
Doing the Right Thing: The WTO and the Developing World

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The prosperity of the richest countries is at an all-time high, and so is their capacity to look beyond their own immediate needs. At the same time, the crisis of the poorest countries is acute, and the shortcomings of the current strategy of globalisation painfully evident. (Jeffrey Sachs, 2000)

Introduction

Advancing the cause of trade liberalization is a tough business to be in these days. Recent attempts to resuscitate the World Trade Organization (WTO) or launch new sets of negotiations such as the Free Trade Agreement of the Americas (FTAA) have met a groundswell of opposition. Hoards of anti-globalization protesters have demonstrated at virtually every meeting of international economic leaders held in the past two years. The activists accuse international institutions like the WTO, the World Bank and the International Monetary Fund of promoting a manifesto for global corporations to the detriment of ordinary citizens. In support of the “race to the bottom” thesis, they point to the growing income divergence between countries of the

developed and developing world that has occurred in recent decades despite the massive growth in world trade volumes.¹

Economists and trade policy experts remain convinced that trade liberalization is good for countries. A link between freer trade and income growth has been established in a number of economic studies.² Income growth is an essential contributor to, although not necessarily a guarantee of, poverty reduction (Max, 2001). International commitments can also foster better domestic policies. Trade liberalization brings with it regulatory reform in critical areas such as telecommunications and financial services that can be an important factor in promoting economic development.

Western political leaders, no doubt frustrated by the protesters that upstage their every meeting, have seized on the potential for trade liberalization to alleviate poverty in the developing world. Their message is that improved global economic integration is not part of a grand corporate agenda but a humanitarian one. Among the items included in the Communiqué of the 2001 G8 leaders' summit in Genoa is a pledge to launch a comprehensive round of multilateral trade negotiations aimed at addressing the concerns of the developing world. Similar commitments were made leading up to the ill-fated WTO ministerial meeting in Seattle.

The developing world has some reason to be sceptical. The West has long preached the benefits of trade liberalization while selectively choosing only those elements of the liberalization agenda that it finds palatable. High barriers persist in the textiles, clothing and agriculture sectors, despite successive rounds of multilateral trade negotiations. At the same time, developing country members of the WTO are being held to commitments to introduce western-style regimes such as intellectual property enforcement measures. Issues of priority to the developing world like labour mobility are not even on the negotiating table.

The fact that there are so many developing country members of the WTO indicates that poorer countries are not yet prepared to give up on the multilateral trading system. Developing nations account for over 100 of the roughly 140 members of the WTO. Dozens of other developing countries

¹A recent report of the United Nations Committee for Trade and Development (UNCTAD) decried the increased marginalization of the world's poorest. The 48 poorest nations accounted for 13 per cent of the world's population in 1997 but only 0.4 per cent of the world's exports and 0.6 per cent of the world's imports. See Lukas (2000, p. 15).

²Jeffrey Sachs and Andrew Warner concluded that developing countries with open economies grew over six times faster in the 1970s and 1980s than countries whose economies were closed to trade (Sachs and Warner, 1995).

have indicated an interest in undergoing the WTO accession process, an undertaking that is long, demanding and with uncertain outcomes.

The key benefit developing nations see in WTO membership is the promise it holds of greater access to markets in the developed world. As major exporters of industrial goods, many strive to emulate the East Asian miracle based on export-led growth and are anxious to participate in negotiations aimed at reducing import barriers. Countries know that trade brings new technologies and practices that can make domestic industries more competitive. They also recognize that membership in international rules-making institutions can make them a more attractive location for foreign investment. The WTO's dispute settlement provisions can also assist developing nations targeted by unilateral measures taken by richer countries in areas such as intellectual property and money laundering.

This paper examines how effectively the multilateral trading system has addressed developing country concerns in the past and considers some proposals for achieving a fairer balance in the world trading system. It is organized into sections that reflect the major trade negotiating areas of concern to the developing world: market access, textiles and clothing, agricultural trade, anti-dumping, intellectual property, the new trade agenda and trade-related assistance.

Market Access

What are developing countries to make of the rhetoric in favour of rapid liberalization, when rich countries with full employment and strong safety nets argue that they need to impose protective measures to help those adversely affected by trade? Or when rich countries play down the political pressures within developing countries — insisting that their polities 'face up to the hard choices' — while excusing their own trade barriers and agricultural subsidies by citing 'political pressures'?

(Joseph E. Stiglitz, 2000)

Better market access was an overriding objective for developing countries participating in the Uruguay Round negotiations. Negotiators made important advances in reducing tariffs, disciplining the use of non-tariff measures and expanding trade in services. Developing countries participated fully in all aspects of the market access negotiations and made significant concessions, particularly on tariffs. Despite the progress made in the Uruguay Round,

however, developing country exporters still remain at a disadvantage in accessing foreign markets.

