B THE DOHA DEVELOPMENT AGENDA

1. INTRODUCTION

An underlying objective of the WTO is to promote economic development through effective participation in world trade. Three aspects of the WTO's structure and rules are relevant to the question of how developing countries can derive greater benefits from participation in the trading system. First, the rules themselves, together with permitted exceptions and interpretations, are the foundation of the system and play a key part in determining the conditions and opportunities of trade. Second, there is the question of the coverage of the system. No examples exist of topics that the WTO has taken up and then discarded, so this is about the inclusion of new areas. Third, the pattern of protection facing a country's exports also goes a long way in defining trading conditions and opportunities. In short, the nature of WTO rules, the reach of these rules, and conditions of market access are the three major areas that determine the quality and utility of the WTO for its Members. Not surprisingly, each of these three elements features prominently in the Doha Development Agenda.

In considering the development dimension of the WTO and how to make trade work more effectively for developing countries, two additional issues linked to developing country participation in the trading system deserve mention. The first concerns efforts that the international community needs to make in helping developing countries to strengthen their capacity to participate more effectively in the trading system. There are several aspects to this question and these will be discussed in Section IIB.3. Second, there is the issue of the working methods of the institution and the challenge of ensuring that all parties to the WTO agreements are given an adequate opportunity to participate in deliberations, make their voices heard and influence outcomes. This issue, sometimes referred to under the rubric of "transparency", will not be taken up in any detail in this Report, but it is one that has attracted attention as growing numbers of Members take an active interest in the WTO.

Much has been written on the historical origins of the GATT/WTO and the development of international economic relations over the last five decades or so.[78] Similarly, an abundant literature exists on the growth of international trade and increasing economic inter-dependency among nations in the post-war period. It is not the intention to repeat this history here.[79] However, an understanding of the challenges currently facing the WTO does require some appreciation of key elements in the evolution of international trade and investment, and of the trading system.

Trade has assumed growing importance as a source of global economic activity and has expanded rapidly.[80] These observed trends in trade and FDI growth are part of the underlying story that animates the current debate on globalization, although of course international trade and investment growth are merely a manifestation of a process which is driven primarily by a mix of technological and policy factors. For the present purposes, what is crucial about increased inter-dependency among nations is the pressure that this exerts on the trading system. In a world of greater economic inter-dependence, the policy stance of one country becomes a more direct matter of concern to other countries. This deepening sense, at least in policy circles, that it is legitimate for one government to have a say in respect of the policy stance of another intensifies the pressure for co-operation. The implications of this for the WTO are obvious.

The WTO and the GATT before it have presided over two important developments that flow directly from the evolution of the world economy and growing inter-dependency. One is the rapid growth in membership of the institution, reflecting increasing engagement by dozens of nations in world trade. The GATT started with 23 Members. The WTO now has 146 and another 27 are seeking to join. Chart IIB.1 shows the evolution of GATT/WTO membership over time. Increased membership in recent years has been accounted for entirely by developing countries and countries in transition. A fundamental challenge for the multilateral trading system is how to manage the growing diversity in economic characteristics, needs and priorities implicit in

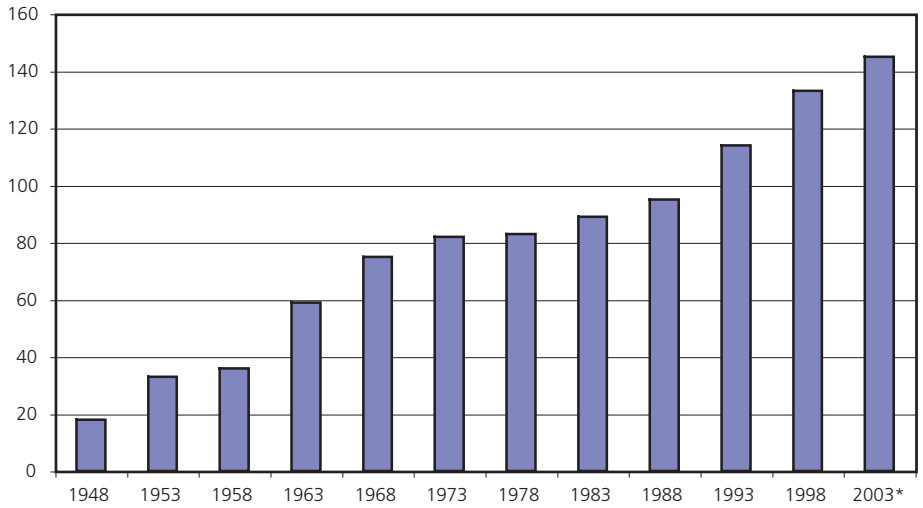
78 Standard references include Diebold (1952), Curzon (1965), Jackson (1969, 1996), Hudec (1975, 1987, 1991), Dam (1977).

79 See chapter 1 of Hoekman and Kostecki (2001).

80 Maddison (1989) traces trade growth in the twentieth century. The most recent developments in international trade and investment growth are systematically recorded in the annual publications of international agencies, including the WTO.

this expansion of membership. The viability of the system requires that this diversity be managed to ensure that all parties believe they are better off within the system than outside it. And for the system to do well, this sense of gain should be positive such that governments believe they score welfare improvements through participation rather than merely avoiding something worse as a result of being outside. At the most basic level, this is the challenge of Doha, as it has been for every negotiation that has preceded the present one.

Chart IIB.1
GATT/WTO membership, 1948-2003
(Number of Members)



* February

Source: WTO.

The second notable development in the GATT/WTO has been the expansion of the agenda and areas of allocated competence of the institution. This has been a gradual and sometimes contentious process. Up until the sixth round of multilateral trade negotiations – the Kennedy Round (1964-1967) – negotiations had focused exclusively on mutual tariff-cutting exercises. In the Kennedy Round, a mild foray was made into rule-making in the area of anti-dumping. The Tokyo Round (1973-1979) built on the beginnings of this rule-making trend, but for the most part the non-tariff measure agreements struck at this time elaborated existing GATT provisions rather than extending them into new policy areas. This was true for the Agreements on subsidies and countervailing measures, anti-dumping, technical barriers to trade, customs valuation and import licensing. It was less true for the Agreement on Government Procurement, which was an explicit extension of the GATT. But like all the new non-tariff measure agreements, that Agreement only applied to those governments that had signed it.

The real break with the past came with the Uruguay Round (1986-1994). Among the major outcomes of this negotiation were the establishment of the World Trade Organization and the inclusion of trade in services and trade-related intellectual property rights within the ambit of the WTO. Many other rules were revised and strengthened at the same time. The Single Undertaking brought many new obligations and a much deeper level of involvement in the system on the part of developing countries. The Single Undertaking required that all WTO Members accepted the whole package of Uruguay Round results – Members were not at liberty to accept some obligations but not others. This aspect of the Uruguay Round results meant that developing countries assumed significantly higher levels of obligation in a range of areas where this had not previously been the case. The process of redefining and expanding the WTO's programme of work has continued since the end of the Uruguay Round and this shall be taken up in subsequent discussions of the Doha Agenda.

Most initiatives aimed at expanding the GATT/WTO's work programme and negotiating mandates have emanated from developed countries. More recently, however, developing countries have also become more active, seeking modifications to a wide range of existing provisions in an effort to make them more responsive to development

needs, as well as introducing such topics as trade and technology transfer and trade, debt and finance onto the agenda. As with any set of co-operative arrangements, the objective must be to find a balance among diverse needs and priorities. The WTO must be encompassing enough to address the increasingly wide set of issues that are relevant to international economic relations. Without this, the institution will become less relevant to an important segment of the more economically advanced membership. But at the same time, the WTO has to respond effectively to the immediate needs of developing countries as they seek to engage further in the international economy in order to address the immediate imperatives of development and poverty alleviation.

(a) The case for intensified engagement in the multilateral trading system

Article III of the Marrakesh Agreement Establishing the World Trade Organization identifies five key functions of the WTO. These, essentially, refer to the responsibilities of the WTO in terms of providing a set of trading rules for trade, a forum for negotiations, and a dispute settlement mechanism. In addition, the WTO is responsible for administering the Trade Policy Review Mechanism and achieving greater coherence in global economic policy-making through co-operation with the World Bank and the International Monetary Fund.

These designated functions broadly describe the activities of the WTO and are not contentious. A prior question that might reasonably be posed, however, is why governments should take the trouble to participate in the WTO. Governments generally know what policies they would like to pursue in the trade field. And if they do not, participation in the WTO is unlikely to be of much use. Indeed, many governments, especially in developing and transition economies, have undertaken significant trade liberalization programmes with no recourse or reference to the WTO. Given the time and money required for effective participation in the WTO, the fact that governments rarely obtain quite what they want, and that they have plenty of scope for autonomous action, why do they engage? What is to be lost by regarding trade policy as an internal matter to be decided at the national level? The existing literature on international relations and the theory of politics would offer many rich hypotheses and explanations as to why governments might favour international co-operation.

For the present purposes, however, four reasons can be identified as to why turning away from international engagement and co-operation in trade policy will make a country worse off. The first of these relates to reciprocity in trade liberalization negotiations, and why governments have almost always seen an advantage in moving together in opening up their markets to import competition. No rule in the WTO requires that Members make reciprocal commitments to open their markets to trading partners, but reciprocity, or at least some degree of reciprocity, is an article of faith in negotiations.[81] Many commentators have criticized insistence on reciprocity as mercantilist and poorly reasoned because the greatest beneficiaries of liberalization are most likely to be the liberalizing countries themselves. On the basis of this argument, market-opening initiatives should not be constrained by an unwillingness of trading partners to do the same.[82]

In effect, countries do not only benefit from their own liberalization, but that of others as well. Any possibility of joint action on the liberalization front is mutually beneficial. This is a reason for seeking reciprocity (although not a reason to eschew unilateral liberalization). More importantly perhaps, in a political economy sense governments will find it easier to persuade domestic interest groups to go along with trade liberalization, notwithstanding adjustment costs, if they can demonstrate that their trading partners are engaged in a comparable exercise. Under a reciprocal scenario, domestic export industries will reap advantages at the same time as import-competing industries face new competition from abroad. This makes for a stronger pro-liberalization coalition, involving producers as well as consumers. Economic gains are thus augmented through co-operative international action because it offers more liberalization than might otherwise be the case.

A second reason for favouring co-operation involving participation in a system of binding international rights and obligations relates to transactions costs. The costs of production and of doing business across frontiers can be

[81] An important exception to this notion of reciprocity, contained in the GATT and other legal texts, is that developing countries are not expected to offer reciprocity to developed countries where this would be inconsistent with their individual development, financial and trade needs.

[82] One economic reason for insisting on reciprocity could be a fear that unilateral liberalization will lead to terms of trade losses. This can only be true where countries are large enough in the market to affect prices. The point is not pursued further here since it is not central to the argument.

greatly reduced through co-operative arrangements that produce more harmonized approaches in such areas as standards and technical regulations, or where governments agree to accept one another's conformity assessment procedures aimed at ensuring that standards are being met. Similarly, uniform administrative procedures associated with trade can lower costs and increase the scope for profitable trade. Some may argue that costs of transactions across frontiers could be lowered through a system of mutual recognition which over time would likely lead to greater uniformity through "regulatory competition". This may be so, but mutual recognition would also need to be negotiated at some level, and experience suggests that in many circumstances governments will prefer explicit understandings and commitments in regulatory matters. This suggests limits to the unilateral harvest of trade-facilitating benefits, and argues for co-operation with trading partners.

Third, trade is likely to expand and be more profitable under conditions of certainty and security as to the terms of market access and the rules of trade. A shared commitment among trading partners to specify *ex ante* the terms and conditions upon which products may be sold in their markets can give a significant boost to trade. A willingness to pre-commit on the characteristics of a policy regime in this manner means that arbitrariness or unrelated elements of conditionality and discrimination are removed from the picture. The dispute settlement system in the WTO also plays an important role in this context, since it allows governments to seek recourse in circumstances where they believe a trading partner has failed to respect its obligations. Once again, however, these benefits cannot be acquired in the absence of explicit co-operation among governments in trade matters.

A fourth reason for entering into internationally binding commitments is not always openly discussed, but can be important. Governments are under constant pressure from domestic interest groups. These interests are sometimes powerful and may seek outcomes that would diminish economic welfare for the nation as a whole. The sheer complexity involved in pursuing multiple national objectives and seeking to balance competing interests means that governments may find it hard to pursue policies unpopular with some, but which they know to be in the national interest. One way of strengthening the hand of a government is through internationally binding obligations. Such obligations raise the costs of adopting contrary policies or of reversing existing policies, and provided the obligations in question reflect the national interest, international co-operation of this kind will increase national well-being.

These arguments suggest a strong case for co-operating through a multilateral institution like the WTO, and in today's increasingly interdependent world, of intensifying engagement. Co-operation involving international rights and obligations should not be seen as a necessary evil, or the least undesirable option. Governments have a responsibility to define and defend their national interests in the WTO, and a lack of effectiveness in this regard is a recipe for discord, confusion and forgone opportunity. Effective participation in the national interest may well mean opposing or seeking to modify someone else's agenda, not in the spirit of blocking merely to defend the status quo, but on the basis of reasoned national interest.

(b) An overview of the Doha Agenda

Much of the rest of this Report will discuss aspects of the Doha Agenda, with particular emphasis on the development dimension of the work programme and negotiations. The intention here is to provide a brief overview of the Doha Declaration and its salient themes as background for the more detailed treatment of some issues to follow. The Doha Ministerial Declaration spelled out a number of key principles and procedures intended to inform the entire negotiation. First, the negotiations are to be conducted in a transparent manner that facilitates effective participation of all parties, with a view to ensuring benefits to all participants and achieving an overall balance in the outcome of the negotiations. Second, the negotiations and other aspects of the work programme are to take fully into account the principle of special and differential treatment for developing and least-developed countries. Third, the Committee on Trade and Development and the Committee on Trade and Environment are to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected. Fourth, the negotiations comprise a single undertaking, with the exception of work on the Dispute Settlement Understanding. Finally, while there is a clear distinction in the Doha Ministerial Declaration between negotiations and the work programme, issues covered by the latter are also to be accorded high priority, pursued under the overall supervision of the General Council and reported on at the Fifth Session

of the Ministerial Conference in Cancún in September 2003. Members can invoke any of these underlying principles and procedures at any time if they feel they are not being accorded adequate attention.

One way of taking a schematic overview of the Doha work programme and negotiating agenda is to divide the Doha Declaration into four main components which give a broad idea of the areas in which Members are working. These are the development dimension and technical assistance and capacity building issues, market access, rules-related issues and dispute settlement. Each element of the work programme fits within these categories.

Development-related issues have been placed at the centre of the Doha Declaration. At the Doha Ministerial Meeting the name coined for the entire work programme was the Doha Development Agenda. In the eyes of many, this is not only a description reflecting the pervasiveness of the focus on development in the Declaration and associated decisions and texts, but also a benchmark against which the results of the negotiations will be judged. Most, if not all, work programmes and negotiating mandates in the Declaration refer to such matters as the importance of the development dimension, special and differential treatment, the priorities of developing countries, and the need for technical assistance and capacity building. In addition, specific sections of the Doha Declaration deal with technical co-operation and capacity building, least-developed countries and special and differential treatment. Work programmes have also been launched on small economies, trade, debt and finance, and trade and transfer of technology. Other development-related work includes the ongoing examination of specific proposals for modifications to WTO provisions and procedures made in the context of the post-Uruguay Round implementation discussions.

Since development concerns suffuse the entire text, the real challenge will be to find ways that genuinely respond to the development needs of developing countries. This means avoiding the twin traps of mere lip service and an attitude of tokenism to development issues on one hand, and the misguided assumption on the other that disengagement and minimal commitments are the best recipe for supporting the development process through the WTO. Succumbing to either temptation will make the results less meaningful and the WTO less useful to all parties. These matters will be discussed further in Section IIB.3.

Market access negotiations, the second element of the Doha work programme identified above, encompass trade in services, agriculture and non-agricultural tariffs. Market access negotiations are the traditional fare of the GATT/WTO trading system and despite many years of real progress in lowering barriers to trade, much remains to be done. Significant tariff peaks and escalating tariff structures remain in the schedules of many industrial countries. Bound average tariffs remain high in many developing countries. There is also the promise of expanded South-South trade under liberalized trade regimes. In services, much scope remains for opening up sectors through the assumption of specific commitments in respect of market access and national treatment. A feature of market access negotiations that may partly explain the historical success of the GATT was that all parties to the negotiation wanted something and had something to give. This facilitated exchange. The same is true today – there is something for everyone in market access negotiations.

Third, the Doha work programme and negotiations include many rules-related issues, some of which are linked and others stand alone. Only some of these issues will be discussed further in subsequent sections of this Report. Negotiations have been engaged on anti-dumping and subsidies and countervailing measures. Disciplines and procedures applying to regional trade agreements are also under negotiation. In the area of TRIPS, work is proceeding on the establishment of a system of notification and registration of geographical indications for wines and spirits. Some Members are also seeking to extend the protection of geographical indications beyond wines and spirits. Of particular interest to developing countries in the area of TRIPS is the Declaration on the TRIPS Agreement and Public Health, upon which work is continuing. These efforts are intended to ensure that developing country governments are better able to address medical emergencies and to acquire medicines more easily and at lower prices. This work is crucial from a development perspective. Also under examination is the relationship between the TRIPS Agreement and the Convention on Biological Diversity, as well as the protection of traditional knowledge and folklore. Other rules-related elements of the Doha Agenda cover trade and environment, electronic commerce, and the full range of the Singapore issues – trade and investment, trade and competition, transparency in government procurement and trade facilitation. The key question confronting governments as far as the Singapore issues are concerned is the nature of any

negotiating process that will go forward pursuant to an explicit consensus decision on modalities to be taken at the Fifth Session of the Ministerial Conference in Cancún in September 2003.

The rules-related issues to be addressed under the Doha Agenda are diverse and complex. A major challenge for Members, especially developing countries, is to identify where national interests lie with respect to all of these subjects. Inevitably, a serious analysis of the national interest will need to look at both the implications of engagement for national policies as well as for the policies that trading partners would be expected to pursue as a result of commitments. In the simpler negotiations of the past it was easier to think in terms of a clear distinction between developing and developed countries. Today, with a far more complex agenda and a growing WTO membership of highly diverse countries, broadly defined groups are unlikely to share common positions beyond a rather general level of specificity. Divergent experiences, needs, priorities and realities make it much more challenging to find a common cause, and effective alliances will inevitably shift across issues. But alliances and coalitions can be highly effective in pressing particular positions, and this places a premium on creative flexibility when it comes to striking mutually supportive negotiating bargains among sub-sets of Members.

Finally, dispute settlement has been treated separately as the fourth element of the Doha Agenda because in many ways it is the glue that keeps the system together as a coherent whole. It is the ultimate arbiter of good faith among trading partners, the guarantor of security under international agreements embodying enforceable rights and obligations. The negotiations on dispute settlement are not part of the single undertaking, and were scheduled for completion by the end of May 2003. This deadline was not met.

The sections that follow will examine specific aspects of the Doha Agenda from a development perspective, drawing on the analysis in earlier parts of this Report of a range of trade and development issues. The discussion is organized around functional aspects or objectives of the multilateral trading system. Four of these have been identified: i) removing impediments to greater openness; ii) facilitating openness for development; iii) managing openness within WTO rules; and iv) deepening global integration and the multilateral trading system. In each case, the intention will be to consider, from a national interest perspective, what insights development-related analysis and empirical work might offer in regard to potential gains and pitfalls that may be encountered as Members work their way through the Doha Agenda.

Removing impediments to greater openness: unfinished business. This section will analyse barriers to trade in goods and services with a view to identifying opportunities for expanding trade. The section on merchandise trade will include agricultural and manufactured goods. It will address tariffs and non-tariff measures, as well as domestic support measures and export subsidies in the case of agriculture. Aspects of trade in services will also be covered. Finally, trade facilitation and transparency in government procurement will be discussed as policy areas that affect conditions of market access.

Facilitating openness for development. The purpose of this section is to focus on developing country interests and priorities. The issue of special and differential treatment will be taken up, along with technical assistance and capacity building. In addition, certain areas of the Doha negotiations and work programme of particular interest to developing countries will be discussed. These include trade and the transfer of technology, trade, debt and finance, and small economies. Finally, issues of access to medicines as well as access to genetic resources and the protection of traditional knowledge will be considered briefly, bearing in mind that these are aspects of current work on TRIPS of particular interest to developing countries.

Managing openness within WTO rules. The viability of the trading system requires that the principle of non-discrimination and market access commitments are protected by a series of rules that guard against policy slippage or erosion. The principal mechanism to fulfil this objective is the dispute settlement system. A second function of the rules is to allow governments to mitigate sudden unanticipated changes in economic conditions and also to guard against unfair trade practices. The rules relevant here are safeguards, anti-dumping, and subsidies and countervailing measures. Finally, other policies may have an impact on trade and give rise to questions of compatibility with WTO rules, for instance in the field of trade and environment. All these different policy areas will be examined, with additional emphasis on those elements that are the subject of attention in the Doha Agenda.

Deepening global integration and the multilateral trading system. This section will consider the issues of trade and investment and trade and competition in terms of proposals by some Members for the inclusion of these items as part of the Doha negotiations after the Fifth Session of the Ministerial Conference.

2. MARKET ACCESS ISSUES

Market access issues for international trade in goods and services remains a core area of work for WTO Members. The General Agreement on Tariffs and Trade (1947), established the rules for market access and subsequent rounds of negotiations related to merchandise trade. This Agreement was complemented by the Agreement on Agriculture, the Agreement on Textiles and Clothing and the General Agreement on Trade in Services (GATS), which came into force in 1995. Taken together, they cover all trade in goods and services.

The market access agenda can be defined more or less broadly. It includes tariffs and measures that are traditionally defined as non-tariff measures such as to control the volume and price of imports. It is also possible to add to this list measures that condition market access through their application at the border such as standards, as well as measures that distort competition in world markets such as domestic support and export subsidies. Market access is also conditioned by inefficient administrative trade practices and lack of transparency at customs ports. Terms and conditions attached to the procurement of goods and services by governments also determine market access conditions. The discussion that follows covers manufactures, agriculture, services, trade facilitation and transparency in government procurement.[83] The section is structured so as to emphasize the instruments of market access.

(a) Tariffs

Before proceeding with the analysis it would be useful to clarify the various definitions of a tariff. Multilateral trade negotiations address what are known as bound tariffs that are applied on a most favoured nation basis (MFN). These rates are called concessions, which are granted to each Member of the WTO on a most favoured nation basis. They are not necessarily the same rates that are applied at customs points, which are called MFN applied rates. They also differ from preferential rates applied on a reciprocal basis such as in regional trading agreements, or non-reciprocal schemes such as the Generalised System of Preferences. This distinction between bound and applied rates is important in the context of discussing the role of the WTO as an institution since, as will be shown below, in some cases the gap between the bound and the applied rates is such that negotiations could conclude without any meaningful change in market access. Furthermore, the principle of binding tariffs at the WTO has both a legal and economic value. In the legal sense a binding is a concession, which a Member has granted to other Members. In the economic sense a binding of a tariff – that is, the commitment not to raise tariffs above a certain level – is of value since it promotes stability and certainty in a tariff regime.

(i) Stylized characteristics of tariffs

The starting point for analysing the landscape of tariffs is to examine the extent to which tariffs persist. Two measures can be used for this purpose. The first is the percentage of world imports that is traded duty-free and the second is the percentage of tariff lines that are duty-free.[84] Both indicators reveal that tariffs remain an important issue if the objective of the system is duty-free trade (Chart IIB.2). At one extreme are WTO Members which are completely duty-free such as: Hong Kong, China; Macao, China and Singapore. At the other extreme are a number of predominantly developing countries. It is important to note that except where all imports are duty-free, no exact correspondence can be expected to exist between the share of tariff lines that are duty-free and the share of imports that enter a country duty-free. Duty-free tariff lines may attract a proportionately greater share of trade than lines bearing a positive duty rate, or vice-versa. Countries with relatively low percentages of duty-free lines may have higher percentages of duty-free imports than suggested by the tariff line count. This is apparent from Chart IIB.2, and Kenya is a prominent example of such a country.