Rich countries continue to impose higher tariffs on products of export interest to developing countries than they levy on products imported from other Organisation for Economic Co-operation and Development (OECD) countries. The average OECD tariff on manufactured product imports from poor countries is estimated to be four times higher than the average tariff on imports from rich countries (Hertel and Martin, 2000). Textiles, clothing, food products, and footwear continue to attract high levels of tariff protection in developed economies. Moreover, tariffs often escalate with the degree of processing, discouraging the further processing of basic commodities in developing nations.³

To a large extent, developed countries have relied on the duty relief they provide least-developed countries under the Generalized System of Preferences (GSP) as an excuse for not proceeding with across-the-board tariff cuts. Research has shown, however, that GSP has had only a modest effect on trade and incomes in developing nations (Whalley, 1999, p. 1091). One reason is that it is entirely up to the developed countries providing the duty relief to determine the recipient countries and the products that qualify for GSP treatment. Quite often, “sensitive” goods like textiles are excluded. Since developed country tariffs on “non-sensitive” goods are already fairly low, tariff relief under the GSP provides little extra advantage. Second, security of access is never assured. GSP is a unilateral tariff concession that is not bound and can be withdrawn at any time. A poor human rights record or weak enforcement of intellectual property rights can disqualify countries from eligibility. The threat of “graduation” from GSP status is always present and can be used to exact concessions from developing country recipients.

In the aftermath of the failed Seattle ministerial meeting the European Union, the United States, Japan and Canada have pledged free access to imports from the least-developed nations. Like the GSP system, the proposals do not go far enough in addressing the impediments to access. The benefits would apply to only the 48 countries on the United Nations’ list of least-

³Studies have found that a similar bias against exports from the developing world exists with respect to non-tariff barriers. Based on 1992 data, Low and Yeats (1995) calculated that 18 per cent of the non-oil exports from developing countries encountered non-tariff measures compared to only 10 per cent of exports from OECD countries. The disparity was even greater for specific sectors such as clothing and textiles. While members committed to removing quantitative restrictions and other non-tariff barriers in the Uruguay Round, the time frame for their elimination is long; until 2005 in the case of textiles and clothing, for example. Other non-tariff barriers, notably those in the agricultural area, were replaced by prohibitive tariffs.

developed countries. Moreover, exemptions will continue to exist. For example, European members states are resisting the idea of free access for sugar and other sensitive products. Canada's initiative will still leave duties on 10 per cent of imports from least-developed countries. As Bhagwati (2001, p. 23) notes, special programs aimed at the most needy countries merely shift limited market access amongst the poorest rather than expanding access opportunities for all developing nations.

Aside from reductions in tariff and non-tariff barriers, the Uruguay Round market-access negotiations made significant strides in opening markets to trade in services. As with the case of impediments to trade in goods, however, liberalization mostly focused on areas of export interest to rich countries. Emphasis was placed on rights of establishment and on changes in domestic regulatory environments to provide access to foreign service providers. A key negotiating priority for developing countries — labour mobility — was dismissed by industrialized nations. To the extent that it was addressed at all, it was in the context of temporary access for accountants, lawyers and insurance executives, not freer entry for construction and other non-professional workers.

The import barriers of developed nations are only one aspect of the market access challenge facing the developing world. Their own import barriers is the other. As Winters (1999, p. 43) has observed: "countries are more affected by their own trade policies than by their partners', and, of course, it is the former over which they have the most influence". The largest gains from trade occur through the consumer savings that arise from reductions in domestic import barriers.

A comprehensive analysis of market access achievements made in the Uruguay Round by Finger and Schuknecht (1999) concludes that tariffs are disproportionately imposed by developing economies and the biases against exports from developing economies exist as much in developing economy tariffs as in tariffs of developed economies. Even after the reductions made in the Uruguay Round, developing country tariffs remain several times higher than rates levied by developed countries.⁴

A number of authors blame the General Agreement on Tariffs and Trade (GATT) concept of Special and Differential Treatment (SDT) for the persistence of high import barriers in developing nations (i.e., Bhagwati, 2001). The origins of SDT lie in development ideology of the 1950s and were

⁴Finger and Schuknecht (1999) have estimated the average post-Uruguay Round applied *ad valorem* tariff rate to be 2.6 per cent for developed economies and 13.3 per cent for developing economies.

popularized in the Singer-Prebisch thesis. It held that the protection of infant industries and preferential access to markets in the developed world was the only means to avoid a secular decline in the terms of trade of developing nations (Whalley, 1999). The extension of this idea, which was formally introduced in the Kennedy Round of GATT negotiations, was that developing countries should not have to reciprocate negotiating concessions made by other GATT members.