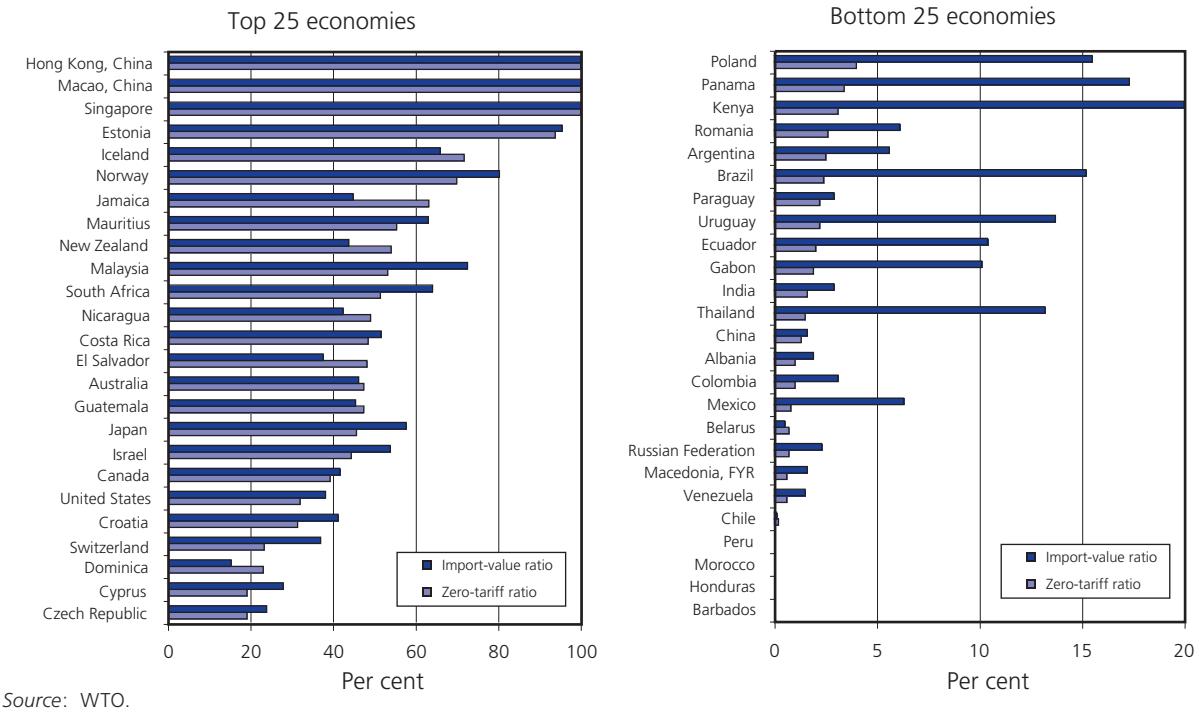
[83] The section draws on a number of recently completed studies that examine the issue of market access, especially WTO (2001a). Other studies include: Bacchetta and Bora (2001, 2003) and UNCTAD (2002a) on industrial tariffs; Hoekman, Ng and Olarreaga (2002a, b), OECD (2002a) and USDA (2001) on agriculture; Bora (2002a), Bora, Cernat and Turrini (2002) and UNCTAD (2001a) on Least-Developed Country issues.

[84] The nature of the duty, that is *ad valorem* or non *ad valorem* does not matter, just as long as its value is zero.

A further observation on the interpretation of the indicators depicted in Chart IIB.2 is that they do not tell us anything about average tariff levels in different countries, the spread of tariff rates, nor the degree to which tariffs are bound. In the case of Chile, for example, virtually all applied tariffs are set at 9 per cent. The absence of duty-free imports does not necessarily indicate a more trade-restrictive or distorting tariff structure than one in which many applied rates are free of duty. More detailed information on such tariff schedule characteristics as averages, spread and bindings is provided in Appendix Tables IIB.1-IIB.6.

At the global level, slightly more than 50 per cent of world imports are traded duty-free, while approximately a third of tariff lines are bound duty-free. These figures do not take into account the network of preferential trading agreements within the trading system (see Section IB.3), so in reality the figure for world trade that is duty-free is likely to be higher, but not so much higher as to suggest that tariffs are not significant. The above figures also do not take into account the issue of preferential market access into developed countries for products originating from developing and least-developed countries (LDCs). A number of recent initiatives such as from the European Union through its Everything But Arms initiative and the United States' African Growth and Opportunity Act have improved market access for LDCs (Box IIB.1).

Chart IIB.2
Per cent of duty free MFN lines and duty free MFN imports, selected economies



Source: WTO.

There are a number of features of the tariff profile (both bound and applied) of the multilateral trading system that should be borne in mind in the context of trade negotiations and pressures on the trading system (Appendix Tables IIB.1-IIB.6). First is the fact that developed countries in general have lower applied and bound average tariffs. The relationship between per capita GDP and the level of average applied MFN tariffs is negative. Second, in terms of percentage of tariff lines that are above 15 per cent there is again a clear negative relationship. The lower the per capita GDP the higher the percentage of lines above 15 per cent. Furthermore, when the calculation is repeated using bound rates, the percentage of lines above 15 per cent increases for most Members. The remainder of this subsection on tariffs will develop these common themes in the context of both agricultural and non-agricultural products, but at a more disaggregated level.

Box IIB.1: Market access for LDCs

Least-Developed Countries (LDCs) account for less than one half of one per cent of world trade. In the Doha Ministerial Declaration, Ministers committed themselves to considering additional measures to progressively improve market access for LDCs and to the objective of duty-free and quota-free access for products originating in LDCs.[1] Paragraph 7 of the WTO Work Programme for LDCs lists elements for review and further examination.[2] This mandate confirms earlier calls for improved market access for LDCs contained in the Plan of Action resulting from the Third United Nations Conference on LDCs 2001[3] and is also one of the indicators in the context of the eighth Millennium Development Goal.[4]

In 2000, the distribution of markets for LDC products remains heavily concentrated. Sixty-three per cent of all exports go to the European Union (EU) and the United States. In addition to the EU and US, the major developed country markets are Australia, Canada, Japan, Norway and Switzerland. Together the developed countries import 69 per cent of total LDC exports. Of particular note is that three of the top five markets are developing countries in East Asia: China, Republic of Korea and Thailand. These countries account for 20 per cent of total LDC exports. The remaining top 10 markets are: Canada, India, Japan, Singapore and Chinese Taipei. The market penetration of LDC exports is greatest in India and Thailand at 2.1 per cent, followed by the European Union at 1.4 per cent.

Duty-Free imports into developed countries from developing countries and LDCs, 1996-2001 (per cent)

	1996	1997	1998	1999	2000	2001
Excluding arms						
Developing countries	54.8	50.5	49.9	57.2	62.8	65.7
LDCs	71.5	67.2	77.7	77.1	75.4	75.3
Excluding arms and oil						
Developing countries	56.8	51.5	49.9	58.1	65.1	66.0
LDCs	81.1	75.5	75.0	73.6	70.5	69.1

Source: Interagency input for monitoring implementation of the Millennium Development Goals, April 2003.

The above table indicates the dimensions of the task to achieve the stated goal of duty-free and quota-free market access. In overall terms, the share of the value of LDC exports, excluding arms, that enters developed country markets duty-free has increased since 1996. However, when the figure is further adjusted for oil there is a clear downward trend. This downward trend reflects the shift in LDC exports to products and export markets that are not duty-free. In fact, the trade values show that there is basically no increase in the value of duty-free imports from LDCs while at the same time there is a significant increase in the dutiable imports from LDCs.

In 2001, the average trade weighted tariff facing LDC agricultural exports into developed country markets is 3.2 per cent. The equivalent figures for textiles and clothing are, respectively 4.5 and 8.5. These figures take into account preferences granted to LDCs but they do not take into account actual preference utilization. For a variety of reasons, such as rules of origin requirements, preferential access offered to LDCs may not be fully utilized.

1 Paragraph 42 of the Doha Ministerial Declaration, WTO document, WT/MIN(01)/DEC/1.

2 WTO document, WT/COMTD/LDC/11.

3 Held in Brussels in May 2001.

4 Goal 8 is to establish a global partnership for development. An indicator to achieve one of the targets of this goal is duty-free and quota-free access for products originating from LDCs.

(ii) Agricultural products

Although the share of agricultural products in world trade has declined over the years to 9.1 per cent, it is still an important export for many developing countries. For example, agricultural products account for more than 50 per cent of the total exports of 12 LDCs (Bora, 2002a). For these countries, the range and magnitude of tariff barriers to agricultural products has a particularly disproportionate impact on their ability to compete in the world market. The importance of tariffs has also been underlined by recent studies examining the benefits to developing countries from liberalizing domestic support and tariffs, which found tariffs to be relatively more important (Hoekman et al., 2002a; IMF, 2002).[85] For example, if industrial countries simultaneously remove both tariffs and subsidies on agricultural products, the benefits from the tariff removal would account for approximately 86 per cent of the total benefits.[86]

A number of features of the tariff profile for agriculture can be contrasted with that of industrial products. First, binding coverage is not an issue since one of the commitments under the Agreement on Agriculture is a 100 per cent binding coverage.[87] Second, the overall average level of tariffs in this category is higher. One estimate is that the world average agricultural bound tariff is 62 per cent, compared to 29 per cent for industrial products.[88] The world average of MFN applied tariffs for agricultural products is 17 per cent[89] and for industrial products it is 9 per cent.[90] Third, the dispersion of the bound tariff rates is very low, since many countries set uniform tariff rates across all commodities (USDA, 2001; WTO, 2001b). Fourth, considerable variation exists across agricultural products. Tariff rates in categories with low average rates in the agricultural sector, such as coffee, fibre, spices and live horticulture are still high relative to industrial products. As a consequence, the agricultural sector is characterized by the highest tariffs in the trading system.

The bias in the tariff profile in agriculture towards higher tariffs is a reflection of the difficulty in negotiating liberalization in the sector both prior to and during the Uruguay Round. Until the Uruguay Round, agriculture, like textiles and clothing, was insulated from successive rounds of multilateral trade negotiations. The modality agreed upon during the Uruguay Round was to apply the agreed formula for cutting tariffs to a profile that resulted from converting non-tariff barriers into tariff barriers.[91] However, the reduction formula along with flexibility to establish initial tariffs at high rates resulted in the current pattern of protection in agricultural subsectors relative to non-agricultural sectors.[92]

85 The USDA (2001) study concludes, "high protection for agricultural commodities in the form of tariffs continues to be the major factor restricting world trade".

86 IMF (2002), Table 2.4. Benefits in this case are defined as welfare effects. The same study also notes that for developing countries the benefits from tariff removal are positive, whereas for subsidy removal they are negative.

87 Twenty-three WTO Members have not bound 100 per cent of their lines, although of these most have binding ratios of approximately 99 per cent.

88 The estimate for agricultural products is based on the USDA (2001) data that included *ad valorem* equivalents and the estimate for non-agricultural products is based on the WTO's Consolidated Tariff Data Schedule without *ad valorem* equivalents. As noted above the incidence of non *ad valorem* duties on non-agricultural products is considerably less than in the agricultural sector.

89 Based on UNCTAD TRAINS data, which uses information from the Agricultural Market Access Database (www.amad.org) to calculate *ad valorem* equivalents for non *ad valorem* lines.

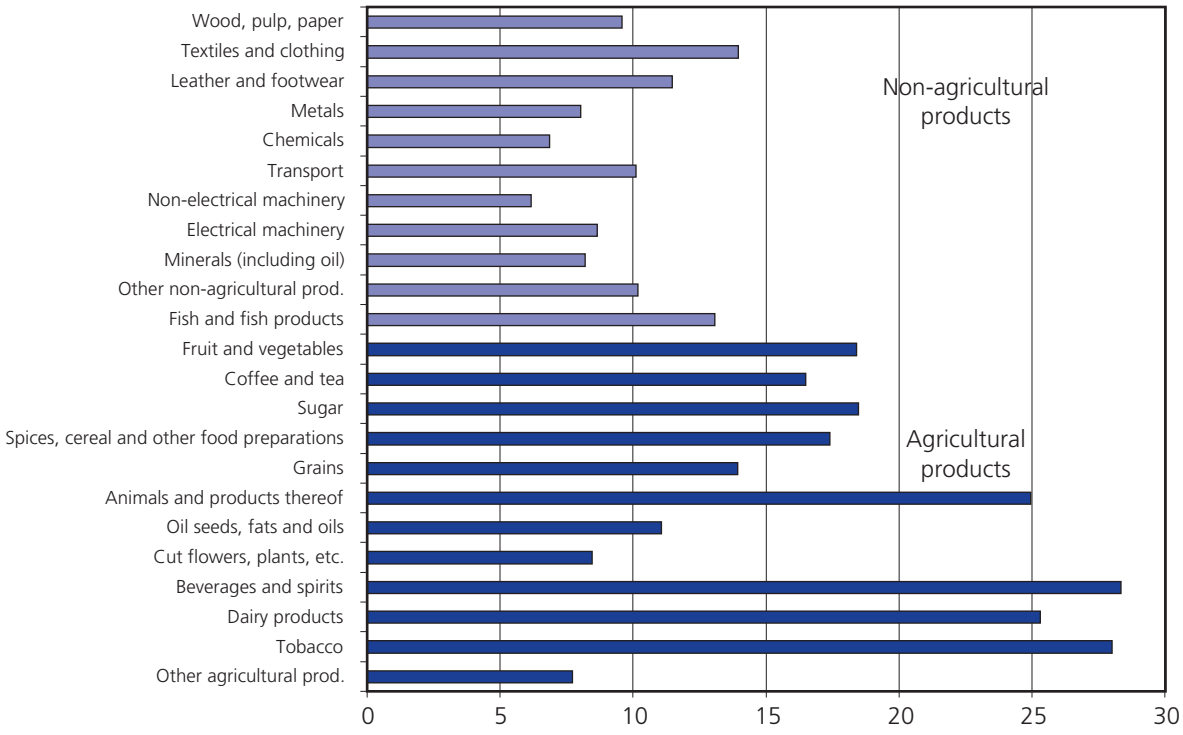
90 Calculated using data from Appendix Table IIB.6.

91 The so-called tariffication process.

92 The Uruguay Round approach for developed countries was a reduction of 36 per cent on a simple average basis over the entire agricultural sector with a minimum reduction of 15 per cent on each line. For developing countries the applicable figures were a 24 per cent cut with a minimum of 10 per cent per line (WTO, 2001b; Table III.1). This means that large tariff cuts on imports that do not compete with domestic products could be combined with large cuts on low tariffs to achieve the desired result with a minimum level of effective liberalization. See www.ers.usda.gov/briefing/wto/tariffs.htm for an analysis of this point (Figure 1 in particular).

The average applied tariff across 23 categories used during the Uruguay Round shows that the average tariff in the agricultural categories is higher than that in most of the industrial categories (Chart IIB.3). The highest rates are applied to animals, beverages and spirits, dairy products and tobacco. In general, the pattern of protection is lower on lower value-added products such as cut flowers, fruits and vegetables, coffee and tea.

Chart IIB.3
Average MFN applied rates by product category
(Per cent)



Source: WTO.

The incidence of high tariffs in agricultural products poses a particular challenge to negotiators. Furthermore, some developed countries have insulated sensitive sectors from international trade reform. Of particular note in this case is the United States (peanuts), Canada (dairy and poultry), Japan (rice) and the Republic of Korea (rice) (USDA, 2001). One element of the difficulty in addressing the problem of such high rates of protection is the use of non *ad valorem* rates, especially by some developed countries.

The tariff profile for agricultural products is complicated by the use of specific (non *ad valorem*) duties for both bound and applied rates. For example, Norway and Switzerland have non *ad valorem* bindings on more than 70 per cent of their agricultural tariff lines.[93] Eight Members, including the Quad Members (Canada, European Union, Japan and the United States) express 20 to 50 per cent of their bindings as non *ad valorem* duties (Appendix Table IIB.2). A similar pattern exists for applied rates (Appendix Table IIB.5).

A number of initiatives have been undertaken to convert the non *ad valorem* rates used by some countries in the agricultural sector into *ad valorem* rates in order to clarify the landscape of protection. The dispersion of non *ad valorem* lines across the tariff schedules shows that the developed countries predominantly make use of such duties in respect of animals, dairy, grains and food preparations such as flours and starches and confectionery sugar. The extent to which such forms of protection materially alter the structure of tariffs can be examined with the use of calculated *ad valorem* equivalents (AVEs).

[93] Based on data from the WTO Integrated Database.

The European Union and the United States supplied the WTO Secretariat with AVEs for a number of years, the latest being the year 2000. These data show that the simple average rate for agriculture, including AVEs, is 18.3 per cent for the European Union and 10.1 per cent for the United States. However, the dutiable trade-weighted average is considerably lower for the United States, at 4.9 per cent, but much higher for the EU, at 23.3 per cent.[94] The maximum tariffs in agriculture for the EU, again according to their data, is 470.9 per cent (milk and cream), whereas the maximum for the United States is 350 per cent (tobacco products).[95] A general conclusion is that in cases where there is a high concentration of non *ad valorem* lines, conversion of the rates to AVEs raises the overall average. This is particularly true for dairy and meat. However, in some instances the use of AVEs results in a decline in the overall level of protection or no change, as is the case of meats, cereals and grains in the United States.[96]

Tariff rate quotas

Tariffication in the Uruguay Round entailed the use of tariff rate quotas in certain circumstances, which are price based, not quantity based restrictions, since there is no limit imposed on the volume or value of imports.[97] Their overall trade restrictiveness effects depend upon the value of the tariff and the quota. A low quota combined with a high, or prohibitive tariff for imports beyond the quota level would have the effect of substantially restricting trade. The economic effect, however, depends upon world prices, domestic demand, the size of the tariff quota, the gap between the in-quota and out-of-quota tariff rate, the administration of the tariff rate quota and other factors.

The use of this instrument is heavily concentrated in the fruits and vegetables, cereals and meat sectors. Tariff quotas are used on 6 per cent of all tariff lines by 44 Members. Six Members with the highest quotas are from Europe. The fill rate of these quotas is on average very low, but varies across categories. It is low for egg and egg products, but high for tobacco, sugar, fruits and vegetables.

Methods used for giving exporters access to quotas include first-come, first-served allocations, import licensing according to historical shares and other criteria, administering through state trading enterprise, bilateral agreements and auctioning. The terms can also specify time periods for using the quotas, for example periods of time for applying for licences, or for delivering the products to the importing countries. Exporters are sometimes concerned that their ability to take advantage of tariff quotas can be handicapped because of the way the quotas are administered. Sometimes they also complain that the licensing timetables put them at a disadvantage when production is seasonal and the products have to be transported over long distances.

Each method has advantages and disadvantages, and many WTO Members acknowledge that it can be difficult to say conclusively whether one method is better than another. Several countries want the negotiations to deal with tariff quotas: to replace them with low tariffs, to increase their size, to sort out what they consider to be restricting and non-transparent allocation methods, or to clarify which methods are legal or illegal under WTO rules in order to provide legal certainty.

94 One possible reason for this difference is an underfill of quotas on US imports, so that a lower tariff rate applies to the products concerned.

95 In contrast to the figures provided by the EU and the United States, Stawowy (2001) finds *ad valorem* equivalent rates as high as 1,000 per cent in the EU, 700 per cent in Canada, near 2000 per cent for Japan and 337 per cent for the United States.

96 These observations hold true for Canada and Japan as well, based on data from Stawowy (2001).

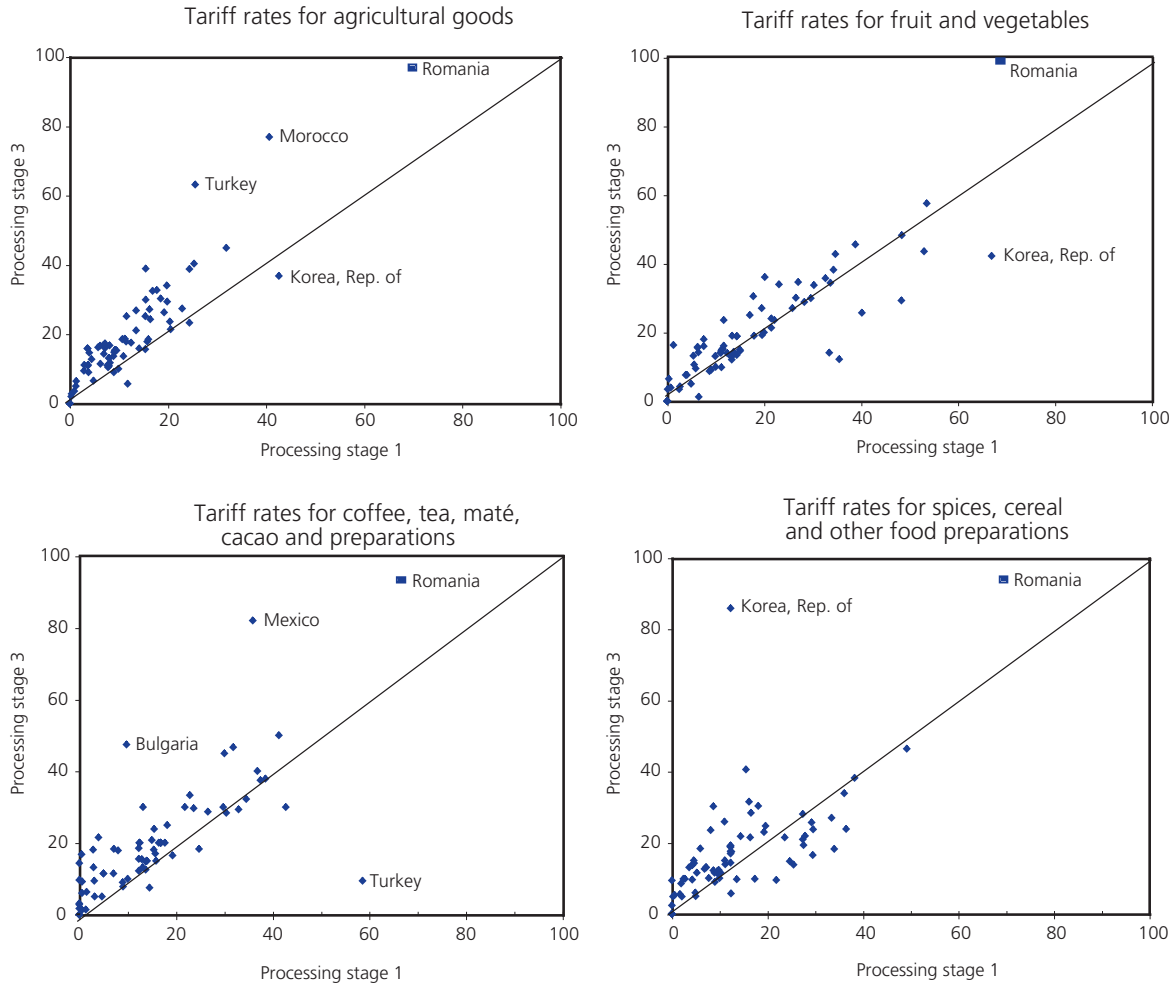
97 A tariff quota is a scheme that applies a different tariff to an imported product depending on whether or not the imports are within the defined quota, or outside the defined quota. Usually, a low tariff is applied, but the volume, or value of imports is subject to a quota. Further imports are imported beyond the quota level; however, these imports would be subject to a tariff (out of quota tariff), which is higher than the value of the tariff if the import was within the quota limits. For further information on the economics of tariff rate quotas see Box III.2 of WTO (2001b).

The question whether the allocation method affects the fill rate was investigated in WTO (2001b). The conclusion of that study was that administration methods have only a limited influence on the fill rates of quotas. Even in cases where the allocation method was simple and transparent, such as "first come, first served", fill rates were low.

Tariff escalation

Tariff escalation (increasing tariff rates with the stage of processing) does not appear to be a general problem across a wide range of agricultural products and markets (Chart IIB.4). The degree of aggregation, however, hides substantial variation across categories. As noted in Section IB.2 tariff escalation is of concern to developing countries in the context of certain commodities. For example, escalation within both lower and higher duties is prevalent in fruits and vegetables, coffee and tea, and spices, cereals and other food preparations (Chart IIB.4). Processed products in which escalation is most pronounced include sweeteners based on sugar, vegetable oils and vegetable juice. The incidence of tariff escalation is not confined to developed countries. Developing countries in some cases have the most significant differences in duties between processed and unprocessed products (Bora et al., 2003; USDA, 2001).

Chart IIB.4
Tariff escalation in agricultural products and in selected agricultural categories, applied tariffs



Source: WTO.

(iii) Industrial products

Although tariffs are less of an issue for market access in industrial products, they are still important impediments to trade. The overall tariff profile for world markets in industrial products is characterized by very low overall average applied rates in developed countries and considerably higher rates in some developing countries (Appendix Table IIB.3).

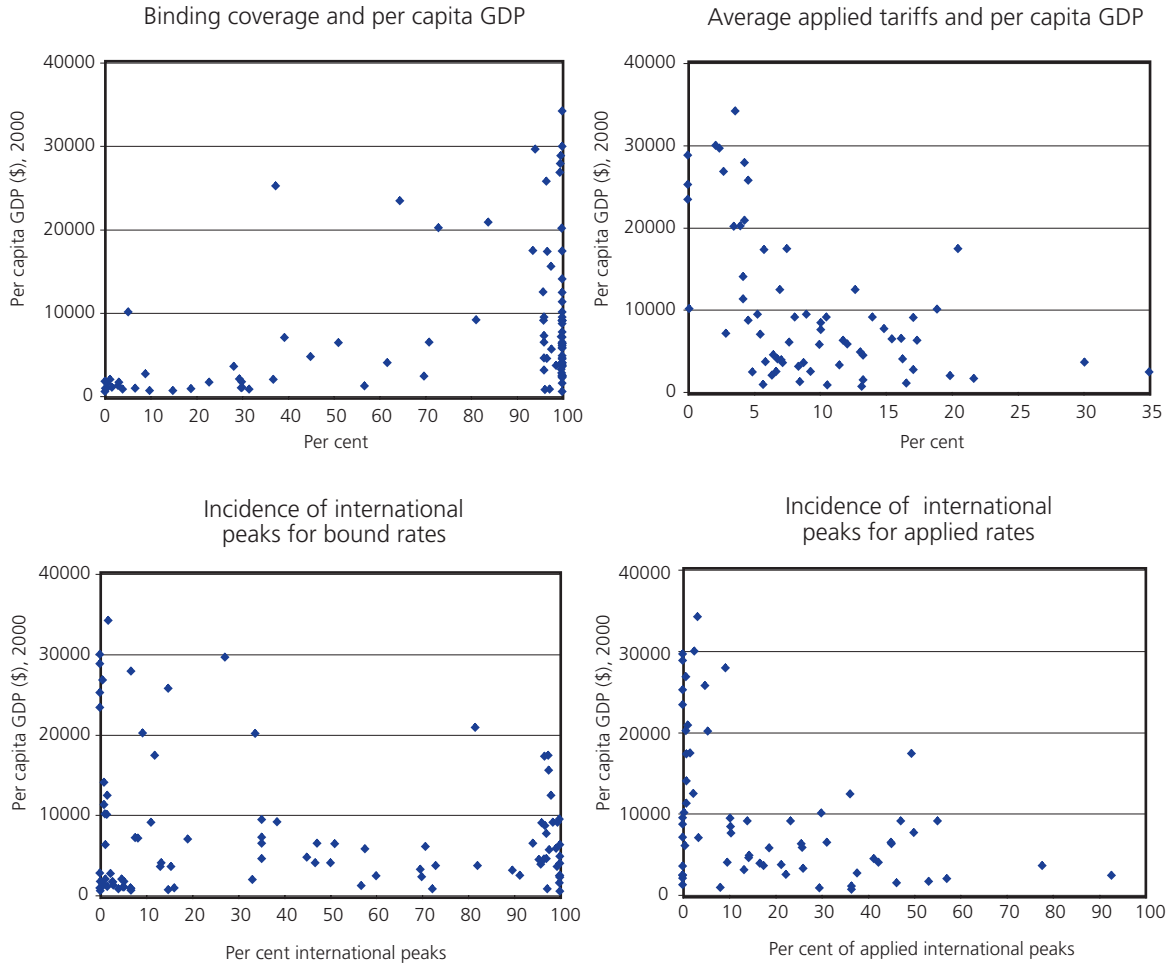
In contrast to agriculture, the binding of tariffs in industrial products is a negotiating issue, since some Members have chosen not to bind all their tariff lines. Developed countries have bound most of their tariffs. Turkey has bound far less than half of its tariff lines and several Asian countries have only bound between 60 and 70 per cent of their tariff lines. Most developing countries also have a higher simple average bound tariff and more dispersion as measured by the standard deviation than developed countries.

Developed countries tend to have the largest share of bound duty-free lines. Japan leads the way with 57.1 per cent followed by Norway (45.5 per cent), New Zealand (41.1 per cent), the United States (38.5 per cent), Canada (29.4 per cent) and the European Union (23.4 per cent). Singapore and Hong Kong, China have bound fewer lines than the Quad. Hong Kong, China has more than three quarters of its lines bound duty-free, and the comparable figure for Singapore is about 50 per cent.

While developed countries, most transition economies and most Latin American countries have bound all, or almost all, of their industrial tariff lines, many African and Asian countries have bound only a limited number of tariff lines (Bacchetta and Bora, 2003). Chart IIB.5 shows the distribution of binding coverage for WTO Members by per capita GDP. The figure shows that for many poorer countries, mostly in Africa, the distribution of binding coverage is concentrated in the extremes. More than half the countries have bound less than half their tariff lines. Fourteen out of a total of 41 African countries have bound less than 10 per cent of their industrial tariff lines. Of those, 11 have even bound less than 5 per cent of their lines. At the same time, 11 countries have bound between 90 and 100 per cent. In Asia, one third of the 21 countries in our sample have consolidated less than half their lines and only 9 countries have consolidated more than 90 per cent of their lines. In Latin America, the situation is strikingly different, with only 4 out of 32 countries with a binding coverage of less than 90 per cent.

The simple average bound rate for the Quad members is less than 5.3 per cent. Developed countries with high average bound rates are Australia and New Zealand, at 11 per cent. Norway's average is 3.1 per cent. The highest averages for developing countries are in India and Turkey, which also have the largest spread or dispersion of rates. Furthermore, when comparing tariff structures and taking 15 per cent as a benchmark, Members with high national averages also have a high percentage of lines above that benchmark. On the other hand, the Quad members have both low averages and low percentages of lines above 15 per cent.

Chart IIB.5
Tariff profile of non-agricultural products



Source: WTO.

While aggregate data provide useful information, they also mask a number of key issues in the context of industrial policy and in multilateral negotiations. Bacchetta and Bora (2003) calculate the simple average of bindings at the Multilateral Trade Negotiations (MTN) category level.[98] In their analysis, four categories of products stand out as having higher tariff averages than the others in both developed and developing countries.[99] These are: textiles and clothing; leather, rubber, footwear and travel goods; transport equipment and fish and fish products.

[98] See WTO (2001b) for definitions of the product categories.

[99] These four categories also turn out to have the highest standard deviation and the highest share of high tariffs in most of our sample countries. See WTO (2001b).

As indicated earlier, it is applied rates that matter for commerce. In developing countries these rates are often far below the level of bindings. Simple applied tariff averages at the MTN category level are presented in Appendix Table IIB.7. Textiles and clothing have the highest or the second highest tariff average in most countries. More generally, for all countries the two sectors with the highest applied tariff averages across categories are among the four sectors identified as the most protected based on the level of their bindings. Textiles and clothing are also the sectors with the largest proportion of lines with tariffs above 15 per cent. In many countries, including the European Union, the largest share of peaks is found in the fish and fish products category. For Japan, the largest share of peaks is in the leather, rubber, footwear, and travel goods category.[100]

Furthermore, the four sectors identified as having the highest average bindings also have lower shares of bound tariffs (Bacchetta and Bora, 2003). Several countries have bound only a limited proportion of lines in the transport equipment category. Thailand, for instance, has bound less than a quarter of its transport equipment lines. Similarly, in the textiles and clothing category, Turkey has bound only 11 per cent and India 26 per cent of tariff lines, while Poland has bound only 13 per cent of the tariff lines in fish and fish products.

Trade in textiles and clothing products will continue to be subject to the Agreement on Textiles and Clothing (ATC) until 1 January 2005. Until that time a significant share of world trade in textiles and clothing remains distorted by the complex set of quantitative restrictions inherited from the Multi-Fibre Agreement (MFA). The ATC establishes a roadmap for phasing out quantitative restrictions and integrating the sector into the mainstream GATT/WTO system of rules. It began in 1995 and consists of four phases. Members carrying over quotas into the ATC – Canada, the European Union and the United States – were required to integrate 51 per cent of their textile and clothing imports into WTO rules by the end of the third stage in December 2001. The fourth and final phase will result in product integration and quota removal of the remaining 49 per cent of imports.

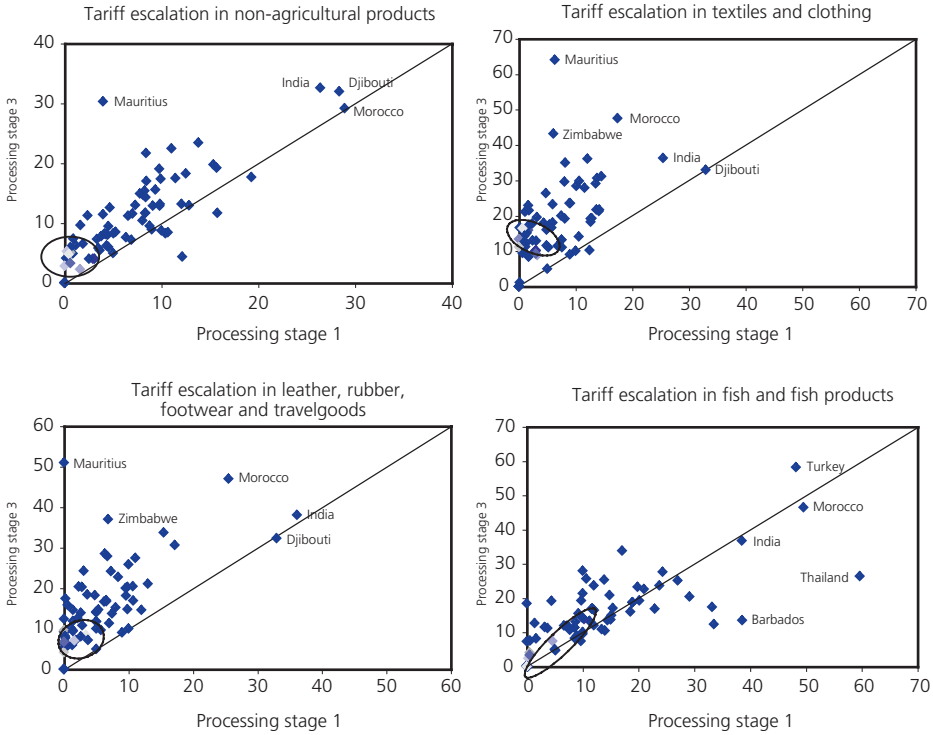
The final implementation phase will result in a substantial adjustment and restructuring of the industry. Approximately 80 per cent of the quotas, consisting of a total of 239 quotas maintained by Canada, 167 by the European Union and 701 by the United States, are left to be eliminated by the end of 2004.

Existing quantitative restrictions, however, should not conceal the prevalence of high tariffs in the textiles and clothing sector. As noted above, in most major markets imports of textiles and clothing face above-average bound and applied tariff rates, and a large number of tariff peaks. The Agreement on Textiles and Clothing does not address the issue of tariff protection.

100 Generally speaking, non-*ad valorem* tariffs are much more frequent in the agricultural sector. Thailand has the highest share of non-*ad valorem* tariff lines with no *ad valorem* equivalent – over 30 per cent in wood and furniture, textiles and clothing and leather and travel goods. The shares of Chinese Taipei in fish and fish products, the United States in "not elsewhere specified" articles, and Thailand in chemicals and photographic supplies, mineral products and precious stones, and metals are all over 15 per cent.

The textiles and clothing sector includes more than 150 4-digit subgroups, a considerably higher number than in other product categories. The tariff structures of WTO Members have certain characteristics in common. First, with some exceptions all countries apply higher tariffs to clothing than to textile products. Some countries such as Poland, Brazil and Mexico apply the same higher tariff to all clothing products, while others impose higher non-uniform tariffs on clothing products. Second, in most cases, the dispersion of tariffs across 4-digit subgroups in the textiles sector is significant. In absolute terms, inter-group dispersion is high in Malaysia, Thailand and Turkey. Among developed countries, it is the highest in Australia, Canada and the United States, where tariff averages range between zero and more than fifteen per cent.

Chart IIB.6
Tariff escalation in non-agricultural products and selected categories



Note: Inside the oval: EU, USA, Japan, Canada, Australia, Norway and New Zealand.

Source: WTO.

Tariff escalation

The previous section indicated that the overall level of protection is high in four of eleven categories. However, within these categories scope exists for a considerable degree of processing and value-added activities. Chart IIB.6 shows the overall incidence of tariff escalation and escalation in three of the four product categories of export interest to developing countries – textiles and clothing; leather, rubber, footwear and travel goods; and fish and fish products. The first panel in Chart IIB.6 shows that average tariffs in many countries are higher on goods subject to higher levels of processing. But the picture varies somewhat by sector. Less tariff escalation is apparent in respect of fish and fish products than in the textiles and clothing, and leather, rubber and footwear sectors. The figures in the Chart also confirm that escalation is more prevalent in sectors subject to higher overall average tariff rates.

(b) Non-tariff measures

Even if countries were to bind all their MFN tariffs at zero, this would not guarantee unfettered trade. Other measures affecting trade flows are used for a range of different reasons. Such measures may be straightforwardly protectionist in intent, or they may focus on other objectives but nevertheless have an impact on trade. The incidence of non-tariff measures varies greatly across sectors, particularly where they are protectionist. Other non-tariff measures are of more general application, designed to serve particular public policy objectives. In the field of trade protection, we have already considered quantitative restrictions in the textiles and clothing sector. Production and export subsidies may also be used to strengthen the market position of less competitive suppliers, as is the case for agriculture in many countries.

Government regulations designed to defend or promote a particular public interest, such as health, safety or the environment, can be designed in many different ways, with quite different effects on trade. WTO rules in the area of public policy seek to ensure that regulation is non-discriminatory and not unnecessarily restrictive of trade.[101] Measures necessary to administer a trade regime, such as licensing procedures and valuation rules, can also unduly frustrate trade if they become restrictive measures in their own right. Again, the WTO seeks to avoid such surreptitious protectionism through a series of rules and procedural requirements. The remainder of this subsection will focus on subsidies, particularly as these affect conditions of market access in the agricultural sector.

(i) Domestic support for agricultural products[102]

In recognition of the trade-distorting potential of domestic subsidies, the Uruguay Round negotiations established a system to constrain the use of such measures. The WTO Agreement on Agriculture uses a "traffic light approach" to categorise different types of domestic support policies. Amber box[103] policies are subject to limitations, green box[104] policies are exempt from any limitations as are blue box[105] policies which cover payments aimed at limiting production. Amber box policies are deemed to be the most trade distorting.

WTO Members that committed to reducing domestic support agreed to reduce their Aggregate Measure of Support (AMS) below the level that existed during the 1986-1988 base period.[106] The total AMS reduction commitments have not been binding, since 75 per cent of Members have notified support levels that are less than 80 per cent of their respective ceilings. The only Members that are close to their ceilings (defined as above 80 per cent) are Argentina, Israel, Republic of Korea, Norway, Slovenia, South Africa and Tunisia.

Two key issues arise with respect to domestic support. The first is that while trade distorting domestic support measures that fall in the amber box category have declined, expenditures in the blue box category have increased. The second, and related issue, is the extent to which certain Members are affected disproportionately by the use of domestic support.

101 These basic principles are set out in the original GATT Agreement, and supplemented by other provisions, such as those contained in the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.

102 For more detail on the negotiating positions of Members with respect to domestic support see WTO (2002d).

103 All domestic support measures considered to distort production and trade (with some exceptions) fall into the amber box. The total value of these measures must be reduced. Various proposals deal with how much further these subsidies should be reduced, and whether limits should be set for specific products rather than having overall "aggregate" limits.

104 In order to qualify for the green box, a subsidy must not distort trade, or at most cause minimal distortion. These subsidies have to be government-funded (not by charging consumers higher prices) and must not involve price support. They tend to be programmes that are not directed at particular products, and include direct income supports for farmers that are not related to (are "decoupled" from) current production levels or prices. Green box subsidies are therefore allowed without limits, provided they comply with relevant criteria. They also include environmental protection and regional development programmes (for details, see Article 6 and Annex 2 of the Agriculture Agreement).

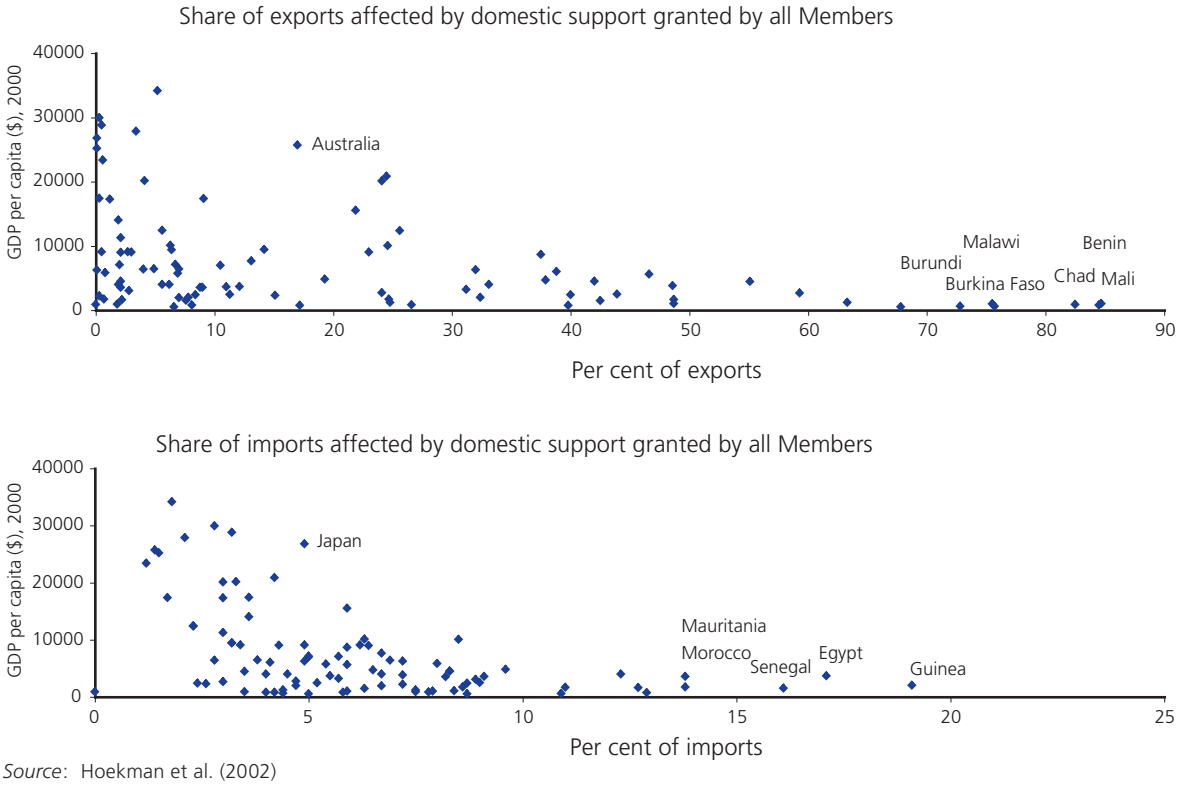
105 The blue box is an exemption from the general rule that all subsidies linked to production must be reduced or kept within defined minimal (*"de minimis"*) levels. It covers payments directly linked to acreage or animal numbers, but under schemes which also limit production by imposing production quotas or requiring farmers to set aside part of their land.

106 A widely used index to measure government support to producers is the Producer Support Estimate (PSE) provided by the OECD. This index measures the annual monetary value of gross transfers from consumers and taxpayers to agricultural producers, measured at the farm-gate level, regardless of their nature, objectives or impact on farm production. A corresponding index is the Total Support Estimate (TSE), which is the net estimate of transfers taking into account budgetary receipts. The OECD estimated the TSE to be $311 million in 2001. The PSE for OECD countries amounts to 31 per cent of total farm receipts (OECD, 2002a).

With respect to the first question, total support as notified to the WTO is $104 billion, of which the Quad countries account for 84 per cent. Developing countries account for 12 per cent[107], with the remaining portion accounted for by other industrialized countries. The major products affected are meat, dairy, cereals and sugar, which account for 82 per cent of all reported non-exempt domestic support. There also appears to be a high correlation across categories in terms of the use of domestic support by developed and developing countries (Hoekman et al., 2002b; OECD, 2002a).

While the Quad Members are the heaviest users of domestic support, it is developing countries, especially least-developed countries that are disproportionately affected by such policies. Between 60 per cent and 80 per cent of the exports of countries such as Benin, Burkina Faso, Burundi, Chad, Malawi, Mali, Rwanda, Sudan, Tanzania, Uganda and Zimbabwe are affected by domestic support granted by Members (Chart IIB.7). At the same time, several poorer countries face lower import prices as a result of domestic support measures (for example, Egypt, Guinea, Morocco and Mauritania), although affected import shares are lower than affected export shares (Chart IIB.7).

Chart IIB.7
Share of Members' trade affected by domestic support granted by all Members



Source: Hoekman et al. (2002)

The main focus of the negotiations under the Doha Development Agenda is on substantial reductions in trade distorting domestic support. Indeed, a number of developing countries have stated that substantial reductions in domestic support and elimination of export subsidies are needed before they can consider improving access to their markets. In addition to reductions a number of proposals have been made relating to rules. The objective of these proposals has been to restrict flexibility for switching support from one product to another or from one subsidy category to another. Many countries, both developed and developing, are in favour of reducing trade distorting support entirely, or to *de minimis* levels, and limiting the value of subsidies with a

[107] The major developing country users of domestic support are Brazil, Thailand and Venezuela.

minimal trade-distorting effect. On the other hand other countries, including some transition economies, have stressed that some level of trade distorting domestic support is needed in order to address non-trade concerns, such as those relating to the environment, rural development and food security. They have also pointed out that strict rules on domestic support and limits to the value of subsidies that cause only minimal trade distortion would make it more difficult for them to agree to reductions in trade-distorting supports.

(ii) Export subsidies[108]

Export subsides are a core concern of the multilateral trading system. The Agreement on Subsidies and Countervailing Measures prohibits export subsidies, except in the case of developing countries falling below a threshold per capita income level in 1986-1990. But exceptions are made for agriculture. Under the Agreement on Agriculture, Members previously applying export subsidies were required to enter into reduction commitments. Developed country Members were required to reduce their base period volume of subsidized exports by 21 per cent and the corresponding budgetary outlays for export subsidies by 36 per cent. The figures for developing country Members are 14 per cent and 24 per cent respectively. Despite these reduction commitments, the use of export subsidies is still quite significant in value terms. A total of 208 tariff lines receive export subsidies in at least one Member country. The total value of agricultural export subsidies notified by Members between 1995 and 1998 was $10 billion. Developed countries accounted for 80 per cent of the total. More than 50 per cent of the total exports of the following African countries are affected by export subsidies granted by all Members:[109] Benin, Burkina Faso, Burundi, Chad, Côte d'Ivoire, Malawi, Mali, Rwanda, Tanzania and Uganda (Chart IIB.8). As far as imports affected by other countries' export subsidies are concerned, a number of poorer countries also figure more prominently than richer ones (Chart IIB.8).

Further reform of export subsidies would, however, have both positive and negative impacts. Reductions in export subsidies would increase world market prices benefiting net exporting economies of unsubsidised products (OECD, 2002a; UNCTAD, 2002a).[110] This would also have an impact on producers of such products regardless of whether or not they are exporters due to the pass-through effect of world prices onto domestic prices. This price increase will have the effect of raising the income of individuals that derive their living from producing these products. At the same time further reform will increase the costs of imports, thereby negatively impacting net importing economies of subsidised products.[111] The main outstanding issue in this area is the depth of reform.