In many respects the SDT concept institutionalized the second-tier status of developing nations. In departing from fundamental GATT principles, it also allowed developed countries to get away with their own GATT-inconsistent practices such as the Multi-Fibre Agreement (Srinivasan, 1999, p. 1051). The result was that until the Uruguay Round, little progress was made in reducing trade barriers in developing countries. The reductions that did occur were often as a result of intervention by the World Bank, not through multilateral negotiations (Pangestu, 2000, p. 1290).

SDT is only part of the explanation for the south's reluctance to reduce import barriers. Many developing countries levy duties not for protective effect but as a second-best policy option. For countries with a rudimentary tax system, for example, customs duties are the cheapest and most effective way for governments to raise revenue. Countries that lack a competition policy regime use import duties to guard against anti-competitive behaviour on the part of foreign corporations (Whalley, 1999, p. 1091). Developing countries frequently lack the technical expertise and resources to implement the other policy changes that would make tariff reduction possible.

It was only in the latest round of trade negotiations that developing countries participated as full players in market access negotiations. Many have come to recognize the limitations of non-reciprocity and understand the benefits of reducing their own import barriers. A number of difficulties remain, however, including the challenge of replacing government revenue lost as a result of tariff reductions. Developed countries can help by providing technical assistance in this area. However, the most important priority for future trade negotiations is reductions in barriers that rich countries maintain against imports from the developing world.⁵ It is time to expand market access negotiations to include sectors that matter not only to rich countries but to poor countries also.

⁵Anne Krueger has advised developing countries to press for across-the-board, not zero-for-zero access in upcoming trade negotiations. This would ensure that developed countries do not resort to their traditional strategy of selecting only those sectors where they have a comparative advantage and removing the political pressure these sectors can exert for liberalization of other restrictions (Krueger, 1999).

Textiles and Apparel

It is shameful for their wealthy trading partners to continue to maintain tariffs and quotas against the products for which the least-developed countries have a clear economic advantage. (Michael Moore, 2001)

In their accounting of U.S. trade barriers, Hufbauer and Elliott termed textile and clothing import restraints “the Mount Everest of U.S. trade protection”.⁶ The same could also be said for the clothing and textile barriers levied by other countries in the developed world. A combination of restrictive import quotas under the Multi-Fibre Arrangement (MFA) and high import duties levied by industrialized nations has frustrated developing country exporters for decades.

It is hard to find a more compelling north-south trade issue. Textile and apparel production is viewed as a critical “first” industry in the process of industrial development and accounts for roughly 20 per cent of industrialized exports from the developing world. Moreover, quantitative restrictions in textiles and clothing are almost exclusively targeted at products exported from the developing to the developed world. With minor exceptions, they do not affect trade between developed countries (Low and Yeats, 1995, p. 58).

Since the 1950s, developed countries have relied on “voluntary” export restraints negotiated on a bilateral basis with developing nations to limit their imports of textile and apparel products. Although it constituted a fundamental violation of GATT principles, quantitative restrictions on clothing and textile exports were formalized under GATT auspices in a series of “trading arrangements” made over the following two decades culminating in the MFA in 1974. The arrangement was extended in 1977, 1981, 1986 and 1991.

Despite the strong case for liberalization, progress has been painfully slow. Powerful producer lobbies in the OECD countries are only part of the explanation. The healthy rents accruing to MFA quota-holders in traditional exporting countries such as Hong Kong, Korea and Taiwan have made them staunch defenders of the status quo intent on keeping out newer producers from places like Bangladesh, Pakistan and India.

Although members agreed in the Uruguay Round to integrate textile and apparel products into the GATT 1994, true trade liberalization still remains a

⁶Hufbauer and Elliott (1994) estimated that clothing and apparel import barriers account for 9 per cent of the economic cost of trade protection in the United States.
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long way off. The implementation period is ten years in duration and little liberalization will occur until the very end. Phase-out requirements refer to import categories, not import volumes and countries have selected for early liberalization categories where no quota restrictions apply or import categories that face little competition from developing countries, such as yarns and fabrics. As an illustration, by January 1, 1998, 33 per cent of imports had to be brought under the GATT rules. The United States has met its obligations but in a way that eliminated only 1 per cent of its MFA commitments. The record for the European Union (EU) and Canada was somewhat better at 7 and 14 per cent respectively (Finger and Schuler, 1999).

The Uruguay Round negotiations instituted a system of transitional safeguards to cushion the effects of liberalization. The resulting mechanism to address import surges could end up being even more restrictive than the MFA quotas themselves (Hamilton and Whalley, 1995, p. 36). Developed countries have also maintained high rates of duty on textile and apparel imports and most have exempted clothing and textile products from the GSP and other tariff preferences that they offer developing nations.