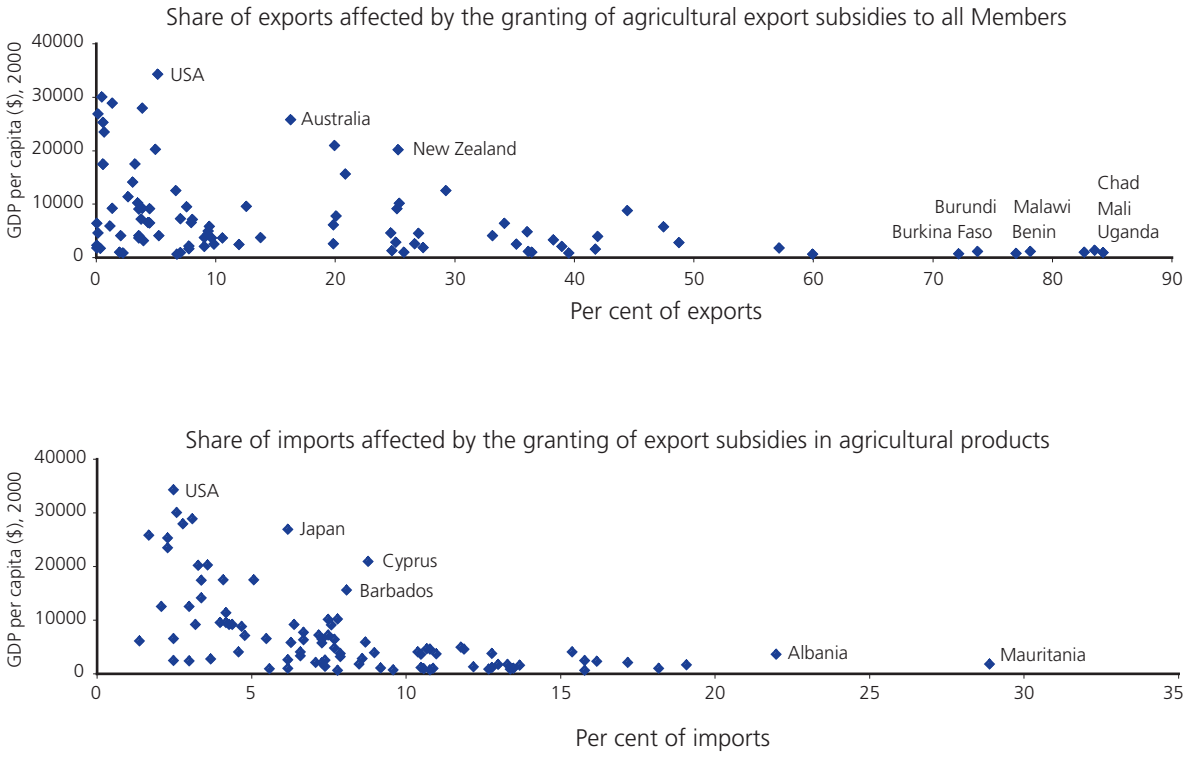
108 For more information on the negotiating positions of Members with respect to export subsides for agricultural products see WTO (2002d).

109 It should be noted that export subsidies granted by some developing countries also have an impact here.

110 As noted before, in some cases the disciplining of domestic support and export subsidies would have a negative welfare effect on some developing countries.

111 The impact of the reform program on agriculture agreed to in the Uruguay Round on least-developed and net food-importing countries is recognized in the "Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries".

Chart IIB.8
Share of Members' trade affected by the granting of agricultural export subsidies



Source: Hoekman et al. (2002)

(c) Trade facilitation

As formal barriers to trade have fallen in many countries, the objective of ensuring that trade can flow with a minimum of regulatory and administrative impediments has attracted increasing attention. The WTO trade facilitation agenda focuses on how to expedite the movement, release and clearance of goods. This calls for simplification and harmonization of international trade procedures, including practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade. A comprehensive approach to trade facilitation would focus attention on a wide array of administrative, technological and infrastructural issues. An efficient, well governed, and modern regulatory structure for administering trade avoids dead-weight costs that, unwittingly or otherwise, constitute barriers to trade. Similarly, efficient port facilities and services lower the costs of doing business. All these benefits from trade facilitation are conceptually very similar to the benefits of trade liberalization.

The work on trade facilitation in the WTO has touched on the following obstacles to smooth trade flows:

- Excessive documentation;
- A lack of automation and inadequate use of information technology;
- A lack of transparency, with unclear and unspecified import and export requirements;
- Inadequate procedures, especially a lack of audit-based controls and risk-assessment techniques; and
- A lack of cooperation among customs and other government agencies, which thwarts efforts to deal effectively with increased trade flows.

Certain provisions in GATT 1947 already address matters relevant to trade facilitation. Article V deals with freedom of transit, Article VIII with fees and formalities connected with importations and exportation, and Article X with publication and administration of trade regulations. Some Members believe that these provisions could be built upon with a view to harmonizing laws and regulations, simplifying administrative and commercial formalities, procedures and documents, and standardizing aspects of transportation services.

An issue to be resolved is whether a contribution to trade facilitation by the WTO should involve the elaboration of new legal rights and obligations, or whether some other approach should be pursued. A prior question for some Members is whether explicit consensus will be achieved on modalities to allow negotiations to go forward after the Fifth Ministerial Session.[112]

Estimates of the gains from trade facilitation vary depending upon the model used and the approach to quantifying the costs of inefficient practices. Estimates are generally based on the value of cost savings from facilitation.[113] These estimates range from 4 to 10 per cent of the value of trade. These results should be treated with some caution, however, as in part they capture technological improvements in transportation. The latter is not directly related to the Doha Agenda on trade facilitation, although no doubt those issues that are being discussed in a WTO context also entail changes offering significant gains.

(d) Transparency in government procurement

In an era when many government budgets are stretched to the limit, obtaining value for money is often an important objective of state procurement policy. Failing to attain this goal compromises the welfare of the poor, in particular, as they tend to be more dependent on state-provided health, education, and social services. Procurement policy can, therefore, support a nation's overall policies towards poverty alleviation and development strategy. On the other hand, governments sometimes want to use the patronage implicit in awarding contracts for goods or services to achieve other objectives. In some countries procurement is an instrument of industrial policy and particular suppliers are awarded contracts on a preferential basis. In other cases, procurement decisions may be determined by political considerations, including national security.

Competition for government contracts can come from foreign as well as domestic firms, and research has amply demonstrated that certain state measures can reduce competitive pressures from both sources (see Arrowsmith and Trybus, 2003, and Evenett and Hoekman, 2002). Opaque tendering procedures and poor governance tend to discourage potential bids from both domestic and foreign firms, often leaving governments dependant on bids from a small group of "insider" firms. In such circumstances contract prices tend to be higher. Quality may be lower, and delays and cost over-runs more common. Needlessly stringent pre-qualification requirements may shut out bidders. Procurement reform can be difficult to accomplish, as vested interests undermine attempts to improve procedures and transparency (Hunja, 2003).

International trade agreements, including the plurilateral WTO Agreement on Government Procurement, have contributed to the contestability of national procurement markets in at least two ways. First, they have reduced the explicit discrimination against foreign bidders, so enhancing market access. For example, the WTO Agreement bans the use of price preferences against foreign bidders on contracts whose value exceeds certain specified threshold levels. Second, international trade agreements typically include provisions to enhance the transparency of procurement processes and this increases the number of bids from all sources – domestic and foreign (see Evenett and Hoekman, 2003, for evidence on this matter). The transparency of tendering procedures is also enhanced by trade rules that require signatories to follow specified – sometimes public – steps when soliciting bids, evaluating submissions, and awarding contracts. The WTO Agreement on Government Procurement has only twenty-eight signatories and does not cover all the potentially eligible public procurement entities of the signatories.[114]

The few empirical analyses of the costs and benefits of trade-related procurement reform point to tangible gains. In the case of the Republic of Korea's accession to the WTO's plurilateral Agreement on Government Procurement in 1994/5, Choi (2003) estimated that the cost savings to the Korean government from goods

[112] A related issue is the applicability of the term modalities to trade facilitation. While the term fits within the discussions on investment and competition policy it does not fit neatly into the trade facilitation discussions since the discussions are focussing on the certain provisions in GATT 1947 as opposed to negotiating a new set of binding obligations.

[113] See, for example, Dee, Geisler and Watts (1997).

[114] A study by Audet (2002) has estimated the value of potentially contestable government procurement markets at $2.1 trillion in 1998.

sourced abroad increased from 18.5 per cent to 23.1 per cent after accession. The use of limited tendering procedures, which reduce the number of potential bidders, also fell (from over 27 per cent to 23.1 per cent in 1996-1998). Likewise, Srivastava (2000) estimates that if India joined this WTO Agreement the welfare gains would be equivalent to between 0.3 per cent and 1.7 per cent of national income.

In the context of the WTO work programme, WTO Members are discussing whether to strengthen rules on transparency in government procurement practices. This agenda focuses on procedural aspects of procurement and not on preferences granted to a subset of potential suppliers. In other words, this approach does not challenge the use of procurement as a mechanism to protect particular suppliers. Some of the hesitation among a number of developing countries in embracing the transparency agenda arises from concern that the possibility of using procurement preferentially will eventually be undermined, particularly in relation to foreign suppliers. This could occur if improved transparency encourages more foreign firms to bid for state contracts. Yet it is worth noting that the same improvements in transparency will encourage more domestic firms to bid, potentially reducing the number of contracts awarded to foreign firms. The impact of greater transparency on market access is ambiguous. Irrespective of the impact on the latter, the beneficiaries of enhanced competition for government contracts will be taxpayers and those most dependant on state-provided goods and services, the poor. Like trade facilitation (and investment and competition), the treatment of transparency in government procurement after the Fifth Ministerial Session depends on a decision on modalities to be taken on the basis of explicit consensus.

(e) Services

The General Agreement on Trade in Services (GATS) provides for a multilateral set of rules and principles governing trade in services.[115] The intangibility of services, the need for direct interaction between supplier and consumer/user in many cases, and the importance of appropriate regulatory control and supervision have rendered rule-making in services a challenging undertaking. The entry into force of the Agreement in January 1995 thus constituted a landmark event in the history of the multilateral system, comparable to the inception of GATT in 1948. However, this was only a first step. In terms of actual trade liberalization, relatively little has been achieved to date. Observers tend to agree that the commitments undertaken by Members remained mostly confined to confirming *status quo* conditions. Moreover, some negotiating mandates in rule-making areas have remained open (domestic regulation, safeguards, government procurement of services, and subsidies). With a view to inspiring the ongoing negotiations on specific commitments, the following discussion focuses on existing barriers to services trade. A note of caution appears necessary, however. Trade barriers may not only result from measures falling under the market access and national treatment provisions of GATS, but from a variety of factors, including licensing and qualification requirements, and technical standards in pursuit of legitimate national policy objectives. Such objectives, of course, will not be the subject of multilateral negotiations.

(i) Quantifying impediments to services trade

Measuring impediments to international trade in services is not a simple task for several reasons, since service transactions take a variety of forms. Establishment and cross-border delivery are different (sometimes substitutable) means of supply, and consumers might also cross frontiers to consume foreign-supplied services. Suppliers are sometimes firms, and sometimes individuals. Some services cannot be delivered at arms-length. Production and consumption may need to be simultaneous. Services are invisible, without physical form and often non-homogeneous. A vast array of government regulations affect trade in services. In the absence of data on the *ad valorem* effect of restricting competition from foreign suppliers, barriers to services trade have to be estimated through a variety of techniques. These techniques often employ a frequency count of measures that affect services trade (Findlay and Warren, 2000). There has also been some progress in estimating the price effects of restrictions, which yield interesting insights.

Measurement of impediments to trade in services is also complicated by diversity of the services sectors in terms of their tradability, importance and the relative importance of different modes of supply.

[115] See the collection of articles in WTO (2001c) on the relevance of the GATS to specific service sectors.

Since international trade in services is invisible, the basic restrictions are in the form of limited market access for foreign suppliers and access to foreign services. One possible framework[116] for identifying impediments to trade in services is to categorise barriers as quantitative restrictions, price based instruments, standards, licensing and procurement and discriminatory access to distribution networks. Even with a taxonomy of this kind, measurement of barriers to trade has proven quite difficult. The results that have been obtained typically focus on relative measurements as opposed to absolute measurements. Relative measurements allow for a comparison between countries without the ability to quantify the magnitude of the differences in barriers. They are not *ad valorem* equivalents and have only limited economic value.[117]

Recent studies attempting to estimate *ad valorem* tariffs for the service sector have been completed for a number of sectors and are surveyed in Findlay and Warren (2000). Of particular note is the work on the banking sector, which tries to estimate the "net interest margin" of banks in different countries. In contrast to this price based approach, Warren (2000) and Francois (1999) use a quantity based approach.

As already noted, an important element of difficulty in the quantification of barriers is the role played by domestic regulation. The GATS specifically recognises the "right of Members to regulate, and to introduce new regulations on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right". Since most services are subject to some form of domestic regulation, the challenge for policy-makers is to liberalize trade in a manner consistent with other public policy objectives.

(ii) Sectoral patterns

Measures of trade restrictiveness in services focus either on the net impact on firms or on the policies themselves. The restrictiveness index used by Hardin and Holmes (2001), for example, and the approach used by Hoekman (1996) focus on measures rather than their impact on trade. For the purposes of this subsection these studies are of particular interest in terms of their ability to chart the landscape of barriers to services trade and hence the parameters of the services negotiations.

The general conclusion that one can draw from these studies is that business services, consultancy, distribution, environmental and recreational services face lower levels of restrictions (Hardin and Holmes, 1997; Hoekman, 2000) than other sectors. By way of illustration, a services trade restrictiveness index, which is calculated using data on the policy regimes in selected countries is presented in Table IIB.1.[118] The index is essentially a sophisticated frequency measure that estimates the restrictiveness of an economy's trading regime for services based on the number and severity of restrictions.[119] The value of the index is between 0 and 1, with 1 being more restrictive. It is calculated separately for domestic and foreign service suppliers. The *foreign index* is calculated to measure all the restrictions that hinder foreign firms from entering and operating in an economy. It covers both *discriminatory* and *non-discriminatory* restrictions. The *domestic index* represents restrictions that are applied to domestic firms and it generally only covers *non-discriminatory* restrictions (for most services, restrictions do not discriminate against domestic firms). The *difference* between the foreign and domestic index scores is a measure of discrimination against foreigners.

116 This section is based on the survey by Stern (2002).

117 Studies of this nature include Hoekman (1996) and PECC (1995a, b). The gravity model approach used by Francois (1999) also falls within this class of models.

118 The data are available from the Productivity Commission of Australia website: www.pc.gov.au. See the articles in Findlay and Warren (2000) for individual studies that employ this methodology.

119 The index methodology classifies restrictions in two ways. The first is by whether a restriction applies to: *establishment* – the ability of service suppliers to establish a physical outlet in a territory and supply services through those outlets; or *ongoing operations* – the operations of a service supplier after it has entered the market.

Restrictions on *establishment* often include licensing requirements for new firms, restrictions on direct investment in existing firms and restrictions on the permanent movement of people. Restrictions on *ongoing operations* often include restrictions on firms conducting their core business, the pricing of services and the temporary movement of people.

The second way a restriction is classified is by whether it is: *non-discriminatory* – that is, restricting domestic and foreign service suppliers equally; or *discriminatory* – that is, restricting only foreign or only domestic service suppliers.

Table IIB.1
Services trade restrictiveness index, selected industries and countries

	Accountancy		Architectural		Banking		Distribution		Engineering		Legal		Maritime	
	Domestic index	Foreign index	Domestic index	Foreign index	Domestic index	Foreign index	Domestic index	Foreign index	Domestic index	Foreign index	Domestic index	Foreign index	Domestic index	Foreign index
Argentina	0.11	0.29	0.03	0.16	0.00	0.07	0.05	0.09	0.01	0.15	...	...	0.10	0.33
Australia	0.16	0.41	0.03	0.15	0.00	0.12	0.03	0.10	0.04	0.08	0.27	0.42	0.13	0.42
Austria	0.27	0.57	0.22	0.44	0.00	0.07	0.05	0.19	0.20	0.39	0.33	0.57	0.13	0.35
Belgium	0.28	0.40	0.13	0.29	0.00	0.07	0.18	0.32	0.01	0.02	0.21	0.31	0.15	0.35
Brazil	0.20	0.39	0.07	0.16	0.01	0.51	0.01	0.23	0.04	0.23	...	...	0.23	0.52
Canada	0.22	0.42	0.25	0.33	0.00	0.07	0.05	0.19	0.11	0.16	0.31	0.52	0.09	0.32
Chile	0.10	0.35	0.05	0.14	0.29	0.40	0.06	0.13	0.00	0.24	...	...	0.12	0.50
Colombia	...	...	...	...	0.05	0.23	0.12	0.19	...	...	...	...	0.18	0.47
Denmark	0.20	0.41	0.01	0.02	0.00	0.07	0.09	0.27	0.01	0.04	0.15	0.43	0.08	0.28
Finland	0.10	0.14	0.01	0.02	0.00	0.07	0.05	0.24	0.01	0.06	0.03	0.14	0.11	0.32
France	0.24	0.31	0.12	0.14	0.00	0.07	0.18	0.33	0.03	0.03	0.22	0.58	0.13	0.33
Germany	0.22	0.39	0.15	0.15	0.00	0.07	0.10	0.24	0.20	0.28	0.29	0.49	0.19	0.39
Greece	0.18	0.32	0.05	0.29	0.00	0.07	0.05	0.27	0.05	0.20	0.10	0.37	0.13	0.28
Hong Kong, China	0.20	0.32	0.09	0.22	0.04	0.09	0.03	0.05	0.08	0.13	0.08	0.27	0.09	0.40
India	0.31	0.44	0.02	0.08	0.05	0.60	0.15	0.32	0.00	0.10	0.09	0.40	0.25	0.61
Indonesia	0.00	0.56	0.04	0.30	0.07	0.55	0.09	0.32	0.05	0.24	0.17	0.57	0.21	0.56
Ireland	...	...	...	...	0.00	0.07	0.05	0.19	...	...	...	...	0.15	0.35
Italy	0.13	0.43	0.13	0.30	0.00	0.07	0.14	0.29	0.16	0.17	0.18	0.54	0.18	0.38
Japan	0.28	0.43	0.08	0.19	0.13	0.19	0.20	0.25	0.14	0.18	0.33	0.52	0.15	0.41
Korea, Rep. of	0.24	0.48	0.00	0.19	0.19	0.43	0.26	0.33	0.00	0.12	0.11	0.44	0.28	0.58
Luxembourg	0.12	0.31	0.00	0.08	0.00	0.07	0.05	0.17	0.08	0.11	...	...	0.10	0.25
Malaysia	0.09	0.51	0.04	0.33	0.27	0.65	0.09	0.40	0.08	0.26	0.13	0.54	0.25	0.52
Mexico	0.14	0.36	0.04	0.31	0.00	0.17	0.00	0.11	0.04	0.33	0.22	0.49	0.17	0.48
Netherlands	0.19	0.22	0.00	0.03	0.00	0.07	0.09	0.24	0.09	0.10	0.10	0.25	0.15	0.35
New Zealand	0.21	0.39	0.03	0.34	0.00	0.06	0.00	0.06	0.00	0.19	0.13	0.47	0.10	0.35
Philippines	0.29	0.63	0.05	0.33	0.14	0.53	0.06	0.37	0.00	0.15	0.10	0.54	0.17	0.64
Portugal	0.26	0.41	0.13	0.39	0.00	0.07	0.05	0.21	0.18	0.33	0.21	0.41	0.08	0.26
Singapore	0.18	0.41	0.00	0.08	0.11	0.37	0.03	0.07	0.01	0.11	0.08	0.42	0.10	0.21
South Africa	0.10	0.44	0.00	0.11	0.00	0.19	0.03	0.07	0.01	0.10	...	...	...	...
Spain	0.20	0.31	0.18	0.35	0.00	0.07	0.08	0.22	0.17	0.24	0.31	0.45	0.19	0.39
Sweden	0.18	0.44	0.00	0.17	0.00	0.07	0.07	0.21	0.01	0.17	0.12	0.27	0.17	0.42
Switzerland	0.08	0.27	0.04	0.18	0.00	0.08	0.16	0.33	0.05	0.15	0.24	0.50	0.10	0.35
Thailand	0.19	0.49	0.00	0.12	0.00	0.39	0.06	0.39	0.04	0.11	0.10	0.44	0.13	0.60
Turkey	0.09	0.41	0.17	0.39	0.05	0.37	0.06	0.13	0.18	0.37	0.26	0.58	0.08	0.49
United Kingdom	0.18	0.19	0.00	0.07	0.00	0.07	0.05	0.19	0.03	0.07	0.18	0.31	0.06	0.24
United States	0.20	0.33	0.13	0.23	0.00	0.06	0.00	0.16	0.12	0.19	0.24	0.48	0.17	0.60
Uruguay	...	...	...	...	0.14	0.46	0.02	0.06	...	...	...	...	...	...
Venezuela	...	...	...	...	0.00	0.17	0.11	0.26	...	...	...	...	...	...

Source: Productivity Commission of Australia, http://www.pc.gov.au/research/memoranda/servicesrestriction/traderestrictivenessindexes.xls.

In terms of differences across the selected industries, the banking sector appears to be one of the most restrictive overall. Most studies, even controlling for different methodologies, find that the core infrastructure services, including financial services, telecommunications and transport are among the most restricted sectors.[120] In some cases, these results are confirmed when compared against available results that adopt a methodology which estimates the effect of trade restrictions on price (Table IIB.2). This would suggest that despite the limitations of such methodologies, they are still useful in identifying the relative trade restrictiveness of various sectors.

Table IIB.2
Price effects of trade restrictions, selected industries and countries

	Banking		Distribution		Engineering		Telecommunications	
	Domestic price effect	Foreign price effect	Domestic price effect	Foreign price effect	Domestic price effect	Foreign price effect	Domestic price effect	Foreign price effect
Argentina	0.00	0.05	...	...	...	...	0.04	0.04
Australia	0.00	0.09	0.00	0.01	0.02	0.03	0.00	0.00
Austria	0.00	0.05	...	...	0.07	0.15	0.01	0.01
Belgium	0.00	0.05	0.07	0.05	0.01	0.01	0.01	0.01
Brazil	0.01	0.46	...	...	...	...	0.04	0.06
Canada	0.00	0.05	0.01	0.03	0.03	0.05	0.01	0.03
Chile	0.23	0.34	0.02	0.01	...	...	0.02	0.02
Colombia	0.04	0.18	...	...	...	...	0.11	0.24
Denmark	0.00	0.05	...	...	0.01	0.01	0.00	0.00
Finland	0.00	0.05	...	...	0.01	0.02	0.00	0.00
France	0.00	0.05	0.07	0.05	0.01	0.01	0.00	0.01
Germany	0.00	0.05	...	...	0.03	0.10	0.00	0.00
Greece	0.00	0.05	0.00	0.00	...	...	0.03	0.05
Hong Kong, China	0.03	0.07	0.00	0.00	0.02	0.05	0.01	0.01
India	0.04	0.55	...	...	...	...	5.61	10.00
Indonesia	0.05	0.49	0.00	0.04	0.03	0.10	0.71	1.38
Ireland	0.00	0.05	0.00	0.03	...	...	0.01	0.03
Italy	0.00	0.05	...	...	...	...	0.01	0.01
Japan	0.10	0.15	0.07	0.02	0.02	0.07	0.00	0.00
Korea, Rep. of	0.15	0.37	...	...	...	...	0.04	0.08
Luxembourg	0.00	0.05	...	...	...	...	0.01	0.01
Malaysia	0.22	0.61	0.04	0.08	0.05	0.12	0.07	0.16
Mexico	0.00	0.13	...	...	0.02	0.14	0.06	0.14
Netherlands	0.00	0.05	0.00	0.03	0.05	0.04	0.00	0.00
New Zealand	0.00	0.05	0.00	0.01	...	...	0.00	0.00
Philippines	0.11	0.47	...	...	...	...	0.21	0.73
Portugal	0.00	0.05	...	...	...	...	0.04	0.06
Singapore	0.08	0.31	0.00	0.00	0.01	0.05	0.02	0.03
South Africa	0.00	0.15	0.00	0.00	0.01	0.04	0.14	0.21
Spain	0.00	0.05	...	...	0.04	0.09	0.02	0.04
Sweden	0.00	0.05	...	...	0.01	0.07	0.01	0.01
Switzerland	0.00	0.06	0.08	0.05	...	...	0.01	0.01
Thailand	0.00	0.33	...	...	...	...	0.30	0.55
Turkey	0.04	0.32	...	...	...	...	0.20	0.34
United Kingdom	0.00	0.05	0.00	0.03	...	...	0.00	0.00
United States	0.00	0.05	0.00	0.02	...	...	0.00	0.00
Uruguay	0.11	0.40	...	...	...	...	0.08	0.12
Venezuela	0.00	0.13	...	...	...	...	0.10	0.15

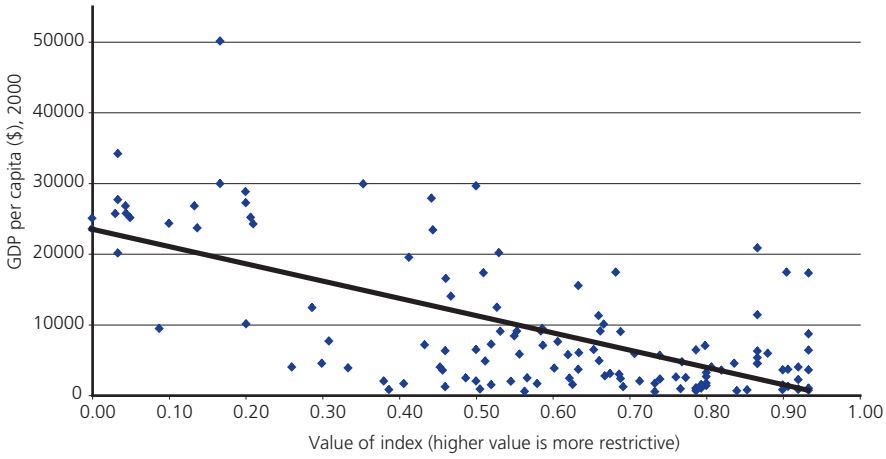
Source: Productivity Commission of Australia, http://www.pc.gov.au/research/memoranda/servicesrestriction/traderestrictivenessindexes.xls.