Lest the combination of residual quota restrictions, high duties and transitional safeguards offers insufficient protection from textile and apparel imports from the developing world, rich countries can resort to the use of anti-dumping measures. Producers in the EU and the United States have already taken anti-dumping actions against a variety of textile products. It is expected that anti-dumping cases will multiply as the end of the implementation period approaches (Reinert, 2000, p. 41; Hamilton and Whalley, 1995).

Developed countries remain concerned that the West might renege entirely on its Uruguay Round commitments with respect to clothing and textiles (Reinert, 2000). Should this happen, it would amount to a monumental failure of the Uruguay Round in the eyes of the developing world.

Agriculture

Barriers to developing country exports in industrialized markets continue to severely disadvantage poor countries. Industrialized countries spend more than \$300 billion a year on agricultural subsidies. That is roughly equal to the total GNP for all of Sub-Saharan Africa. And yet, even today developed country tariffs on meat, fruits, and vegetables — all primary exports from the developing world — can exceed 100 per cent. Debt relief without increased market access is a sham. (James D. Wolfensohn, 2001)

The notion that developing countries glean the preponderance of their earnings from farming and other primary industries is outdated. In fact, manufactured products account for over 70 per cent of the exports of developing countries and could rise to 80 per cent by 2005 (Hertel and Martin, 2000). Despite this, agriculture is perhaps the most critical sector for developing countries to address in the next round of multilateral trade negotiations. As Kym Anderson has noted, the welfare cost to developing countries of OECD agricultural policies is estimated to well exceed the cost of protection to the textile and clothing sector. For the world as a whole, agricultural policies are more damaging to economic welfare than are tariffs on industrial goods, despite agriculture's small share of global trade and GDP (Anderson, 1999, p. 3).

Farm subsidy and support programs in rich countries negate the natural comparative advantage developing countries have in the production of many basic agricultural commodities. Rice, sugar and peanuts are examples of goods that trade on world markets at prices well below domestic support price levels in industrialized nations. High trade barriers in developed countries shut out many food imports from the developing world. Domestic farm subsidies in developed nations create food surpluses that are sold in world markets, sometimes with the assistance of export subsidies, driving world prices to uneconomic levels. Food aid compounds the difficulties, particularly since rich countries are more inclined to donate food when prices are low and surpluses high, destroying any opportunity for local farmers in recipient countries to earn a fair return. The fact that many of the poor in the developing world live in farm households means that low and unstable global food prices affect a large proportion of their population.

The Uruguay Round succeeded in bringing agriculture within the general GATT framework. Theoretically, agriculture will be subject to the same general disciplines that apply to manufactured goods. In reality, however, the extent of liberalization is very limited. Average agricultural tariffs in the

industrialized nations remain in the 40 to 50 per cent range while tariffs on manufactured goods have steadily fallen to the 4 per cent level over the past 50 years. Domestic subsidization is still permitted, although subject to certain constraints. While a variety of non-tariff barriers, such as Canada's import restrictions on dairy, poultry and other supply-managed commodities, were converted to tariffs, the outcome of tariffication was, in the view of one observer, "scandalous" (Srinivasan, 1999, p. 1053). The tariff on butter imports to Canada is over 300 per cent. Japan has implemented tariffs of over 1,000 per cent on some varieties of rice. Worse still, according to Hertel and Martin, is that the new tariff-rate-quotas (TRQs) are less transparent than the previous quota regimes and they generate significant quota rents. This will make future liberalization very difficult to accomplish (Hertel and Martin, 2000). Anderson (1999, p. 3) shares this view noting that the TRQs have created a new MFA — a multilateral food agreement — that could leave agricultural trade with quantitative restraints for decades to come.

Real progress on agricultural trade liberalization remains some distance away. Although the European Union made some conciliatory overtures in the lead-up to the Seattle WTO ministerial meeting, it remains committed to its interventionist Common Agricultural Policy. Governments such as the EU's and Japan's have garnered strong support at home for the notion that farm policy is critical to achieving a host of non-agricultural objectives such as the protection of rural communities, the humane treatment of animals, and proper environmental stewardship. They maintain that because of this so-called "multifunctional" dimension of farm policy, agriculture should not be subject to the same sort of disciplines that govern trade in industrial goods. Outbreaks of mad cow and other diseases have strengthened the call for border restrictions in developed countries. Concern over genetically-modified products, the so-called "frankenfoods", contribute to more trade impediments, not less. Like many other issues on the new trade agenda, developing nations view the West's concern for food safety and the "multifunctionality" of agriculture as thinly veiled attempts at protectionism.

It does not help that developing nations are not entirely agreed on the desirability of agricultural trade reform. Countries such as Brazil, Argentina and Thailand have pressed for improved access for their food exports. But importing nations, recognizing that high subsidies in developed countries lower their food costs, are more ambivalent. Preferential trade arrangements, such as the Lomé Convention that favours former European colonies, have made some privileged developing countries strong advocates for the status quo.

If agricultural trade reform is to have any success, it will need to form part of a broader package in future trade negotiations. Players such as the EU

are strongly resistant to liberalization, despite the solid economic case for it. It is essentially the EU and United States that will determine the prospect and pace of agricultural trade liberalization. One would hope that they will keep the interests of the developing world in mind.

Anti-dumping

The fact that the WTO permits anti-dumping may make it sound respectable. It rarely is. (*The Economist*, October 3, 1998, p. 17)

Use of trade remedy laws, until now a prerogative of developed nations, undermines legitimate attempts to liberalize trade. In Stiglitz's view (2000, p. 439), nowhere is the hypocrisy of the developed world greater than when it comes to anti-dumping.

Dumping occurs when an exporter sells goods to a foreign market at less than the price it charges in its home market or at a price that does not fully cover its average total cost of production. The GATT allows an importing country to impose special duties on dumped imports that cause or threaten to cause material injury to its producers of the competing product. The duties remain in place for up to five years but can be renewed if a threat of injury continues to exist.

Economists have rarely understood the rationale for anti-dumping measures (see, for example, Boltuck and Litan, 1991; and Macmillan, 1995). Price discrimination is normal behaviour for profit-maximizing firms. It is only natural that price discrimination would occur across international borders, particularly since factors like tariff protection at home might warrant higher prices in the domestic market. Analyses of anti-dumping cases have concluded that only rarely would they qualify as genuine predatory pricing behaviour (Hutton and Trebilcock, 1992; Willig, 1998). Instead, anti-dumping has become a valuable weapon of corporate strategy for oligopolistic industries, particularly in the metals, chemical, machinery and textile sectors. The proliferation of anti-dumping actions by developed nations is an important factor behind Sylvia Ostry's (1990, p. 17) characterization of the 1980s as "the decade of the privatization of trade policy".

Anti-dumping measures are a highly effective protectionist tool. Typically, the duties imposed are many times higher than prevailing nominal tariff rates. It is not unusual to have anti-dumping duties in the 20 to 50 per cent range, sometimes higher. Almost always, the imposition of anti-dumping

measures wipe out imports from affected countries and has a “chilling” effect on shipments from other countries. The information and legal demands for exporters hit by an anti-dumping action are extremely onerous and expensive. Quite often, developing country exporters targeted by anti-dumping actions do not even bother attempting to defend their interests.

Countries made a half-hearted attempt to address the interests of the developing world in the Uruguay Round negotiations on anti-dumping. The text of the WTO agreement stipulates that particular regard be given by developed country members to the special situation of developing country members when considering the application of anti-dumping duties. Competition policy solutions are suggested as an alternative. However, many countries, including Canada, have not even implemented this aspect of the Anti-dumping Agreement into their domestic legislation, let alone excused any developing country member of anti-dumping duties that would otherwise apply.

The use of anti-dumping measures continues unabated. According to the latest WTO Annual Report, WTO members notified 360 initiations of anti-dumping investigations in 1999, up 42 per cent over 1998. The European Union and India reported the highest number of initiations in 1999, 68 each, followed by the United States at 45 initiations. Despite the introduction in the WTO Anti-dumping Agreement of a five-year sunset clause in 1995, the accumulated stock of anti-dumping measures in existence continues to grow. In mid-2000, an estimated 1,211 final anti-dumping findings were in place worldwide, 300 of which were accounted for by the United States and 190 by the European Union. Canada ranks fifth in the world for the number of anti-dumping measures levied, with 88 (WTO, 2001).

There is good reason to fear that matters will get worse before they get better. Anti-dumping has become entrenched in the world trading system with the recent introduction of legislation in many countries, including dozens of developing nations. Developing countries have learned well from their developed counterparts and have levied many actions against each other, with China being a favourite target. Anti-dumping measures, per dollar of imports, are now probably higher among developing nations than among developed nations (Finger and Schuknecht, 1999, p. 36).

An even greater concern for the future is that the anti-dumping system will be used by industrial countries as a way to escape liberalization commitments in other areas. There is already some indication that clothing and textile import restraints could be replaced with anti-dumping findings. The removal of quantitative restrictions and other non-tariff barriers could lead to a renewed interest in anti-dumping among producers in industrialized nations.

There is no shortage of creative ideas for reforming the anti-dumping system. Alternatives such as the use of import safeguards or competition policy measures have been advocated for years by trade policy analysts. What has been absent is the political will for reform, particularly in the United States. The fact that Canada and the United States with their similar domestic regulatory regimes cannot even agree to restrain the use of anti-dumping measures on bilateral trade does not bode well for the prospect of significant reforms at the multilateral level.