120 Francois (1999) finds very high levels of restrictiveness in construction services across various geographic regions. In some cases his estimates for this sector are double that of business and financial services.

Another common result across various studies is that public sector services such as health and education have not been the subject of far-reaching liberalization. Reservations about liberalizing these sectors are well known, bearing in mind the social and distributional issues underlying these particular services (Adlung et al., 2002). Part of the concern relating to liberalization of social and other essential services (such as health, education, water supply, and refuse collection) and network-based services (such as telecommunications and transport) is that public monopolies may simply be replaced by private ones, with little regard for price-related concerns and universal access. If benefits are to be gleaned from a non-discriminatory and open regulatory regime, pro-competitive deregulation may be a prior requirement (Hodge, 2002), along with universal service obligations of one kind or another.

Despite the diversity of service sectors, another general conclusion is that where estimates of trade restrictiveness are available, these seem to indicate higher levels of restriction in countries with lower per capita GDP. Chart IIB.9 illustrates this point for telecommunications using the trade restrictiveness index. Different factors may explain this, including the difficulties of engendering genuine competition in small markets with few suppliers, but it does raise the question whether developing countries could gain more by opening up in some sectors.

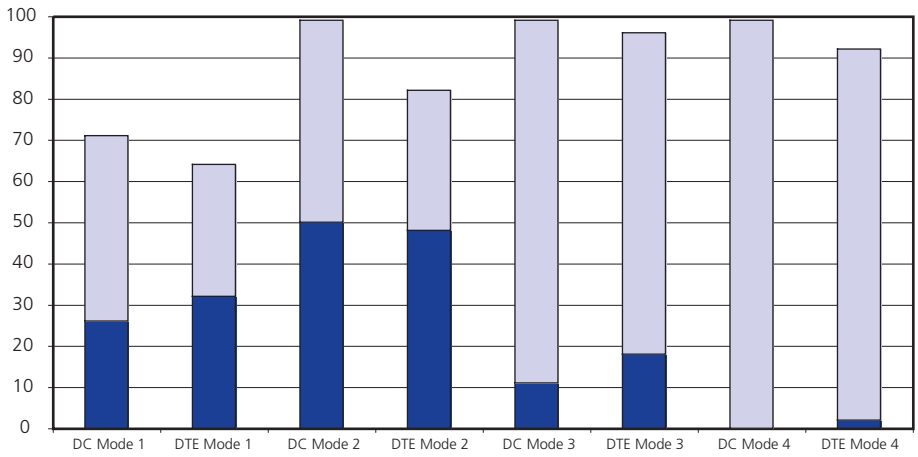
Chart IIB.9
Index of trade restrictiveness in telecommunications and per capita GDP



Source: Productivity Commission of Australia, www.pc.gov.au/research.

A final point to note on the pattern of protection in the services sector concerns differences among various modes of supply. Data on specific commitments under the GATS suggest that consumption abroad and cross-border supply are the most open Modes, while commercial presence and the temporary movement of labour are the most restricted (Chart IIB.10). This is despite the importance of movement of natural persons (Mode 4) for developing countries (Box IIB.2). These data should be treated with great caution, since they simply measure openness by entries in WTO Schedules of specific commitments, without gauging the relative commercial or economic significance of commitments, nor whether commitments reflect the actual degree of openness.

Chart IIB.10
GATS commitments by mode of delivery
(Per cent)



The upper part of each bar represents partial commitments, the lower part full commitments
DC = Developed countries, DTE = Developing and transition economies

Source: WTO.

Box IIB.2: Movement of natural persons (Mode 4)

Mode 4 is defined as the supply of a service through presence of natural persons of a Member in the territory of another Member. The Annex on Movement of Natural Persons Supplying Services under the Agreement clarifies that the movement of natural persons for the supply of a service does not encompass persons seeking access to the employment market, and stresses that Members remain free to apply measures regarding citizenship, residence or employment on a permanent basis.

Unlike for other Modes of supply, no Member has fully liberalized services supplied through Mode 4. Most liberalization commitments are connected to movement and employment of personnel necessary for establishment and maintenance of a commercial presence (i.e. executives, managers, specialists). Business in both developed and developing countries considers Mode 4 movements as necessary supplements to commitments in the other Modes of supply.

Barriers to the movement of natural persons include discretionary economic needs tests, quotas, pre-employment requirements and lack of recognition of qualifications obtained in the home country.

It is not possible to estimate precisely the relevance of Mode 4 movements relative to the other Modes of supply under GATS or relative to total migration flows. It is, however, clear that the relative importance is small. Global labour migration numbered about 120 million people in 1996, or 2.3 per cent of the world population, and Mode 4 movements represent just a small fraction of this group. A survey by Pricewaterhouse Coopers looked at intra-company movements in 1997 and 2000 and found that there was almost a doubling of the number of movements in that period (OECD, 2002c). Important reasons for the sharp increase are globalization of production and the need to be able to move key personnel for shorter periods in order to support foreign production, marketing, sales, after-sales services and maintenance.

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In the current services negotiations, both developed and developing countries have demonstrated strong interest in Mode 4 liberalization. In general, developed countries have put more emphasis on Mode 3 related movements, while developing countries have shown greater interest in movements independent of the establishment of commercial presence. Over the past decade, Mode 4 has become more widespread due to local shortages of skills in both developed and developing countries, and the proliferation of global business networks. Local skills shortages can be filled by migrant workers - nurses and ICT staff are prominent examples of this. However, labour market conditions change rapidly as we have seen in the ICT sectors of late. Therefore, one major challenge for the ongoing negotiations may be to reconcile the permanency of GATS commitments with rapidly changing labour market conditions and the flexibility required by technical and organizational changes in the business environment. Other important challenges relate to transparency of immigration regulations, and the concern that temporary Mode 4 movement may lead to *de facto* permanent migration.

What is certain, however, is that the movement of natural persons has been subject to limited opening relative to other Modes of supply (Chanda, 2002). One hundred WTO Members have made commitments under Mode 4. Of a total of 328 entries, 135 relate to intra-company transfers of executives, managers and specialists (one entry is for "others"), while 70 relate to business visitors. Only 17 entries relate to worker categories other than highly-skilled or managerial staff. From a developing country perspective, there is a certain asymmetry in this pattern of protection since developing countries stand to gain significantly through the liberalization of the movement of labour, whereas for commercial presence, it is the developed countries that are the principal sources of capital.

(iii) Gains from services liberalization

Four service sectors of importance to development are business, finance, telecommunications and transport. The potential returns to addressing impediments to trade in these sectors are examined in this subsection. Due to lack of data, there are few good empirical studies of the gains from liberalization of trade in services. There is, however, a growing literature that simulates the impact of liberalization using stylized, but realistic models based on protection data of the type surveyed in the previous section.

Business services

Business services are skill-intensive and offer specific solutions for customers that enhance innovation capacity, productivity and competitiveness. In some cases business services provide a "missing" input that unlocks export potential. Examples are geological and engineering services necessary to produce and export oil and minerals, designer and marketing services necessary for entering fashion markets, and internet services for exporting labour-intensive back-office services.

Foreign direct investment (FDI) and the movement of natural persons are complementary in these services, since key personnel often cannot be found locally due to a scarcity of skills in the host country, but also because skills are to some extent firm specific as each firm specializes in a particular niche of the market. Thus, liberalizing FDI (Mode 3) in these services will not have all the desired effects unless Mode 4 is also liberalized. Markusen et al. (2000) analyse the impact of FDI liberalization in business services in developing countries.[121] They find that entry of foreign business service firms encourages modern manufacturing in the host country. The availability of sophisticated business services provided by foreign firms increases the competitiveness of local manufacturers in their home market, and in some cases also in export markets. The study also finds that even if foreign business service firms bring in many expatriates, these are complementary to local skilled workers. Demand for local skilled workers increases, particularly in the manufacturing firms that switch to modern manufacturing technologies, and the wages of skilled workers increase.

[121] They model FDI in business services and assume that foreign companies must import a specific input in order to set up a business. This specific input can reasonably be interpreted as visits or temporary employment of professional staff.

Financial services

As stated earlier in this report, the way a country utilizes its resources (in contrast to its resource endowment) is by far the most important determinant of its income level and economic growth. The financial sector plays a pivotal role in the efficient allocation of resources across time and space in an uncertain environment. The sector's role in the economy can be summarized in terms of five functions: facilitating the trading, hedging, diversification and pooling of risk; allocating resources; monitoring managers and exerting corporate control; mobilizing savings; and facilitating the exchange of goods and services (Levine, 1997).

In a world of perfect information and no risk, there would be little need for financial intermediaries. However, in the real world information is costly to obtain and there is a considerable amount of risk. Furthermore, there is a trade-off between the risk of projects and their return. Projects with a high rate of return are also often large-scale undertakings with significant gestation periods. In such a world the best projects would most likely not be realized without financial services that can provide long-term funding at the same time as they provide liquidity and savers can easily convert their assets into purchasing power when desired. In those developing countries where the financial sector is shallow and largely confined to providing short-term lending such as working capital, investment projects have to be funded through retained earnings, probably resulting in a number of lost opportunities. It has further been argued that a precondition for the industrial revolution was a preceding development of the financial sector and that financial sector development is a good predictor of future economic growth (Levine, 1997).

The financial sector's relevance for economic development is beyond doubt. But does openness to trade in financial services improve the functioning of the financial services sector? If the answer is yes, trade liberalization in financial services will improve the performance of the liberalizing economy as a whole. For the banking sector, the evidence points to the affirmative. Case studies and cross-sectional econometric analysis surveyed by Levine (2001) find that the presence of foreign banks exerts competitive pressure on local banks and that there is a significant decline in their overhead costs following the entry of foreign banks. In addition, foreign banks often bring new products and may stimulate improvements in domestic supervision and regulation. Thus, although foreign banks often limit their activities to niches in the local market, their mere presence increases competition and improves the performance of local banks, forcing them to improve the range and quality of services provided. Moreover, entry of foreign banks also stimulates the improvement of bank supervisory and legal frameworks.

Poor countries tend to have small financial sectors, characterized by concentrated risks, they have relatively high costs and a narrow range of services. These deficiencies follow from their small markets and the presence of economies of scale in the financial system. As in other sectors discussed in the report, openness to trade allows firms to exploit economies of scale and broaden the service spectre, given that the local and foreign markets are sufficiently integrated. Otherwise foreign banks will face the same problems stemming from a small market as local banks. A recent study (Claessens et al., 2001) indeed finds that foreign banks have higher overhead expenses in low-income countries than in high-income countries. Furthermore, the study finds that foreign banks have higher net interest margins and overhead than local banks in low-income countries (except in Africa). The gains from liberalization in poor countries thus depend on the extent to which liberalization expands the financial market and on the quality of financial sector regulation. Finally, in the financial service sector trade liberalization may increase the exposure to risks related to external shocks and to exchange rate volatility. For these reasons in developing countries with less well-developed financial sectors, poor prudential provisions, and non-market arrangements such as administrative credit rationing and interest rate controls, setting the regulatory framework right is likely to be as important a step as fostering competition from foreign suppliers, and perhaps one that should precede the latter.

Telecommunications

Effective telecommunications provide a low-cost channel for searching, gathering and exchanging information, which in turn is a key input in all economic activities as well as in social interactions. One would therefore expect that the quality and availability of telecommunications services have a significant impact on both the productivity level in the economy and the quality of life. Telecommunications are subject to network effects – the value of a telephone line or an internet connection for one person or firm depends positively on how many other persons or firms are also connected. Therefore the number of connections needs to reach a critical level before there is a significant impact on productivity. A recent study on the impact of telecommunications on economic growth in 21 OECD countries during the period 1970-90 finds a significant and positive linkage between investment in telecommunication infrastructure and economic growth. It also found that the impact was higher in countries with universal services.[122] Because of this, investments in telecommunications tended to have a larger growth effect in more developed economies, although there was a positive growth effect in the entire sample (Röller and Waverman, 2001).

Having established that investments in telecommunication had a positive (but non-linear) impact on growth, and a larger impact than just any investment in equipment in the OECD countries during 1970-90, the next question is whether trade liberalization can affect the telecommunications penetration rate. During the 1990s, most OECD countries and many developing countries liberalized their telecommunications sector. Warren (2000) has estimated the impact of liberalization on telecommunications penetration as measured by the number of mobile and fixed lines per 100 inhabitants. The estimates controlled for other variables, most notably the level of income and population density. He found that the impact of opening to new entrants (domestic or foreign) in the domestic fixed line market had little effect on the penetration rate in countries that already had universal services, although opening did improve the quality of the service (Trewin, 2000). In developing countries, however, the penetration rate increased up to a hundred per cent (in China) as a direct result of liberalization. Similar results are found for mobile networks, and here the gains are even higher.

Using Warren's methodology of estimating the impact of trade liberalization on mobile phone penetration rates, it is found that least-developed countries are much more likely to have a mobile telephone network if they allow foreign companies to enter than if the market is reserved for local companies, usually the incumbent fixed line operator. Furthermore, at GDP per capita levels below $3,500, the difference in penetration rates between closed and open markets is more than a hundred per cent, while the difference declines to about 12 per cent at an income level of $25,000.[123] As these estimates indicate, openness increases the service supply and more so for developing and least-developed countries. Increased service supply in turn improves efficiency in the economy at large, but here we recall that the impact is largest for rich countries.

Transport and other infrastructure services

Transport costs have until recently been largely ignored in trade policy analysis. However, as tariffs and non-tariff barriers to trade come down, transport costs are the remaining barrier to trade and have consequently received more attention. Clearly, transport costs are a function of distance, weight and value of the cargo, and frequency of call at the port, which are more or less given by geography and the properties of the goods being shipped. However, doubling the distance of sea transport only leads to a 20 per cent increase in transport cost. This indicates that there are substantial fixed costs related to infrastructure, port handling, customs clearance etc. that are at least as important as the physical distance between (potential) trading partners (Clark et al., 2001). Clark et al. find that being among the 25 per cent least effective ports is equivalent to being 60 per cent further away from the nearest major market, compared to being in the 75th percentile. It is likely that better regulation and more competition both domestically and from foreign service providers would improve port efficiency and thus lower transport costs (Venables, 2001).

122 Universal service is defined as more than 40 fixed telephone lines per 100 inhabitants.

123 Income levels are given at 1995 dollars in 2000 or latest year available.

Turning to the impact of transport costs on export volume, Radelet and Sachs (1998) have estimated how transport costs affect growth in exports for 43 developing countries, using the CIF/FOB ratio as an indicator of transport costs.[124] They find that an increase in the CIF/FOB ratio of 5 percentage points reduces the long-term annual growth rate of non-primary manufactured exports by 0.2 percentage points of GDP.[125] Clearly, high transport costs impede exports and by implication export-led growth. In addition, if the exporter is a price-taker in international markets, high transport costs lower the net export revenue and wages in the exporting country. It should be noted, however, that not all factors which raise transport costs are amenable to solution simply by introducing competition. Small and distant countries have little control over the behaviour of foreign shipping companies, and problems sometimes relate in the first instance to a lack of investment in basic infrastructure.

To summarize this subsection, financial services, telecommunications, business services and other infrastructural services provide the glue that holds the economy together and low-cost and efficient services improve the workings and productivity of the economy as a whole. The widely shared perception that information and communications technology is a general purpose technology that improves productivity and technological progress in the economy as a whole motivated the Information Technology Agreement. A similar case for well-conceived liberalization could be made for basic infrastructural services.

(f) Implications for the Doha Development Agenda

Market access issues are of primary importance for many WTO Members. Market opportunities, in parallel with the quality of the trading rules, set the stage for the engagement of countries in the trading system. A key issue for developing countries is action on residual levels of tariff and non-tariff protection in developed markets, which are relatively open to imports. This residual protection is to be found predominantly in products of export interest to developing countries, such as agricultural and labour-intensive industrial products. However, given the growing importance of South-South trade (as discussed in Section IB.1 above), developing countries also have an interest in addressing the issue of high tariffs within their own markets. These arguments are in addition to the standard and widely accepted propositions regarding the benefits that accrue to countries from their own liberalization efforts.

Negotiations in the WTO focus on bound tariff rates, which raises the question of the extent to which the current round of negotiations will yield sufficient improvements in market access if they do not target applied rates. Two elements of a development-oriented outcome would be to improve the coverage of bindings on industrial products and to reduce the gap between bound and applied rates. The latter could be achieved through a variety of modalities that would meet the level of ambition and guidelines set down in the Doha Ministerial Declaration (Box IIB.3).

A number of asymmetries permeate market access issues. In the context of tariffs, developing countries have significant scope to improve access to their markets (in addition to what was said above about residual tariff protection in developed countries). In the context of non-tariff measures such as domestic support and export subsidies, it is action by the developed countries that will be of particular benefit both to them and their developing country trading partners.

In other aspects of market access, including trade facilitation, such asymmetry does not exist as a basis for mutually beneficial bargains involving the exchange of tariff and non-tariff measure concessions. Rather, the gains arise from mutual cooperation in increasing transparency and efficiency, subject to ensuring adequate implementation capacity for developing countries.

As far as services is concerned, much scope exists for further liberalization, both autonomously and to take advantage of the value of binding commitments available under the GATS (Gamberale and Mattoo, 2002). The positive list approach of the GATS allows Members to work progressively towards market-opening, at different speeds for different sectors and modes of delivery. The importance from a development perspective of well-priced, efficient and generally available infrastructural services such as transport, telecommunications and financial services has been emphasized. The need for accompanying regulatory reforms at the domestic level, and in some cases reforms that precede liberalization, has also been discussed.

[124] CIF represents the cost of an imported item at the point of entry in the importing country, including insurance, handling and freight costs, while FOB represents the costs of an imported item at the point of shipment by the exporter.

[125] They control for sea distance to the nearest major world market, being landlocked and the initial level of GDP.

Box IIB.3: Modalities for tariff negotiations

A variety of approaches have been used in the past to negotiate the reduction of bound tariffs starting with the request and offer approach. This technique, grounded in the selected product by product approach proved cumbersome and yielded results that were not particularly ambitious. Two significant departures from this approach occurred during the Kennedy Round: industrialized countries adopted a linear tariff reduction technique and developing countries were granted "less than full reciprocity" (Hoda, 2001).

In the Tokyo Round an explicit reference was made to "appropriate formulae". A number of proposals were submitted in response to the mandate, including some that had the effect of higher reductions for higher tariff rates in contrast to a linear reduction.[1] The proposal from Switzerland was ultimately adopted by some countries, which specified the new tariff rate to be calculated as follows:

$$t_1 = \frac{\alpha \times t_0}{\alpha + t_0}$$

where α is a coefficient to be agreed upon by the participants in the negotiations, t_0 is the initial tariff rate and t_1 is the final tariff rate.

In applying this formula some countries used a coefficient equal to 14, others adopted 16. It should be noted that the formula was not universally applied by all countries and those that did apply it did so with exceptions.

The mandates for the Uruguay Round negotiations and the Doha Development Agenda did not specifically mention the use of formulae as the core modality. However, during both negotiations proposals for modalities based on formulae have figured prominently. In the current Doha agriculture negotiations some Members proposed the Swiss formula as stated above with a coefficient of 25. In the non-agricultural market access negotiations the Swiss formula was proposed by the United States with a coefficient of 8 for certain phases of their proposed tariff reduction plan. In addition, variants of the Swiss formula that take into account the diversity of Members' profiles were proposed.[2]

The Chair's draft proposal for the Doha negotiations on agriculture followed the approach used during the Uruguay Round which was a target rate of reduction based on a simple average of out-quota tariff rates with a minimum cut per line.[3] The reductions would apply across three different bands of tariffs with a higher average reduction for tariffs in the high range. Developing countries were proposed a similar approach, but with higher thresholds for tariffs to be reduced and lower percentage reductions.

In the Doha non-agricultural market access negotiations the Chair proposed a number of elements for the reduction of tariffs.[4] The core element is the following formula to be applied on a line-by-line basis[5]:

$$t_1 = \frac{B \times t_a \times t_0}{B \times t_a + t_0}$$

where,
t_1 is the final rate, to be bound in *ad valorem* terms
t_0 is the base rate for negotiations
t_a is the average of the base rates
B is a coefficient with a unique value to be determined by the participants.

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Less than full reciprocity in this context is incorporated into the formula through the t_a coefficient. A higher coefficient implies a lower reduction and developing countries in general have higher average applied and bound tariffs (Chart IIB.5).

The Chair further proposed that Members could consider the elimination of tariffs in certain sectors of export interest to developing countries. As with agriculture, the Chair's proposal in non-agricultural market access takes into account the issue of special and differential treatment for developing countries.

Source: WTO

1 See WTO document, TN/MA/S3/R1 and Panagriya (2002) for more details on the general properties of formulas that have been used for reciprocal negotiations.

2 The various formulae that have been proposed in the Negotiating Group on Market Access are presented in WTO document, TN/MA/S3/ Rev.2.

3 See WTO document, TN/AG/W1/ Rev.1 for the full proposal, including for a possible approach to negotiate domestic support and export competition issues as discussed in the section on non-tariff measures.

4 See WTO document, TN/MA/W/35 for the full proposal.

5 A number of technical criteria are required before the formula can be applied including the definition of base rates and the conversion of *ad valorem* duties into non *ad valorem* duties. These details can be found in WTO document, TN/MA/W/35.

3. FACILITATING OPENNESS FOR DEVELOPMENT

As discussed in Section IIA trade is not an end in itself and neither, therefore, is unqualified trade expansion. But few dispute the proposition that trade can make a strong contribution to development and is a key accompaniment to growth. Specialization through trade allows for a more efficient allocation of resources and can spur greater efficiency through competition. Beyond these static gains, trade can engender technology transfer, deepen and diversify production structures and contribute to the modernization of the economy. These points are well enough known and need no elaboration here.

It is also well understood that developing countries often face constraints that impair their ability to benefit as rapidly from trade liberalization as higher income countries. The importance of an appropriate sequencing of policies and of accompanying trade liberalization with a sound macroeconomic environment and an adequate regulatory base has become better understood. Developing countries may find the burden of adjustment difficult to deal with where governments and individuals lack the resources to finance the transition of workers to other occupations, and where poorly functioning capital and labour markets inhibit necessary shifts in resource use. In some circumstances, trade liberalization may have a particularly negative impact on vulnerable groups within the economy. Moreover, low-income countries with weak institutions may find it hard to take full advantage of opportunities arising from trade liberalization. They will also experience difficulty in implementing certain WTO rules, raising the question of the balance between the resource costs of implementation and the benefits of certain agreements to the economy.