Intellectual Property

The TRIPS does not involve mutual gain; rather, it positions the WTO primarily as a collector of intellectual property-related rents on behalf of multinational corporations. This is a bad image for the WTO.
(Jagdish Bhagwati, 2001, p. 20)

Developing country members had little alternative but to go along with the WTO's Agreement on Trade-Related Intellectual Property (TRIP). WTO's "single undertaking" or "all or nothing" nature meant that members had to sign on to all its component agreements if they wanted to improve their market access in agriculture, textiles and other areas.

Developing nations also considered a multilateral agreement preferable to the unilateral pressure they were under from developed nations to enforce western-style intellectual property obligations. Under Section 301 of the U.S. 1988 *Trade and Competitiveness Act*, countries could be placed on a watch list for what was considered to be weak enforcement of intellectual property rights. The WTO's TRIP commitments had one important advantage over the unilateral U.S. measures: disputes arising under the TRIP Agreement would at least be handled by the WTO's dispute settlement provisions.

While developing nations held their noses and agreed to the TRIP commitments during the Uruguay Round, many have yet to implement the obligations. At the end of 2000, one year past the deadline contained in the WTO agreement, some 70 countries have still not brought their domestic laws and regulations into conformity with the TRIP requirements. Implementation of the TRIP commitments — or, more accurately, the failure to do so — has become an important symbol of North-South trade relations, post-Uruguay.

The South quickly began to regret its grand bargain — immediate implementation of Western-style intellectual property enforcement in return for the uncertain promise of improved market access and technical assistance sometime down the road. Many countries failed to appreciate at the time the tremendous burden involved in implementing intellectual property measures. In retrospect, it was simply unrealistic to expect that countries with little or no legal or regulatory tradition in this area could create a system within a few short years (Finger and Schuler, 1999).⁷

The very nature of the TRIP Agreement imposes an uneven burden on developing nations. Ciuriak (2001, pp. 257-258) notes that it represents a fundamental departure from the standard GATT approach in two important respects. First, unlike the old GATT which generally avoided pronouncing on matters of domestic regulation, the TRIP Agreement severs the implicit barrier between international and domestic policy. Second, Ciuriak observes that the TRIP Agreement departs from the typical practice followed in GATT tariff reductions of dictating symmetrical lowering of barriers to asymmetrical levels. Instead, it requires countries to institute asymmetrical reforms in their domestic policy regimes to achieve a uniform standard. Ostry sees this as part of a general shift from the *negative* regulation under the GATT — what governments must not do — to *positive* regulation — what governments must do (Ostry, 2001). Because they often begin with more rudimentary intellectual property policy regimes and a relative lack of policy resources, the implementation burden is especially difficult for developing nations.

The TRIP Agreement might have even more ominous consequences in the future for developing nations. In using the international trade system to address non-trade objectives, Ciuriak believes that the Agreement creates a dangerous precedent. It opens the door to embedding other non-trade matters such as labour and environmental goals in the WTO, a possibility that gravely concerns developing countries. In the view of many trade policy experts, intellectual property enforcement is a matter that might have been better left with the World Intellectual Property Organization to determine (see Bhagwati, 2001; Hufbauer, 2001; Srinivasan, 1999).

Others have asked even more basic questions about the fairness of requiring developing countries to enforce the property rights of western industrialists. According to Jeffery Sachs, a vast inequality in innovation and technology diffusion is the root cause of much of the global divide. This could be eased if rich countries showed more restraint in asserting intellectual property rights. Patent protection renders life-saving pharmaceuticals and

⁷There are essentially three transition periods for the TRIPs Agreement: developed countries, by January 1, 1996; developing and transition economies, by January 1, 2000; and least-developed countries by January 1, 2006.

seed varieties inaccessible to millions of impoverished citizens in the developing world. While an ad hoc solution has recently been found to make low-cost AIDS drugs available to highly infected African nations, other diseases remain untreated due to the prohibitive cost of patent medicines or because the rewards to pharmaceutical firms are too meager to interest them (Sachs, 2000).

Winters (1999, p. 59) has also expressed concern that the creation and rigorous enforcement of intellectual property rights at the WTO could discourage researchers from focusing on the problems of poorer nations. He advocates special measures to disseminate publicly funded technologies and to develop crop technologies and health products for the poor.

Developing countries are painfully aware that they often lack the necessary knowledge and technology to adequately provide for their citizens. Many view the rigorous enforcement of western intellectual property rights as limiting their access to this knowledge, perpetuating a world of “haves” and “have nots”. A better balance needs to be found between the desire to reward genuine innovation and the diffusion of ideas that could dramatically improve the well-being of the world’s poorest citizens. Arguably, the TRIP Agreement has not achieved this balance.