(a) Special and differential treatment

As discussed in Section IIA the evidence is strong that those countries which have sought engagement in the international economy and actively worked to overcome these constraints have done better than those which have tended towards defensive isolation. To the extent that developing countries face different constraints than industrialized countries, a case may be made for special and differential treatment (S&D) in the multilateral trading system. The issue is clearly one of balance and emphasis, which is what makes the identification of appropriate S&D provisions central to developing countries as they determine their national interests in relation to the WTO and the Doha Agenda. Special and differential treatment, however, is hardly a panacea if it is interpreted as an effort to minimize the extent of commitments on the part of developing countries. The idea that less engagement in the WTO means more development may seem foolish when thus stated, but some

critics of the WTO seem to work on the basis of this implicit assumption. Special and differential treatment provisions should focus on policy design and timing questions, and on aligning contractual commitments in the WTO with development needs and priorities. Just as efforts to accept as little as possible by way of commitments will offer scant contribution to development, so too will coercive WTO commitments de-linked from a properly articulated national economic interest.

(i) The history of special provisions for developing countries in the multilateral trading system

An appreciation of the evolution of provisions designed specifically for developing countries in the multilateral trading system provides a helpful perspective in considering the issue of S&D today in the context of the Doha Agenda. For this very brief account of how the S&D issue has evolved in the GATT/WTO system, four phases can usefully be distinguished. The first phase is from the creation of the GATT in 1948 to the beginning of the Tokyo Round in 1973. The second phase is the Tokyo Round itself, from 1973 to 1979. The third phase is from the end of the Tokyo Round to the end of the Uruguay Round, that is from 1979 to 1995. The fourth phase is from the end of the Uruguay Round until the present. These phases have been chosen because they each encompass significant events and tendencies in relation to the participation of developing countries in the multilateral trading system.

The *first phase*, up to the beginning of the Tokyo Round in 1973, was dominated by market access questions, in particular the conditions of access for developing country exports to developed country markets. A notable landmark during this period was the twelfth session of the GATT Contracting Parties, held at Ministerial level in 1957. At that meeting, agricultural protectionism, fluctuating commodity prices and the failure of export earnings to keep pace with import demand in developing countries were identified as undesirable features of the international trading environment. A Panel of Experts was established to examine trends in international trade in light of these concerns. The Panel was chaired by Professor Gottfried Haberler. The 1958 Haberler Report confirmed the view that developing country export earnings were insufficient to meet development needs and focused primarily on developed country trade barriers as a significant part of the problem, although the report also criticized some developing country trade barriers. In response to Haberler, GATT Contracting Parties established three committees to develop a co-ordinated Programme of Action Directed Towards an Expansion of International Trade. Committee III focused on barriers to exports maintained by developed countries. By 1963, Committee III had drawn up an eight-point Plan of Action, which among other things called for a freeze on all developed country trade barriers on products of interest to developing countries and the removal of all duties on tropical and other primary products. The Programme of Action became part of the Kennedy Round (1964-1967) and was never implemented to a significant degree. The impression of repetitious similarity between what was happening in this area forty years ago and the discussion today is unavoidable.

On the institutional front, the shift in development thinking initiated by the Prebisch-Singer thesis was enshrined in the United Nations Conference on Trade and Development (UNCTAD), established in 1964.[126] The birth of UNCTAD, the growing number of newly independent states following de-colonization in Africa, Asia and the Caribbean, the Cold War, and the success of developing countries in placing their issues centre-stage in the GATT all contributed to the decision to establish Part IV of the GATT in 1965.[127] Part IV consisted of three Articles on Trade and Development.[128] While designed to promote development and developing country interests in the trading system, Part IV was never more than a set of "best endeavour" undertakings with no legal force – a fact that has been the source of dissatisfaction among many developing countries to

[126] Developing countries were pushing hard in GATT for improved market access for their primary exports at the same time that "export pessimism" and fear of deteriorating developing country terms of trade resulting from reliance on primary product exports (the Prebish-Singer thesis) dominated the development debate. The latter reasoning provided part of the justification behind the argument that developing countries should diversify into manufacturing industry through import substitution policies.

[127] The numerical preponderance of developing countries was beginning to assert itself at this time. In 1960, 21 Members of GATT were developed countries and 16 developing countries. By 1970 the figures were 25 developed countries and 52 developing countries.

[128] Article XXXVI – Principles and Objectives, Article XXXVII – Commitments, and Article XXXVIII – Joint Action.

the present day. One particularly significant feature of Part IV, however, was the assertion of the principle of non-reciprocity in Article XXXVI:8. Non-reciprocity meant that developing countries would not be expected, in the course of trade negotiations, to make contributions inconsistent with their individual development, financial and trade needs. Non-reciprocity has never been more clearly defined than that, and just like the later and closely linked concept of S&D, a definition of reciprocity or its inverse has eluded the precision that might have avoided some of the debates which continue to dominate the discussion of developing country participation in the trading system.

By the time of the *second phase* in the evolution of this debate (Tokyo Round, 1973-1979), the pendulum in trade policy discussions had started to swing away from import substitution and towards favouring greater export orientation. The inherent limitations and trade-distorting effects of excessive reliance on import substitution were becoming better understood. The move towards a more neutral stance in respect of trade policy incentives implied opening up more to import competition as well as removing the policy bias against exports. From the institutional perspective, Part IV already presaged this second aspect of the trade and development debate in GATT, which was to focus increasingly on developing countries' own trade policies as well as market access for their exports. It was this tendency, coupled with a strong emphasis on non-tariff trade measures in the Tokyo Round that distinguishes the second phase from the first.

Much of the negotiating involvement of developing countries in the Tokyo Round aimed at limiting the extent to which the new agreements (the Tokyo Round "Codes") on non-tariff measures would impose policy limitations or undue administrative or financial burdens on developing countries. This objective, together with continued insistence on the importance of non-reciprocity in market access negotiations, led to three principal results for developing countries. First, developing countries agreed to limited market access commitments and relatively few tariff bindings. Second, the "Code approach" was adopted in respect of the new non-tariff measure agreements, meaning that the agreements only applied to signatories. Many developing countries refrained from signing the various Codes, which covered technical barriers to trade, customs valuation, import licensing, subsidies and countervailing measures, anti-dumping and government procurement.

Third, a new framework was established to define and codify key legal rights and obligations of developing countries under the GATT. The 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, also known as the Enabling Clause, provided permanent legal cover for the Generalized System of Preferences, for S&D provisions under GATT agreements, for certain aspects of regional or global preferential agreements among developing countries, and for special treatment for least-developed countries. The Enabling Clause also restated the principle of non-reciprocity, as first spelled out in Part IV, and further stated that developing countries expected their capacity to make contributions or negotiate commitments to improve with the progressive development of their economies and improvement in their trade situation. This was the origin of the notion of "graduation".

Some commentators lauded the flexibility that the Tokyo Round results afforded developing countries, believing it supportive of their development needs. Others considered that the degree of non-engagement implied by these arrangements meant that developing countries gained little from the system. This argument was based on two points – that the GATT did not support developing countries in the formulation of better trade policies, and that because developing countries offered as little as they did in the negotiations, they received little in return from their trading partners. The problem with both these positions, which tended to inform a good deal of the debate during the post-Tokyo Round years, is that they over-simplified reality by failing to distinguish adequately among the dozens of developing countries in the system who faced very different situations and had very different needs. This is a tendency that has persisted to the present and underlies some of the difficulty that the WTO is currently experiencing in its efforts to address S&D issues.

The *third phase* in the evolution of developing countries in the trading system saw a change in direction in the S&D debate. By the end of this period in 1995, when the Uruguay Round was completed, developing countries had assumed a much higher level of commitments within the system than ever before. A number of factors explain this trend. First, some developing countries had enjoyed rapid growth and had succeeded in diversifying their economies, particularly in Asia and to some degree in Latin America. This made them better equipped

to participate more fully in the trading system and changed the nature of their interests in international negotiations. Second, the decade of the 1980s opened with a significant realignment in economic thinking in some major economies, especially the United States. This approach, while not always pursued consistently in the trade policy field by the large trading nations, nevertheless militated against government intervention and emphasized the role of markets, including for development.

A third factor was the sense that the trading system itself needed fixing. The system was trying to confront the challenge of contingency protection provisions, with the increased use of voluntary export restraint arrangements. Regionalism was appearing on the trade policy scene in a more significant way and governments were concerned about the multilateral consequences of this development. Some governments felt it was time for the GATT to tackle agriculture, something it had failed to do for the forty years of its existence. Similar sentiments applied in the case of textiles and clothing. In addition, some developed country governments wished to see the trading system encompass new areas, in particular investment, trade in services and intellectual property rights. Finally, the idea that developing countries ought to assume higher levels of obligation within the system was also increasing in currency.

The single undertaking of the Uruguay Round meant that all WTO Members had to accept all agreements,[129] in sharp distinction to the Code approach of the Tokyo Round. This alone meant an important range of new developing country commitments within the system. Many developing countries significantly increased their tariff bindings, especially in agriculture. In addition, new agreements in services and intellectual property applied to all through the single undertaking.

The *fourth phase* began with a significant challenge for developing countries as they prepared to absorb their new Uruguay Round obligations legislatively and administratively, although in many instances developing countries were accorded phase-in periods for the assumption of new obligations. This period also began with a sense among many developing countries that they had not been given an adequate opportunity to participate in the closing stages of the Uruguay Round and had been presented with a *fait accompli*, particularly as a result of the single undertaking. Linked to this feeling of exclusion was the conviction that not all the obligations assumed under the Uruguay Round package were consistent with national economic interests and development priorities.

Discussions have been held in different contexts over the last few years on how to improve the internal working methods of the WTO in order to ensure that all parties who wish to participate in negotiations and decision-making are able to do so. This matter is very important and will continue to be discussed, but does not explicitly form part of the Doha Agenda. On the policy side, however, the "implementation" debate was soon engaged and became a major element in the discussions at Seattle, at Doha and beyond. Two distinct elements inform the implementation discussions. One concerns the difficulty some developing countries are encountering as they seek to implement their obligations, bearing in mind the costs, administrative aspects and human capital requirements of implementation. Efforts are being made to address this aspect of implementation through augmented technical assistance and capacity building efforts. The other aspect of implementation relates to the substantive provisions of various WTO agreements. Developing countries are seeking modifications to many provisions on the grounds that they need to be made more operationally effective in order to support development and/or less restrictive in relation to the degree of policy flexibility afforded developing countries.

Some progress was made on implementation issues at Doha, but elements of this discussion are continuing. At Doha, another exercise was launched, focusing specifically on making S&D provisions more effective. At the same time, Paragraph 44 of the Doha Declaration calls for a review of all S&D provisions "with a view to strengthening them and making them more precise, effective and operational". Both the implementation and

[129] The only exceptions were the plurilateral agreements on government procurement, trade in civil aircraft and dairy and meat products.

S&D discussions have been the focus of many hours of meetings and many issues remain unresolved. This will be discussed further below. For the present, however, it is sufficient to note that these issues are going to be central to discussions throughout the Doha negotiations, and a successful outcome of the negotiations will require further progress on this front.

(ii) A typology of S&D provisions

Special and differential treatment provisions seek to address a lack of institutional capacity and resources for the management of trade policy. They also seek to render the trade policy regime as supportive as possible of the development aspirations of developing countries. How does this general formulation find expression in particular provisions and policy approaches? There are different ways of distinguishing among types of S&D provisions. The WTO Secretariat has developed a six-fold taxonomy of such provisions.[130] The six categories are: (i) provisions aimed at increasing the trade opportunities of developing country Members; (ii) provisions under which WTO Members should safeguard the interests of developing country Members; (iii) flexibility of commitments, of action, and use of policy instruments; (iv) transitional time periods; (v) technical assistance; and (vi) provisions relating to least-developed country Members. Each of these will be considered briefly.

The most prominent form of S&D treatment under category (i) is preferential access to developed country markets through such arrangements as the Generalized System of Preferences (GSP). Other references to measures aimed at increasing trade opportunities for developing countries can be found in various provisions and agreements, including Part IV, the Agreement on Agriculture, the Agreement on Textiles and Clothing and the General Agreement on Trade in Services. Most of these provisions are of a "best endeavour" nature.

Much has been said and written about preferences over the years, particularly the GSP. The picture is mixed. It appears that while some countries have been able to make good use of preferences at particular points in their development, schemes like the GSP have been of limited utility to most developing countries in terms of expanding their exports.[131] Among the explanations that have been offered for this situation are supply-side constraints in developing countries, administrative complexities attached to the schemes, and a lack of stability in schemes that are essentially voluntary in nature and sometimes discriminatory among potential beneficiaries. Additional factors are that schemes like the GSP are subject to "graduation" criteria defined by the importing countries and are eroded over time through MFN liberalization. To the extent that preferences have proved useful, there is always an additional risk that beneficiary countries may have specialized in areas where they do not possess comparative advantage. The erosion and eventual elimination of preference margins in these circumstances may imply adjustment costs and a need to reallocate resources. The above considerations suggest that while preferences may promote development in some circumstances, they may not be as useful as contractually based non-discriminatory liberalization, and should in any case be subject to careful assessment before too much negotiating effort is invested in seeking preferential access.

Category (ii) measures involve actions that may be taken or avoided by Members in order to safeguard or promote developing country interests. Provisions covering such measures are to be found in a wide range of agreements and instruments, and in some cases are mandatory in nature. According to WTO document WT/COMTD/W/77, there are 47 provisions of this nature contained in 13 WTO agreements and two decisions. These provisions vary a good deal in their potential impact and it is impossible to generalize as to their adequacy or utility. Similarly, category (iii) provisions, which offer greater flexibility to developing countries in terms of commitments and actions, span ten different WTO agreements and are some 50 in number. Again, the extent to which such provisions serve development objectives in developing countries can only be assessed in relation to the individual measures concerned and the capacity of individual developing countries to take advantage of them. Category (iv) provisions allow developing countries longer time-frames within which

130 WT/COMTD/W/77/Rev.1

131 See, for example, Brenton (2003), Mattoo, Roy and Subramanian (2002) and Özden and Reinhardt (2003).

to comply with their obligations. All of the 19 phase-in provisions of this nature relate to Uruguay Round agreements. In some cases, extensions of phase-in periods are envisaged. Implementation delays are intended to provide developing countries with extra time to develop institutional and human capacity to meet new obligations, as well as additional economic adjustment time to meet new policy conditions. Whether these delays are useful and sufficient from a development perspective will generally depend on specific conditions facing individual developing countries.

Category (v) provisions on technical assistance feature in six different agreements, where implementation costs and capacity requirements may be considered higher than in other agreements. It should be noted that technical assistance is made available not only in respect of those agreements where technical assistance is mentioned – it is generally available to developing countries in relation to their participation in the WTO, subject to resource constraints. Technical assistance and capacity building will be discussed separately in the next section. Finally, category (vi) provisions in favour of least-developed countries number some 24 in total and can be found in seven different agreements and three decisions. As with the provisions generally available to developing countries described above, the value of measures and dispositions envisaged exclusively for least-developed countries can only be judged in the specific context of the provisions themselves and the individual intended beneficiaries.

(iii) Special and differential treatment and the Doha Development Agenda

The prolonged discussions on implementation before and after Doha and on S&D since Doha have highlighted important issues that need to be addressed more effectively before real progress can be made in the negotiations.[132] The work done so far cannot leave any doubt about the importance for a significant segment of the membership of defining an appropriate approach to special and differential treatment and an adequate set of provisions thereon. The fact that there are more than 150 S&D provisions in the WTO agreements greatly complicates matters, not least because taken individually, these provisions vary greatly in their degree of importance from a development perspective. The tendency in discussions so far to place so many provisions on the table has rendered more difficult the analytical task of identifying what matters most.

Developing countries have shown some reluctance to allow the discussion to move in the direction of considering further the objectives, principles and modalities that should underlie the WTO's approach towards special and differential treatment. This reluctance is partly driven by the concern that such a discussion will deflect attention from the specifics of what developing countries believe S&D provisions should comprise. At the same time, developed countries have been unwilling to consider some of the more far-reaching proposals on how to improve S&D provisions outside a negotiating context. Movement will be required on the specifics of S&D provisions as well as on the broader systemic questions before Members can come to closure on this aspect of the Doha Development Agenda.

Who should benefit?

The notion that "one size does not fit all" is firmly embedded in S&D discussions. For some, this simply means that individual developing countries must enjoy the necessary flexibility to apply measures and exercise rights so that their involvement in the multilateral trading system responds fully to their trade, financial and development needs. But others are concerned that variable geometry will accord advantages to some developing countries at the expense of others. Clearly, the fewer Members that have access to S&D, or more precisely, the lower the per capita income levels of qualifying beneficiaries, the more far-reaching will be the provisions. The greater the differences in obligation levels, the more likely it is that countries will feel that exemptions for others are prejudicial to their own interests. Therein lies the challenge of achieving a balance that responds to the demonstrable needs of every Member. In light of these considerations, it is not surprising that a good deal of discussion has focused on which countries should enjoy access to S&D, and how much S&D individual countries should enjoy, rather than on the principle of flexibility. In other words, if

[132] For discussions on S&D, see for example, Kessie (2000), Michalopoulos (2000), Pangestu (2000), Whalley (1999), and WTO (1999b).

WTO provisions are to be tailor-made to respond to different priorities and needs among the membership, this implies a flexibility that distinguishes not just between developed and developing countries, but among developing countries. This is taken by some to mean "graduation" for certain developing countries. But what would graduation mean in practical terms?

The graduation issue has proved just as intractable as any effort to agree upon a formal definition of developing country status in the WTO.[133] For political reasons, if not economic ones, this situation is unlikely to change. An effective approach, therefore, would seem to require greater reliance on systematic analysis rooted firmly in developmental considerations. If it is true that "one size does not fit all", it follows that we require a frame of reference to define the content of S&D provisions and identify those Members for whom access to such measures is essential. The latter aspect of identifying appropriate S&D might be assisted by efforts to define provisions in a manner that automatically determines access thresholds for individual Members. This would also help avoid what many potential beneficiaries of S&D fear, which is that in trying to link S&D as closely as possible to particular development needs, an unwelcome element of discretionary decision-making could become part of the WTO approach in this area. An additional factor to bear in mind is that while individual Members may be reluctant to acknowledge explicitly a change in their development status, in practice it is not difficult to trace reduced recourse to S&D provisions in various developing countries over time. An implicit approach has the advantage of recognizing the evolutionary nature of the development process.

The design of S&D provisions

Some Members have argued that if "one size does not fit all", this must be understood in a time-specific context. In other words, S&D provisions should not define a permanent distinction among Members in terms of their WTO obligations, but only a temporary one. Special and differential treatment provisions should, therefore, be limited to phase-in periods. One problem with specified time periods is that they are a blunt criterion applied to a large number of countries facing quite different conditions. A uniform approach in the face of diversity creates contention. Moreover, even if that were not a problem, it is no easy matter to determine an appropriate phase-in period to match development needs. Mention has already been made of provisions that intrinsically define the beneficiaries of S&D through thresholds linked to a development benchmark. Provisions designed in this manner make any discussion of limited phase-in periods unnecessary. They also imply that if countries develop successfully, the same rules will fit all countries. An example of an S&D provision that automatically defines which Members benefit from it is the national income threshold in the Agreement on Subsidies and Countervailing Measures.

As noted above, the Tokyo Round agreements and arrangements elaborated various GATT rules on non-tariff measures which offered a choice to developing countries as to whether or not they would become signatories. These Tokyo Round "Codes" also contained S&D provisions, but the important point is that governments could simply decide not to be bound by particular agreements. This bifurcated approach to rule-making was eliminated through the single undertaking at the end of the Uruguay Round. A discussion of an "opt-in, opt-out" approach with respect to proposals on new areas of rule-making briefly took place during preparations for the Doha Ministerial Meeting. When the Tokyo Round Codes applied, a frequently heard concern was that selective membership of such agreements undermined the coherence of the trading system. The question whether the Codes were fully MFN-based in terms of the obligations they imposed on signatories was never resolved. Some developing countries were also concerned that if non-participation was an option, agreements might be less sensitive to the interests of potential non-signatories. In other words, the dynamic of negotiations involving the prospect of opt-out would not favour careful consideration of the interests and needs of poorer countries. Yet these countries would one day be expected to adhere to the agreements. Finally, treating S&D as a matter for discrete decision about participation rather than a continuing process of engagement over time did nothing to ease the difficulty of defining the circumstances in which countries should sign on. If an "opt-in, opt-out" approach is considered further, these are questions that will have to be addressed.

[133] The agreed definition of least-developed country status was established in the broader framework of the United Nations and later adopted by the GATT.

Another approach to defining differentiated levels of participation and commitment in the WTO emerged from the negotiations on basic telecommunications and financial services immediately following the completion of the Uruguay Round. The notion of "critical mass" was introduced and Members were willing to make MFN commitments to open further their markets even though the negotiations did not involve the full membership. To the extent that the telecoms and financial services negotiations dealt with market access, there was nothing very innovative about the approach, since tariff negotiations based on MFN and driven by reciprocity have always had to deal with the problem of free-riding. The final package in every tariff negotiation under the GATT/WTO has implicitly defined a critical mass of acceptable participation. However, an important development in these post-Uruguay Round services negotiations occurred in telecoms, where a legally binding, MFN-based "reference paper" defining regulatory principles for major suppliers of certain services was adopted on the basis of a judgement on acceptable critical mass. Those who did not accept the reference paper, or who accepted only part of it are expected to revisit the matter at a later date, including in the context of a future negotiation. A question that merits consideration is whether a similar approach might work in other rules negotiations. Such an outcome might not differ greatly from an "opt-in, opt-out" scenario, except that it does not draw such a sharp distinction between insiders and outsiders, and it is firmly anchored in a MFN approach.

How can the S&D discussion be moved forward?

Nobody challenges the legitimacy of arrangements seeking to ensure that developing country participation in the multilateral trading system contributes to development to the fullest extent possible. Little is to be gained, therefore, from continuing reiteration of matters of principle in relation to special and differential treatment. The challenge is how to define access to S&D in a manner that supports development. A practical, analytically clear and needs-driven approach is required. Two guiding principles suggest themselves.

First, in order for S&D provisions to be strengthened and made more precise, effective and operational, they need to be designed to respond to the specific development needs of individual Members. The challenge is to attain the requisite degree of flexibility in the design and application of special and differential treatment measures without according undue discretion either to beneficiaries or their trading partners, and without generating pressures for developing countries to forsake access to S&D treatment when this is still needed from a development perspective. A needs-based approach of this kind requires an examination of how far it makes sense to rely on provisions that are undifferentiated in respect of developing countries facing significantly different economic conditions.

Second, S&D provisions designed to respond to clearly articulated development needs are more likely to be effective. An emphasis on such precision is a necessary accompaniment of provisions that are designed to respond to specific needs. This approach avoids undue politicization and symbolism, tendencies that are unlikely to support the development of effective S&D provisions.

Measures defined to specify automatically the conditions that must be present in a country before it can benefit from S&D provisions combine three advantages. First, such measures are automatically flexible and able to respond to country-specific needs. Second, since this approach requires the identification of thresholds, it lends itself to economically based reasoning, thereby favouring analysis over a politically driven assertion of need or denial. Third, once the thresholds are established, it is unnecessary to consider further any differentiation among countries.

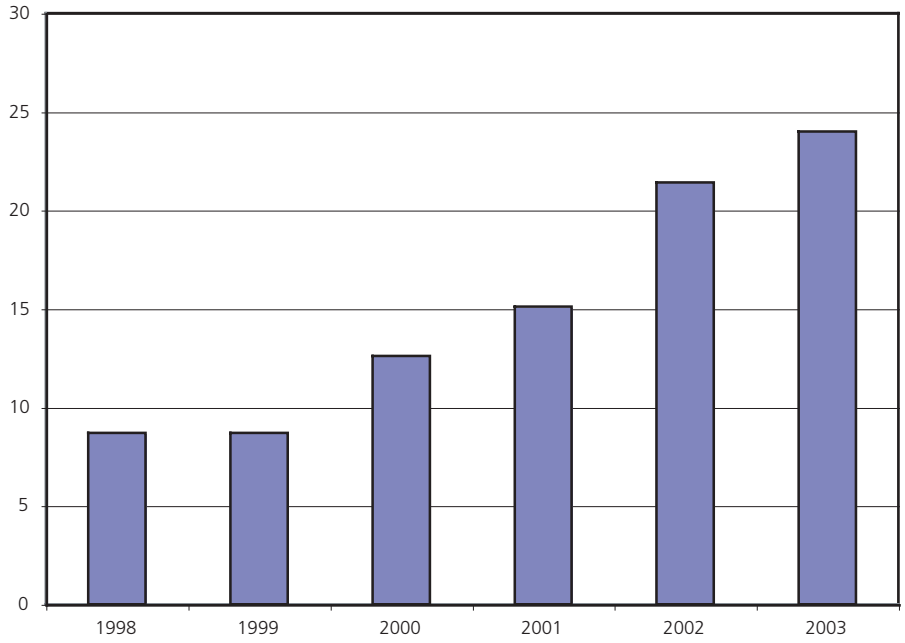
Not all S&D provisions readily lend themselves to this approach. But appropriate flexibility and needs-driven analysis will be no less important in such circumstances. Non-binding provisions, for example, are often "best endeavour" undertakings applied at the discretion of trading partners, with attendant uncertainty as to how and when they will provide benefits to developing countries. This is the reason that the Decision on Implementation-Related Issues and Concerns adopted at Doha contemplates the possibility of making non-binding S&D provisions mandatory. Discussions in the Special Session of the Committee on Trade and Development have revealed differences among Members on the question whether it is possible or desirable to make certain provisions mandatory. This discussion is likely to continue in one form or another after the Fifth

Ministerial Meeting. Where S&D provisions can be improved by being made mandatory, it would still be for consideration whether they could be designed to incorporate elements of development-related automaticity. In cases where transitional time periods are contemplated, the question would be whether a way could be found to link phase-in periods to a threshold condition.

(b) Technical assistance and capacity building

The Doha Declaration marked a new departure in the GATT/WTO approach to technical assistance and capacity building. While references to the need for technical assistance can be found in Part IV, the Tokyo Round agreements and arrangements and the Uruguay Round texts, the importance of this kind of support for developing countries is more strongly emphasized in the Doha Declaration. Paragraph 38 of the Declaration states that "technical cooperation and capacity building are core elements of the development dimension of the multilateral trading system". In addition, specific commitments on technical assistance and capacity building form an integral part of the negotiating mandates on market access for non-agricultural products and trade and environment, and of the work programmes on trade and investment, trade and competition policy, transparency in government procurement and trade facilitation. This is in addition to commitments on assistance in the mainstreaming of trade into national plans for economic development and poverty reduction, effective coordination with bilateral donors and international institutions, and the provision of secure and predictable funding. The overall result of these developments is a significant expansion in the technical assistance activities of the WTO (Chart IIB.11).

Chart IIB.11
WTO budget allocation for technical assistance activities, 1998-2003
(Million of Swiss francs)



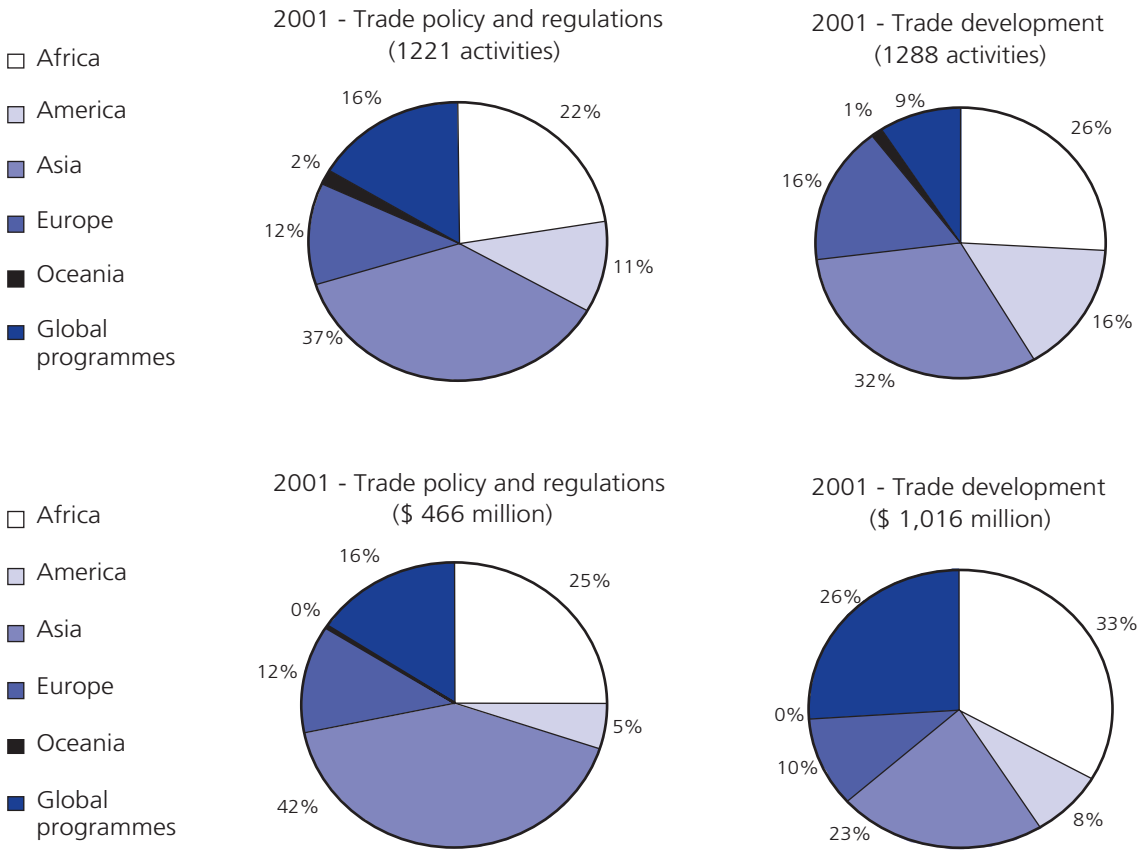
Source: WTO.

This intensified focus on technical assistance and capacity building was in no small part the result of the single undertaking in the Uruguay Round and the additional commitments that this implied for developing countries. It also arose from the proposals of some Members to incorporate the Singapore issues into the negotiations. Perhaps the most significant aspect of the current approach to technical assistance and capacity building is that it has acquired a certain negotiating overlay. The counterpart to technical assistance and capacity building commitments linked to particular negotiations and areas of work is that potential beneficiaries consider that their capacity to negotiate is conditioned by the extent and effectiveness of this kind of support. This reality emphasizes the importance of focusing on the quality rather than mere quantity of assistance, and of directing activities towards those areas where beneficiaries feel the most need.

Effective technical assistance and capacity building is multi-faceted, and the scope of the WTO's contribution is circumscribed by its functions and competence. Other agencies and governments offer complementary activities and support to developing countries. The WTO's efforts are focused on human capital development. This essentially concerns the acquisition of knowledge about international trade and the trading system, combined with the technical skills to identify, articulate and defend national interests in the field of trade. Other agencies and governments provide similar support in this area. Some of them are also engaged in other aspects of assistance and capacity building, such as providing physical infrastructure and support in other areas of economic policy. The joint provision of support makes coherence among agencies and governments involved essential for effectiveness.

Three fundamental challenges face the WTO as it continues to develop its technical assistance and capacity building programme. First, all technical assistance and capacity building efforts are ultimately judged on how effectively they transfer knowledge and skills on a durable basis. This means achieving a situation in which beneficiaries can both participate effectively in the WTO and take responsibility for their own training and capacity-building needs. In other words, what does WTO technical assistance and training activity leave behind? What does it build? Careful design of programmes in full consultation with beneficiaries, partners and donors is essential. Following the expansion of its technical assistance and capacity building activities, the WTO, other international agencies and governments have been working with some success to provide improved services that respond to the needs of Members (Chart IIB.12).

Chart IIB.12
Distribution of trade related technical assistance and capacity building by number of activities and value
(Million of Swiss francs)



Source: OECD/WTO Doha Development Agenda Trade Capacity Building Database.

Second, if trade policy and WTO commitments are super-imposed onto the domestic policy structure rather than being integrated into that structure, it is very likely that policy contradictions will arise and the WTO will come to be regarded as an unwelcome harbinger of obligations imposed from the outside. Sound trade policy and effective participation in the WTO require that trade considerations become an integral part of a country's overall policy framework. Many factors determine the success of countries in attaining their development objectives. If governments fail to take account of how policies interact and the ways in which different economic and social policies contribute to national objectives and priorities, incoherence will temper success. Growing appreciation of this reality has led to a new emphasis on "mainstreaming" trade policy into the domestic policy framework. The WTO has a role to play in its technical assistance and capacity building efforts, along with other agencies and governments. The Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries is a major programme in which the WTO has participated with other agencies to develop a fully integrated approach to meeting the challenges of development (Box IIB.4).

Box IIB.4: Integrated Framework

The Integrated Framework (IF) was launched at the High Level Meeting on Integrated Initiatives for Least-Developed Countries' Trade Development in October 1997. At the original launching of the IF, the objective was to increase the benefits that LDCs would derive from the trade-related technical assistance available to them from the six core agencies involved in the IF (IMF, ITC, UNCTAD, UNDP, World Bank and WTO) as well as from their other (bilateral and multilateral) development partners, and to deliver such assistance in response to LDCs' needs assessments. The IF sought to assist the LDCs in enhancing their trade opportunities and in responding to market demand as well as to integrate them into the multilateral trading system. In the first three years of its operations, the IF made modest contributions to meet the original objectives established by the 1997 High Level Meeting. The Framework was reviewed in 2000 and reshaped subsequently.

The two objectives of the redesigned IF are: the use of the IF as a mechanism to "mainstream" (integrate) trade into the national development plans or poverty reduction strategies of least-developed countries; and, (ii) the use of the IF as a mechanism to assist in the coordinated delivery of trade-related technical assistance in response to needs identified by the LDC.

The revamped IF defines three broad steps for mainstreaming and subsequent presentation by the LDC of its prioritized list of trade-related sectors in need of assistance to its development partners. First, a diagnostic trade integration study (DTIS) is prepared for each country. The DTIS assesses the competitiveness of the economy and identifies the impediments to the effective integration into the multilateral trading system and the global economy. Second, based on the findings of the study, an Action Matrix is developed, in consultation with all stakeholders at a national IF Workshop. The Action Matrix spells out a set of policy recommendations and priority technical assistance needs to overcome the constraints identified in the study. These technical assistance needs may cover a wide range of activities such as: assistance for private investment promotion activities, study of craft work exportable potential, institutional capacity building, implementation of customs modernization, development of tourism, fisheries products promotion centre, trade negotiations capacity building, quality control and improvement of quality of exports, land access, measures to strengthen the competitiveness of public utilities, improvement of the judicial system, improvement of sectoral competitiveness. Lastly, the trade policy priorities are incorporated into the national Development Plan, such as the Poverty Reduction Strategy Papers (PRSPs), and the priority technical assistance needs are fed into donors' financing fora, such as the Consultative Groups (CGs) or UNDP Round Tables, which provide the LDC with the platform to present its trade-related technical assistance needs to its traditional development partners.

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The implementation of the revamped IF began with a Pilot phase of three countries in May, 2001 – Cambodia, Madagascar and Mauritania – and was extended to eleven LDCs before the Doha Ministerial (Burundi, Djibouti, Eritrea, Ethiopia, Guinea, Lesotho, Mali, Malawi, Nepal, Senegal and Yemen). Heads of Agency at their first meeting of February 2001, had noted that additional IF DTIS would be preceded by a thorough evaluation of the IF. Accordingly, a decision on extension has been deferred and will be taken within the context of the evaluation of the IF. The second evaluation of the IF will take place this year. In addition, implementation of follow-up activities to the IF Round Table Meetings held under the "old IF" scheme in five countries is on-going: Bangladesh, the Gambia, Haiti, Tanzania and Uganda.

In 2002, of the fourteen LDCs to which the "revamped" IF has been extended, pilot DTIS studies were completed for Cambodia, Lesotho, Madagascar, Malawi, Mauritania, Senegal and Yemen and initiated for Burundi, Djibouti, Ethiopia, Guinea, Mali and Nepal. Completion workshops were held in 2002 for Cambodia, Mauritania and Senegal, while Lesotho held its national IF Workshop in February 2003.

The management structure of the IF includes the Integrated Framework Working Group (IFWG), which is responsible for the day-to-day management of the IF. The IFWG is chaired by the WTO and consists of representatives of the six agencies and two special representatives each from least-developed countries and the donor community. The Integrated Framework Steering Committee (IFSC) was established to improve transparency of the operations of the IF. The IFSC is a tripartite arrangement and consists of equality representation by the six agencies, donors and LDCs. In practice, all WTO Members and Observers are invited to attend IFSC meetings. The WTO, which houses the IF Secretariat, services both the IFWG and the IFSC.

The IF has a Trust Fund, established in March 2001 by voluntary contributions from multilateral and bilateral donors. The Fund finances the preparation of the DTIS but also follow-up activities from the studies. Consultations on this latter function are on-going with a view to clarifying its terms of reference. As of 10 March, 2003, total pledges to the IF Trust Fund amount to $11.8 million.

The third basic challenge facing the WTO is how to forge effective partnerships with other agencies to provide trade-related support to Members. The need for this kind of co-operation is obvious from the above discussion on the importance of fully integrated policy approaches – agencies have different but related mandates and expertise. Effective co-operation among agencies and governments involved in technical assistance and capacity building is also vital because of the costs that arise from unco-ordinated activities in terms of duplication and additional demands made on the intended recipients of assistance. In addition to the Integrated Framework, the WTO is part of the inter-agency Joint Integrated Technical Assistance Programme to Selected Least-Developed and Other African Countries (Box IIB.5). In addition, the WTO is working with the OECD to establish a comprehensive data base of trade-related technical assistance provided by governments and international agencies. This data base is a valuable tool for supporting coherence.

In addition to the IF and JITAP programmes, the WTO, in many cases with other international agencies, is engaged in a range of other technical assistance activities, both at the regional and national levels. These activities tend to focus increasingly on providing support in respect of specific aspects of the WTO's activities, in particular issues subject to negotiation or included in the Doha work programme. These activities are organized in response to specific requests from Members. They are frequently of short duration, aimed at officials that are already specialists.

Box IIB.5: Joint Integrated Technical Assistance Programme

JITAP – the Joint Integrated Technical Assistance Programme – mobilizes the expertise and support of the World Trade Organization (WTO), the United Nations Conference on Trade and Development (UNCTAD) and the International Trade Centre (ITC) to help African country partners benefit from the multilateral trading system (MTS). JITAP is the first programme that the three organizations have established to deliver jointly a broad range of selected technical assistance inputs to a number of countries simultaneously, focusing mainly on capacity-building.

Between 1998 and 2002, the Programme covered eight countries, namely Benin, Burkina Faso, Côte d'Ivoire, Ghana, Kenya, Tunisia, Uganda, and Tanzania. Thirteen donors contributed $10 million to the overall budget.

A new phase of the Programme which begins in January 2003 will run for four years and cover eight additional countries namely, Botswana, Cameroon, Malawi, Mali, Mauritania, Mozambique, Senegal and Zambia. The estimated budget is $12.6 million. The 16 countries in the new phase represent a careful balance among LDCs, non-LDCs, different sub-regions of Africa, and different linguistic groupings.

JITAP's three objectives are to:

- build national capacity to understand the evolving MTS and its implications for external trade;
- adapt the national trading system to the obligations and disciplines of the MTS;
- seek maximum advantage from the MTS by enhancing the readiness of exporters.

The Programme is based on a partnership among the executing organizations and the participating countries, with a close supervision of the donor countries on the progress made and outstanding issues. As much as possible, it favours using national human resources to undertake the planned activities, including the experts and trainers trained under the programme itself. JITAP also promotes networking as a guarantee for the sustainability of the capacity built. The institutional support is also part of the programme priorities, namely in the form of setting up Reference Centres and strengthening the Inter-Institutional Committees (IICs) as frameworks to coordinate MTS issues in the countries, and to prepare negotiations.

The Institute of Training and Technical Cooperation of the WTO Secretariat, in cooperation with other Divisions, has been expanding its training activities. The capacity to deliver the WTO's three-month residential trade policy courses was doubled in 2002. The WTO has also begun to work in partnership with local institutions in developing countries to deliver three-month trade policy courses in different regions. Two such courses were held in 2002, one in Kenya for English-speaking African countries and another in Morocco for French-speaking African countries. Additional courses of this kind are planned. The regional courses represent a new departure for the WTO in that they are intended not only to train government officials, but also to act as a vehicle for building lasting knowledge and training capacity in developing countries. The courses are taught jointly by WTO Secretariat officials (and other specialists from outside the region) and specialists with some WTO expertise from different universities and policy institutions within the region in which the courses are held. The joint teaching is intended to build a partnership that involves a continuing transfer of responsibility for the courses to the local partners. Other activities with the specialists from developing countries include periodic meetings to discuss the design and evolution of the courses and the development of a research network that includes other international agencies besides the WTO. The WTO also organizes "training of trainers" events which share the same objective of transferring trade-related knowledge and skills to developing countries.

(c) Other policy areas of particular interest to developing countries

(i) Trade and technology transfer

Technology transfer is a core development issue, a fact which was recognized by Ministers at the Fourth Ministerial Meeting when they agreed to establish the Working Group on Trade and Transfer of Technology. The objective of the group is to examine the relationship between trade and transfer of technology and any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. Technology transfer had never been included explicitly on the GATT/WTO agenda before.

Basic issues relating to the developmental significance of the effective transfer, diffusion and absorption of technology have been discussed above in Section IIA.[134] The role that the WTO might play in enhancing the transfer of technology to developing countries relates, *inter alia*, to the potential impact of liberalization on high technology, intermediary sectors and relevant service sectors. It also concerns issues related to investment, design of competition policies, intellectual property rights, government procurement, technical assistance and capacity building. It is important to ensure that provisions in such areas as TRIPS, GATS and in other WTO agreements support the creation of an environment that promotes effective technology transfer.

(ii) Trade, debt and finance

Following proposals by a group of developing countries during the preparations for the Fourth Ministerial Conference at Doha (WTO documents, WT/GC/W/444, WT/GC/W/445), Ministers agreed to establish a Working Group on Trade, Debt and Finance under the auspices of the General Council.[135] In accordance with its mandate, the Working Group examines from an analytical point of view the relationship between trade and finance as well as trade and debt with a view to developing a better understanding of such linkages, and possibly making recommendations that fall within the WTO's remit. Developing countries feel that a better understanding of the – often indirect or insufficiently clear – role of trade in the prevention/remedy of financial crises and the easing of debt burdens on the one hand, as well as of the effects of financial instabilities and excessive debt on developing countries' trade on the other, is necessary in order to better harness the process of further multilateral trade liberalization for development.

The role of trade in addressing problems of debt and finance

The role that trade can play in addressing financial problems was borne out during the recent Asian financial crisis. During that period, it was crucial that affected countries – characterized by excess capacity and depreciating exchange rates – were able to increase exports, even of sensitive products (e.g. steel, semi-conductors, electronics), as trading partners were bound by WTO rules and commitments and could not simply respond with a tightening of restrictions (WTO, 2002e). For indebted countries, increased trade secures reliable inflows of foreign exchange to service debt. A liberal trading regime is equally important in the prevention of financial crises and excessive debt burdens. Open trade is conducive to an efficient allocation of resources, the elimination of anti-export bias and the strengthening of the resilience of an economy to external shocks. It helps to preserve healthy corporate balance sheets and prevent non-performing loans in the banking sector. Financial services liberalization and the presence of foreign services providers strengthens the stability of the financial system through a variety of factors that improve financial intermediation (Kono et al., 1998). It is also likely to broaden the range of debt instruments with a more balanced maturity structure, reducing short-term

[134] See WTO documents WT/WGTTT/W/1 and WT/WGTTT/W/3 for a deeper discussion on these topics.

[135] The mandate of the Working Group, as set out in Paragraph 36 of WTO document, WT/MIN/(01)/DEC/W/1, reads as follows: "We agree to an examination, in a Working Group under the auspices of the General Council, on the relationship between trade, debt and finance, and of any possible recommendations on steps that might be taken within the mandate and competence of the WTO to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed countries, and to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability. The General Council shall report to the Fifth Session of the Ministerial Conference on progress in the examination.".

loans that have exacerbated financial difficulties in many countries in the past (WTO, 1999). In the longer term, higher incomes as a consequence of trade can pave the way to a more advantageous debt structure and improved credit ratings.

The impact of debt and financial difficulties on trade

By the same token, financial instability and excessive debt are undesirable in view of their individual and combined impact on production and trade. A crunch for credit during financial crises can adversely affect production, investment and export and import volumes by increasing costs of financing and making it more difficult to get capital at all (WTO, 1999a). Financial turmoil and the concomitant decline in domestic demand have a negative effect on exports by third countries, possibly undermining growth in the latter as well (WTO, 1999a). Sustained exchange rate movements triggered through capital flight can translate into changes of relative prices and lead to a reallocation of resources between sectors (Dell'Ariccia, 1998). Production structures can be destabilized in countries relying on a given set of price-based measures, such as tariffs, for the protection of industries. This can increase the pressure to employ quantitative restrictions on trade. Indebted countries may not only see their foreign-currency-denominated debt soar, but also find it harder to attract other forms of capital. They may be faced with worsening terms of new debt if real exchange rates depreciate. In addition, excessive external debt has to be serviced with foreign exchange that could otherwise be used for imports.[136] Given the high import content of many developing countries' exports, their overall trade performance can be severely affected (WTO, 2002f).

Coherence in global economic policy-making

Besides studying interlinkages of this kind, the Working Group has also undertaken to consider the issues of debt and finance from a coherence point of view. Achieving greater coherence in global economic policy-making through cooperation with the IMF and the World Bank is one of the five core functions of the WTO (WTO, 2002g). A better understanding of trade, debt and finance issues may encourage coherence efforts in a number of ways. Most notably, it may give further impetus to meaningful improvements in market access for products of particular export interest to developing and least-developed countries – and, in particular, a reduction of tariff escalation to allow for diversification of production – in order to help them secure adequate foreign exchange reserves and sustainable levels of debt.

Coherence in trade, debt and finance issues also refers to the question of how and when to liberalize the financial sector. In view of the lessons learnt from the Asian crisis, it seems advisable that appropriate financial sector reform – and the putting in place of adequate prudential regulation and supervision in particular – not lag behind the pace of liberalization. Coordination, especially with the IMF, and an assessment of the capacity to adopt internationally accepted standards for financial systems are important in this regard (Kenen, 2001; Wijnholds et al., 2001). At the same time, financial sector liberalization ensures competition as well as the transfer of skills, technology and management techniques needed to achieve higher efficiency, lower costs of financial transactions and a wider choice of financial instruments (WTO, 1998; WTO, 1999a). As noted above, Kono et al. (1998) conclude that, even in a weak policy environment, the liberalization of financial services, can make an important contribution to the strengthening of financial stability.

As financial services and capital account liberalization are two distinct but closely related matters, ongoing discussions in the Working Group on Trade and Investment on the practicalities of distinguishing short-term from long-term flows, such as FDI, are also relevant in this context (WTO, 2002h). While the availability of other forms of capital reduces the need to engage in risky external borrowing and can therefore contribute decisively to the avoidance of excessive debt, the case for temporary capital controls in crisis prevention and resolution has also been made (Eichengreen, 1998). As a new, but related coherence matter, for which the

[136] It should be noted that reasonable levels of foreign borrowing are likely to enhance growth. It is, however, important that borrowed funds are used for productive investment that generates a sufficient return to cover debt repayment.

appropriate institutional mechanisms still need to be found, it may be useful to consider appropriate means of securing short-term trade-financing in exceptional circumstances, such as the Asian financial crisis, when it is difficult to gain access to traditional financing instruments for export, such as letters of credit (WTO, 2002g; Stephens, 1998).

The role of the WTO in issues of debt and finance

The WTO is certainly not in a position to correct major exchange rate disequilibria or forgive excessive debt burdens. However, it can improve its complementarity with other relevant institutions by building on its role in absorbing and preventing financial shocks and the build-up of unsustainable debt levels. Its key activity will likely remain to provide stability and economic security in periods of financial difficulty by making recourse to protectionism more difficult and by keeping markets open in areas of interest to developing and least-developed countries. At the same time, coherence activities in specific areas, both traditional and new, such as financial liberalization and trade financing, can be further strengthened.