The New Trade Agenda

Some lines will have to be drawn as to what is trade and trade-related policy — and what is not. Several, if not many, of the issues that have been brought into the realm of trade policy issues are in fact broadly *trade-unrelated*. Continuing to deal with them in a trade context is damaging to the cause of getting developing countries to support a new round. (Jagdish Bhagwati, 2001, p. 20)

A disconnect has emerged between the trade policy objectives of the developing and developed world, post-Uruguay. Developing nations are preoccupied with implementation matters and remain committed to expanding market access. The West is considering expanding the scope of trade agreements to encompass social, environmental and other “values” issues. In reaction to pressures from non-governmental organizations and representatives of civil society at home, western governments are also debating ways to make the WTO a more open and democratic institution.

One area where the developing world stands united is in opposition to the “trade and ...” initiatives. Former President Clinton’s support for the idea of trade sanctions to enforce core labour standards was a major reason behind the failure of the WTO’s Seattle ministerial meeting. Equally unpalatable to developing nations is the attempt to link trade and the environment. In their view, using the trading system to impose the West’s environmental or labour standards is simple protectionism that is designed to undermine their comparative advantage.

Developing countries will strongly resist the introduction of labour and environmental standards into WTO Agreements and will likely object to any other “values” standards that depend on extraterritorial application of domestic norms. Their position is that these matters are best left to the relevant international body to administer. For its part, the U.S. Congress appears to consider labour and environmental standards as part of its trade agenda and has pressured the administration to include them in its recent pact with Jordan. This does not bode well for a new round of multilateral trade negotiations or, indeed, for bridging the North-South divide.

Another element of the new trade agenda that developing countries greet with scepticism is the bid to “democratize” the WTO. On the one hand, they welcome measures to improve the WTO’s “internal democracy” by wresting control over key policy decisions from the small group of western nations that previously reigned. What they decry, however, are proposals to open WTO dispute settlement and committee meetings to non-governmental representatives (Bhagwati, 2001). They fear, with some reason, that the chief preoccupation of non-governmental organizations intervening before the WTO would be social and environmental considerations. Poorer nations view the deference that countries like Canada and the United States accord representatives of “civil society” with a measure of curiosity and mistrust.

There is no doubt that the WTO needs to evolve as an institution if it is to remain relevant and effective. It is equally true that it cannot avoid addressing domestic regulation if it is to liberalize trade in important areas such as services and investment. However, the issues that divide developed and developing nations are considerably larger when it comes to the new trade agenda than in the more traditional areas of trade policy. They raise matters of governance and national values and, as such, are highly sensitive.

Trade-Related Assistance

The transition periods for implementation for developing countries were arbitrary and not based on any analysis or, indeed, on any awareness of [the] system problem. (Sylvia Ostry, 2000, p. 6)

Developing nations have missed out on many of the benefits of participation in the multilateral trading system because they lack the resources to take advantage of them. Assistance is needed in several areas: to help implement the commitments they have already made, for trade adjustment, to represent their interests in trade disputes, to participate in future rounds of trade negotiations and to reform their policies and regulations to better capitalize on the new opportunities created by trade liberalization.

As Ostry (1999, p. 21) has written, the one common element characterizing the new WTO issues is that they all deal with the institutional structure of domestic economies. As with negotiations on competition policy, financial services, e-commerce and investment, this necessarily infringes on areas of domestic regulation. Obligations to increase institutional transparency and reform domestic regulations gravely concern developing nations. And it is more than simply an issue of resources. Developing nations often lack the long history of institutional development that OECD nations have shared. In many instances, they are required to implement in several short years western-style legal and institutional systems that evolved over many centuries in the western nations themselves.

The most immediate issue is that of implementation. Finger and Schuler (1999) estimate that the cost of implementing the WTO Agreements can easily exceed the entire development budget of a least-developed nation. It is many times greater than the burden that implementation represents for developed country members since the disciplines being imposed closely reflect the status quo in industrialized nations.

Another issue is that of trade adjustment. Rich countries agonize over trade adjustment pressures affecting their textiles, apparel, steel and agriculture sectors. These pale in comparison to the challenges facing countries in the developing world. As Stiglitz (2000, p. 440) points out, trade adjustment in developing countries is inhibited by many factors including government rigidities, rigidities in labour markets and lack of access to capital. These matters have to be addressed if trade liberalization is to succeed. The standard competitiveness paradigm that applies in OECD economies does not always work in the developing world.

Help is also needed to allow developing country members to participate in trade negotiations and represent their interests in trade disputes. More than one-half of the WTO's developing country members cannot even afford to have a full-time representative in Geneva. The WTO's dispute-settlement mechanism, while much welcomed by developing nations, is too expensive for many to access. Often, developing countries lack the money and expertise to properly defend their own interests in WTO disputes or to participate in other disputes where important issues of principle are being decided.

In recent years, international institutions have recognized that trade assistance needs to be supported by programs to back institutional and regulatory reform and development of social and physical infrastructure. Basic issues of governance need to be addressed and reforms undertaken to improve legal systems, infrastructure and private sector capabilities. The WTO's own resources for trade-assistance are meager, in the range of US\$ 500,000 per year. International institutions have tried to improve coherence in recent years through initiatives such as "The Integrated Framework for Trade-Related Assistance to Least Developed Countries". Unfortunately, the resources are still insufficient and their mandates ambiguous. Moreover, many of the measures are aimed solely at the least-developed countries when it is all the nations of the developing world that require technical and institutional resources.

The failure to provide adequate trade-related assistance for developing countries was one of the greatest shortfalls of the Uruguay Round. More resources and a better appreciation of the implementation and adjustment burden facing developing countries is necessary if they are to become full partners in the multilateral trading system.

Conclusion

As many trade experts often point out, the WTO is not a development agency. That argument is true but irrelevant, because trade is not trade today. And the new focus on domestic policy and institutions creates spillover and linkages among policy domains and international institutions that never existed in the GATT. Thus, the implications of the grand bargain for the evolution of the WTO are profound and deserve far more analysis than has been provided to date. (Sylvia Ostry, 2000, p. 15)

The legitimacy of the WTO depends critically on its ability to achieve a better balance between its developed and developing country members. Multilateral trade relations have deteriorated sharply post-Uruguay with the refusal by many developing countries to implement Uruguay Round commitments and the very meagre progress in services and agricultural negotiations. It is up to developing country members, and particularly the influential “Quad” group of countries which includes Canada, to take up the challenge. Not only is a greater concern for the trade aspirations of developing countries the right thing to do from a development perspective but it is also essential to the future success of the multilateral trading system.

The challenge is particularly relevant for the Canadian government, which is already under scrutiny for cutting back the budget of the Canadian International Development Agency during the 1990s.⁸ Like the other industrialized countries, Canada does not allow international development officials much, if any, role in trade policy-making. The fact that the foreign aid and trade policy realms operate in virtual isolation is one reason why development issues are rarely taken into account in the trade policy of developed countries.

There is much work to be done. Import barriers in developed country markets disproportionately penalize exports from the developing world. The West has held out promise that agricultural and textile barriers will drop sometime in the future, but only in return for the immediate implementation of intellectual property regimes and reforms in other areas such as customs valuation, import-licensing, and technical, sanitary and phyto-sanitary standards in developing nations. Poorer countries have been left largely on their own without outside technical resources to make the considerable changes to their domestic institutions and regulations that their WTO commitments require. Developed countries have steadfastly held onto their

⁸OECD figures ranked Canada's aid budget relative to the size of its economy as seventeenth out of 22 donor countries in 2000 (*The Globe and Mail*, April 27, 2001).
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protectionist weapon of choice — anti-dumping measures — the use of which can obliterate the effects of trade liberalization in other areas. More-over, the WTO threatens to evolve into a more transparent and democratic institution by allowing representations from NGOs, many of whom are intent on expanding agreements to include non-trade considerations like social and environmental standards which could undermine the comparative advantage of poorer countries.

The elements of a fairer trade system are quite obvious: the removal of tariff and non-tariff barriers on imports from the developing world, reform of domestic agricultural programs, generous financial assistance and assistance in kind to developing nations to help them with implementation and trade adjustment, a substantial weakening of anti-dumping regimes and the refusal to include labour and other “values” standards in WTO Agreements.

Sadly, trade policy has very little to do with fairness nor, indeed, with economic efficiency. If economic principles prevailed in trade policy-making, all countries would abandon protectionism unilaterally for domestic economic reasons. Instead, trade policy-making is dominated by special interests and, up until now, has represented a balance between the demands of import-competing interests for protection and the desire of powerful exporters in industrialized nations for greater market access. The interests of developing nations have not been well served by what has essentially been a mercantilist bargaining model.

Previous rounds of trade negotiations have not been entirely devoid of non-economic objectives, however. The desire to provide a basis for a lasting peace was the major consideration behind the creation of the GATT in the postwar period. If it is to succeed, the WTO needs a unifying mission that is more persuasive than merely economics. As Ostry points out in this volume, Canada has played a lead role on many previous occasions mobilizing middle-power support for difficult negotiations (Ostry, 2001). It is hard to imagine a more worthy political, economic and humanitarian cause for Canada to champion than a WTO that better addresses the interests of the developing world. This must begin by acknowledging the degree to which trade policy in the West has disadvantaged those that are already disadvantaged.

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