(iii) Small and vulnerable economies

The WTO membership comprises a significant number of small economies, many of which are developing or least developed countries. There is concern that some of these countries face particular difficulties to integrate into the global trading system. This concern had already been expressed at the Second WTO Ministerial Conference in 1998 and led to the establishment at Doha of a work programme on small economies.

Economic size can have a number of effects on the production structure of countries and their participation in international trade. In particular, "smallness" is likely to limit an economy's possibilities to diversify production. As a consequence, small economies tend to rely more heavily on imports than larger economies. Data indeed show that smaller countries are characterized by a higher ratio of trade to GDP. At the same time, limited scope for diversification tends to be reflected in a highly concentrated export structure.[137]

No agreement has been reached so far in the economic literature as to whether this lack of diversification on the export side systematically leads to more volatility in export earnings in small economies. However, residents of small states do tend to experience higher volatility in their incomes. This is to a large extent due to the very openness of small economies, as any given level of volatility on the export side has stronger repercussions on the local economy.[138] Changes in the trading environment may also represent a bigger challenge to small economies than to large ones, because of the concentrated production and export structure. If such a change leads to a shrinkage in a small economy's main export sector, this is likely to have repercussions for private sector activity in general. At the same time, it may be more difficult for a small economy to expand exports in alternative activities.

WTO Members have made specific proposals as to how to address these and other problems affecting the trade of small economies. There is particular concern about the possible erosion of existing preferences governing the trade relations between a number of small economies and their trading partners. There are also requests for increased flexibility in the application of subsidies, which have been argued to be a crucial policy instrument for the development process of certain small economies. These and other proposals are currently under discussion in the relevant WTO bodies.[139]

137 See WTO document WT/COMTD/SE/W/5.

138 Easterly and Kraay (1999) and Commonwealth Secretariat/World Bank Joint Task Force (2000).

139 See WTO document WT/COMTD/SE/W/3.

It has also been pointed out by the WTO membership that some small economies encounter difficulties in participating effectively in WTO activities because of administrative constraints. A number of small countries have no missions in Geneva or very small ones, which obviously limits their possibilities of influencing the negotiations. Some of these countries also have very limited capacity in their capitals to formulate and administer trade policy, leading to difficulties in the implementation of certain WTO provisions. Areas that have been explicitly mentioned in this context include antidumping and countervailing measures, safeguards, and standards (sanitary and phytosanitary measures and technical barriers to trade). Two important issues arise. The first concerns what action or provisions might be contemplated to ensure that WTO membership contributes to the well-being of small economies and does not impose undue burdens upon them. The second question is how any dispositions developed in this regard might be given effect, bearing in mind the explicit rider in the Doha work programme against the creation of a new sub-category of WTO Members.

(iv) Intellectual property

Intellectual property rights have steadily gained in significance in international trade transactions, especially in relation to high-tech goods and intellectual property rights-related services (e.g. software production, publishing and entertainment). Strengthened intellectual property right regimes are an important factor in attracting certain kinds of foreign direct investment (FDI) in some countries, and in fostering technology transfer, know-how and improved management skills.

The considerable potential that strengthened intellectual property rights carry for the growth prospects of developing countries is widely recognized, but so are the non-negligible short-run adaptation costs that explain much of the reluctance in developing countries to improve their intellectual property rights regimes. Where technology can be readily copied or reverse engineered, strengthened intellectual property rights can raise the costs of such imitation and reduce the concomitant diffusion of technological information. Alternative employment may need to be found for those involved in copying activities. Another cost consideration relates to the establishment or reinforcement of effective administration and enforcement institutions of intellectual property rights. Building institutional infrastructure can involve significant fixed costs.

On the other hand, initial prices of products covered by intellectual property rights will tend to be set lower the more competitive the environment into which they are introduced. Where technology is not readily copiable, strengthened intellectual property protection could induce more rather than less transfer of technology. Taking into account the considerable flexibility in designing and implementing national standards to implement the requirements of the TRIPS Agreement, Maskus (2000) concludes that it is possible to be optimistic about the potential long-run effects of this Agreement "even in countries that currently lag well behind the technological frontier, as long as ... growth-enhancing supplemental policies [are pursued]".[140] Institutional outlays may, for the most part, be kept under control through a combination of fees charged by intellectual property offices, technical and financial assistance, including on a bilateral basis, and perhaps, regional cooperative arrangements that help cut examination costs.

Despite good progress towards establishing efficient and reliable institutions for administering and enforcing intellectual property rights, many developing countries continue to voice concern over the TRIPS Agreement in two major respects.[141] First, they have pointed to the need to secure access to patented drugs at prices consistent with their limited purchasing power. This issue was successfully addressed in the Doha Declaration on the TRIPS Agreement and Public Health, but work remained to be done in order to find a solution to the problem faced by countries lacking manufacturing capacitiy in making effective use of compulsory licences in the pharmaceutical sector. Secondly, developing countries continue to attach considerable importance to the question of adequate protection of genetic resources and traditional knowledge, which are seen as constituting a source of significant potential wealth in the developing world. This discussion is ongoing under the Doha work programme.

[140] The author provides a comprehensive survey of the literature on the relationship between intellectual property rights and economic development in the global economy.

[141] Another important demand being made by some developing countries, along with others, in the work programme of the TRIPS Council is the extension of the higher level of protection of geographical indications to products other than wines and spirits. This subject has not been dealt with in this Report.

Access to medicines

The WTO is not the primary international institution responsible for addressing the public health needs of developing countries. The World Health Organization (WHO) and the UN Global Fund, for instance, have a major role to play in implementing appropriate policies and securing resources to deal with major disease threats in the developing world. While access to patented drugs at affordable prices is vital, a major challenge also exists in ensuring that drugs, whether patented or generic, reach those who need them (WHO, 2000).

The WHO has identified four components of an "access framework", each of which is necessary for ensuring access to drugs in developing countries: rational selection; affordable prices; sustainable and adequate financing; and reliable health care and supply systems. It stresses that any effort to expand and secure access should ensure that all four "legs of the access table" are adequately addressed. This includes the provision of local health services that are adequately staffed, equipped, managed and financed, and oriented to local needs and priorities, as well as efficient and tariff and tax-free distribution systems (WHO and WTO Secretariats, 2001). Since these points are relatively uncontentious, international attention has tended to focus on drug prices and the role of compulsory licensing.

Compulsory licensing takes place when a government allows a third party to make, use or sell a patented product or a product obtained through a patented process without the consent of the patent owner. The TRIPS Agreement allows compulsory licensing as part of its overall attempt to strike a balance between promoting access to existing drugs and promoting research and development into new drugs. The Doha Declaration on the TRIPS Agreement and Public Health has clarified that each WTO Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted. The Declaration also confirmed each Member's right to determine what constitutes a national emergency or other circumstances of extreme urgency, in which case the requirement first to seek authorization from the patent holder to use the patented invention on reasonable commercial terms and conditions may be waived.

In addition, paragraph 6 of the Doha Declaration instructed WTO Members to find a solution to the difficulty faced by countries lacking manufacturing capacity in the pharmaceutical sector to make effective use of compulsory licensing under the TRIPS Agreement. Countries may use compulsory licences either to produce locally or to import the products covered by a patent. Discussions at the WTO have concentrated on the conditions under which countries with export potential in generic drugs could issue a compulsory licence in order to respond to public health problems in another country.

Thus, the key concern has related to the provision under Article 31(f) of the TRIPS Agreement which states that countries need to ensure that compulsory licencees in their territories sell a predominant part of their total production in the domestic market. Some have understood this to mean that the export of compulsorily licensed drugs would have to be limited to less than half of the total production. In a draft decision put forward on 16 December 2002 by the Chair of the TRIPS Council, this obligation would have been waived for the production and export of drugs to an eligible Member country lacking manufacturing capacity, subject to a set of conditions for both the exporting and importing country. These would include specific notification requirements by both countries relating, among other things, to the precise quantities to be shipped. In addition, exporting countries would be obliged to provide special labelling or marking and would be encouraged to use special colouring, shaping or packaging of the drugs themselves if feasible, and without significant impact on price. Such differentiation of drugs would be an important measure to prevent trade diversion to other countries, where these drugs could be sold at higher prices. All WTO Members would have the obligation to ensure the availability of effective legal means to prevent the importation into, and sale in, their territories of products produced under this system, using the means already required under the TRIPS Agreement.

The ultimate sticking point preventing a decision on the basis of the 16 December 2002 draft turned out to be the question of scope of public health problems or diseases to be covered by the proposed solution. The issue was whether the new provisions would only apply to the more serious infectious epidemics plaguing developing countries or whether the scope of the arrangements should be governed by paragraph 1 of the

Doha Declaration on the TRIPS Agreement and Public Health, which refers to the "gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics". Notwithstanding the failure to reach an agreement in the WTO by the end of 2002, Members have confirmed that they remain committed to finding a multilateral solution to the problem as expeditiously as possible. Pending such an agreement, the United States, Canada, the EU and Switzerland have declared unilateral moratoria on bringing WTO dispute cases against countries that export drugs under compulsory licences, subject to varying conditions and limits on scope. The need for a multilateral solution is becoming increasingly urgent, given the imminence of the end of the transition period for the introduction of pharmaceutical product patent protection in some developing countries at the end of 2004.

As noted above, under the TRIPS Agreement an importing country can issue a compulsory licence for the importation of generic drugs. In accordance with Article 31(h) of the TRIPS Agreement, compensation for patents subject to licensing would normally need to be paid in such cases in both the exporting and importing country. Under the text of 16 December 2002, the obligation for importing countries to compensate patent holders would be waived, provided that adequate remuneration was provided by the exporting country. It was also noted that compensation would be calculated on the basis of the value of the licence to the importing country.

Despite the focus on drug prices and the role of compulsory licensing, it should be noted that even with full patent protection, drugs may be sold in low-income countries at reduced prices if patent-holding pharmaceutical companies pursue a certain form of price discrimination, often called differential pricing. Different markets can be served at the prices that reflect local demand conditions. Even by setting prices in low-income markets close to marginal costs, a pharmaceutical company can still earn a contribution towards its R&D and other fixed costs. However, in order for pharmaceutical companies to engage in differential pricing, markets need to be effectively segmented. Otherwise, there would be a substantial risk that medicines are re-imported into high-income countries in what is known as "parallel trade". Such a system would also depend on a willingness on the part of the consumers and tax payers in such countries not to seek the low prices (WHO and WTO Secretariats, 2001). Of course, the poorest residents in the world's least affluent countries may not be able to pay even the marginal cost of drugs, and supply may need to be subsidized in one way or another.

In sum, Members need to complete the task of ensuring that the WTO is part of the solution to this development challenge, and is seen to be so. This objective underlies the considerable efforts made so far to find ways of interpreting and implementing the TRIPS Agreement in a manner that balances two fundamental objectives – promoting access to medicines for all and securing the conditions that ensure new medicines will be available in the future. Successful closure on the access to medicines debate will send a valuable message to communities everywhere about the WTO's commitment to development.

Access to genetic resources and traditional knowledge[142]

With the rise of modern biotechnology, the preservation, management and use of genetic resources and associated traditional knowledge has been perceived to be an issue of increasing commercial significance, especially in developing countries, where much of the world's biodiversity is located. Traditional knowledge evolves and is not produced systematically. It is passed on, often orally, from generation to generation and is generally held collectively (WIPO, 2002). Many areas of knowledge are involved, including cultural expressions, such as folklore. An active debate on all aspects of traditional knowledge and folklore is going on at WIPO. Some developing countries have nevertheless pressed for a parallel discussion in the WTO. Much of the attention at the WTO is currently directed towards genetic resources preserved and managed over time by traditional communities and the biotechnological inventions derived therefrom by third parties. If its invention qualifies under patentability criteria, the owner of a biotechnological invention can enjoy patent protection pursuant to TRIPS, provided it does not fall under the permissible exclusion for plant and animal inventions other than micro-organisms and microbiological processes. On the other hand, traditional knowledge may not qualify for such protection where it does not meet the criteria of patentability, for example novelty.

142 A fuller summary of the on-going discussion in the WTO on this and related subjects can be found in WTO documents IP/C/W/368, 369 and 370.

The discussion on this matter takes place in the TRIPS Council under the mandate contained in paragraph 19 of the Doha Ministerial Declaration to pursue its work programme, including under the review of Article 27.3(b) (which refers to exceptions from patentability), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen on implementation-related issues and concerns pursuant to paragraph 12 of the Declaration. In order to secure benefits from genetic resources and related traditional knowledge, many developing countries are seeking an amendment of the TRIPS Agreement that would require patent applicants to disclose the source of such material and knowledge used in a claimed invention, as well as to provide evidence of prior informed consent and benefit sharing arrangements in the country of origin, as foreseen in the Convention on Biological Diversity. These countries regard national legislation as an insufficient protection against bio-piracy. In their view, governments could require the conclusion of contracts to require informed consent and adequate benefit-sharing arrangements prior to providing access to genetic resources and related traditional knowledge. Bio-prospecting might still take place without authorization under national law, whose reach once the genetic material and traditional knowledge are used outside a country's jurisdiction, would be limited.

Some Members have expressed the view that national law and contracts based on it, can adequately ensure respect of prior informed consent and benefit sharing. They doubt the relevance of the TRIPS Agreement, arguing that the protection of intellectual property rights is about rewarding investment in innovation and subsequent commercialization, and not about the possession of natural resources and related traditional knowledge, which in any event may exist in a number of locations and not easily be attributable to any one source.

Some developing countries are also concerned that the application of the criteria for patentability in some countries is blurred to the extent that mere discoveries of micro-organisms or other biological material may qualify as inventions and lead to the grant of patents covering genetic material in its natural state. This, it is felt, would amount to an appropriation of genetic resources by private parties inconsistent with countries' sovereign rights over genetic resources within their territories. They believe that disclosure of origin of any genetic material would facilitate the monitoring of potentially inappropriate patent grants.

Not all WTO Members share this view. Some argue that, provided there is sufficient human intervention, such as the isolation or purification of genetic material whose existence was not previously recognized, the criteria of patentability, including inventive step, could be fulfilled. Such a patent would not amount to ownership of the original material nor interfere with property rights over the source of the material. A requirement to disclose the source of origin of genetic resources and traditional knowledge is also resisted on the grounds that it can be complicated to determine origin, additional costs and administrative burdens would be placed on inventors, and secrecy would be encouraged as inventors might avoid seeking patents. A further argument is that the main purpose of disclosure requirements in TRIPS is to enable others to reproduce the patented technology and learn from it, and that the proposed approach would be contrary to these and other related objectives.

Another approach by some developing countries to prevent what they see as potentially improper patenting of genetic resources and related traditional knowledge, is to press for the extension of exceptions from patentability contained in Article 27.3(b) to cover all life forms. This would include micro-organisms and all other living organisms and their parts, such as genes, as well as natural processes producing living organisms. Alternatively, it has been suggested that patentable "micro-organisms" could be defined to exclude genes, enzymes, cell-lines, etc. A key element of the reasoning behind these suggestions is ethical. Some opponents of this view argue that an extension of exceptions to patentability, or for that matter the existence of any exceptions, is unnecessary to meet ethical concerns because the exploitation of patented inventions is subject to the ethical exceptions provided for in Article 27.2 of the TRIPS Agreement. Moreover, it is argued that excluding particular subject-matters from patentability will not in itself prevent either research or exploitation of such technology, but rather make such activity more difficult to control should it move into secrecy.

Developing countries point to the Convention on Biological Diversity (CBD) and its provisions related to sovereignty of countries over their genetic resources, prior informed consent and benefit-sharing. They argue that the TRIPS Agreement should be made supportive of these provisions in the ways discussed above. Other countries see no conflict between TRIPS and CBD provisions, which they say can be implemented in a mutually supportive manner, in particular given their different objectives and purposes. As noted earlier, developing countries believe that if they could secure the inclusion of disclosure obligations as a condition of patentability in the TRIPS Agreement, this would allow them to challenge patents awarded in other countries or help in securing appropriate arrangements for the sharing of benefits.

In the area of plant variety protection, many developing countries seek to avoid any reduction in the flexibility provided under Article 27.3(b) of TRIPS, which allows countries to protect plant varieties either by patents or by an effective *sui generis* system. They have argued that the re-use and exchange of seeds by farmers, access to new seeds and the cost of obtaining new seeds could be significantly affected, depending on the type of protection granted. Accordingly, they insist that flexibility provided under the TRIPS Agreement in regard to the provision of effective *sui generis* protection should be maintained, as no specific criteria have been provided to judge such effectiveness. Discussions on the most effective *sui generis* systems of protection have also revealed differences which turn on the degree of flexibility provided.

The concern has also been expressed that, since food security in local communities in many developing countries depends largely on the saving, sharing and replanting of seeds from previous harvests, poor communities could be negatively affected by having to pay fees to plant breeders for engaging in such activities. The argument has also been made that traditional farmers have made a contribution over many decades to biodiversity and the development of new plant varieties.

Other Members have, on the other hand, emphasized the heavy investments required for the development and exploitation of new plant varieties, the potential to meet the needs of an expanding population and to enhance farmers' incomes as well as the need for an effective system of protection to encourage such investment.

Intellectual property protection in the multilateral trading system and economic development

The above discussion has focused on some aspects of the intellectual property debate close to developing country interests which have received most recent attention in the WTO. These topics illustrate the economic issues underlying the design of any system for intellectual property protection. Finding a balance at the national level between producers and users of intellectual property that maximizes national economic welfare and development, is itself a difficult task and may generate losers as well as winners. This becomes an even more difficult exercise when transposed to the multilateral level, where even under a system that increases world welfare there may still be winners and losers.

It is the same with trade liberalization. Winners and losers emerge, but in most circumstances all countries gain from trade liberalization and so the problems of those who lose can be more easily dealt with against a background of overall gain in a national context. Even where countries gain from the results of international trade negotiations as a whole, they may remain conscious of themselves as net losers of the intellectual property component of such negotiations.

The task of finding a proper balance between incentives for innovation and creativity on the one hand and the costs of access facing users on the other, especially in the light of the very differing levels of development of countries, was very much to the fore in the negotiations that led to the formulation of the TRIPS Agreement. While, inevitably, any multilateral rules will not mirror exactly what each country would determine left to itself, given that they seek to take account also of the interests of other countries, the end result was the incorporation into the TRIPS Agreement of a considerable amount of flexibility. Issues in this connection have been discussed earlier in this report in connection with public health and access to medicines, but options

regarding the form and level of protection to be afforded can be found throughout the TRIPS Agreement. The challenge facing each WTO Member is how to make the best use of this flexibility in the light of its particular national development situation.

It would be inappropriate for developing countries to see intellectual property protection as simply a zero-sum game. Not only does each developing country have to be conscious of the scope for intellectual property protection to promote its own development-enhancing creativity and innovation, but also of the role that intellectual property protection can play in providing conditions for promoting foreign investment and the transfer of the latest technologies, especially those for which co-operation with the developers of such technology may be essential.

The extent to which countries can maximize the use of the intellectual property system for developmental purposes will of course depend very much on synergies with a range of other policies which affect domestic creativity and innovation, adaptiveness and receptiveness to technology, foreign investment, industrial development, agriculture, etc. There is evidence that the welfare gains of intellectual property protection to countries with open trading systems are higher than those to more closed economies.[143] One policy area which is particularly closely related to the costs and benefits of intellectual property protection is that of competition law and policy. A well-functioning competition law can be valuable in alleviating the adverse effects of the abusive use of intellectual property while preserving the intended positive consequences. Increasingly, developing countries are introducing or improving their competition law frameworks. In this regard, the Doha Ministerial Declaration has recognized the case for a multilateral framework to enhance the contribution of competition policy to international trade and development and important decisions are expected to be taken at Cancún in this connection.

Intellectual property is not a static concept as it evolves and changes according to the needs of the changing world. The TRIPS Agreement recognizes this and envisages adaptation to such evolution. As the ongoing discussions in the TRIPS Council demonstrate, there are a number of subjects where some developing countries have taken a lead in the WTO in this connection with a view to enhancing the way the intellectual property system can respond to their needs. These include not only the issues of access to medicines and the protection of genetic resources and traditional knowledge discussed above but also the extension of the higher protection of geographical indications to products other than wines and spirits.

4. MANAGING OPENNESS WITHIN WTO RULES

The rules of the GATT/WTO seek to secure at least four objectives that are crucial to the viability, effectiveness and smooth running of the trading system. These objectives define the backbone upon which continuing stability in the system is built, ensuring that Members balance the exercise of their rights and respect for their obligations in a predictable and mutually beneficial manner.

First, market access commitments and the fundamental systemic principle of non-discrimination must not be undermined by the way in which other policies are designed or by administrative procedures. Provisions on the goods side covering such areas as customs valuation, technical barriers to trade, sanitary and phytosanitary measures, import licensing, the use of quantitative restrictions, subsidies, state trading, regional arrangements, and general and security exceptions are all designed with this in mind. Various rules in the services area, such as those pertaining to economic integration, domestic regulation, recognition, monopolies and business practices pursue the same objective, although they are obviously tailored to the characteristics of services transactions.

Second, the rules must accommodate public policy objectives, particularly where trade restrictions of one kind or another may be required in order to meet these objectives. The provisions on standards, for example, allow public authorities to protect life, health and safety. The general exceptions of Article XX of GATT 1994

[143] Maskus (2000) finds that the positive impact of intellectual property protection on growth depends critically on other economic variables, including economic openness.

and Article XIV of GATS seek to do the same, but range more widely in terms of public policy objectives. The link between the first and second objectives identified here is made clear in these provisions, as public policy objectives must be pursued in a non-discriminatory manner and must not constitute a disguised restriction on international trade.

Third, certain GATT/WTO rules define circumstances in which Members can reverse, temporarily or otherwise, their market access commitments. Two main justifications exist for such action. One is that sudden and sometimes unanticipated changes in trading conditions may make trade restrictions necessary from a national economic perspective. The other is to guard against unfair trade practices. Among the provisions designed for these purposes on the goods side are the right to use safeguard measures, anti-dumping duties, and countervailing duties. Although each of these are intended to respond to quite different circumstances, they are sometimes collectively referred to as "contingency" trade policy. In services, the possibility of safeguards and anti-subsidy measures is foreseen, but any possible provisions are yet to be negotiated.

Other GATT/WTO provisions also contemplate the introduction of trade restrictions. Restrictions may be adopted on balance-of-payments grounds under GATT 1994 and GATS to address a serious decline or shortage of foreign exchange reserves. Developing countries are permitted under Article XVIII:C of GATT 1994 to impose import restrictions to promote the establishment of a particular industry with a view to raising general living standards. Finally, Article XXVIII of GATT 1994 and Article XXI of GATS permit governments, respectively, to renegotiate maximum permitted tariff levels that have previously been bound and to modify services schedules of specific market access and national treatment commitments.

Fourth, the dispute settlement arrangements provide for the multilateral enforcement of WTO obligations. This is a vital part of the underpinning of the entire system. If Members could not exercise their WTO rights through recourse at the multilateral level, they would be tempted to do so unilaterally. They might also take a different view of their own obligations if they did not believe that others were abiding by theirs. So without multilateral dispute settlement, the trading system would be less stable and effective.

Many of the provisions mentioned above are under consideration in the context of discussions on implementation-related issues and concerns, or the work on special and differential treatment. These discussions focus on particular aspects of the rules as they affect developing countries. Broad questions relating to specific rules for developing countries were taken up in Section IIB.3 above. In this Section attention will focus on four rules-related issues included for negotiation in the Doha Declaration. These are dispute settlement, aspects of contingency trade policy, trade and environment, and regional arrangements. It will be seen that the relevant rules in each case are fashioned with one or more of the above objectives in mind. The essential considerations are how effectively these objectives are met and what is at stake from a development perspective in these negotiations.

(a) Dispute settlement

A widely held view is that the dispute settlement mechanism of the WTO has worked well (Lacarte-Muró et al., 2000), although many Members believe that it can be improved. This is why the Doha Declaration called for negotiations to improve and clarify the Dispute Settlement Understanding (DSU).

Formal dispute settlement at the WTO is a last-resort option. The preferred approach is that countries solve their differences among themselves, and, indeed, many potential disputes do not become an issue at the WTO. Moreover, of all complaints raised, about three quarters do not proceed beyond consultations to the panel stage, which indicates that a satisfactory solution is found at an early stage of the WTO procedures (WTO, 2003b). Members widely regard the WTO dispute settlement mechanism as crucial to security and predictability within the trading system and at least some developing countries see the arrangements as a means of diluting underlying power imbalances among trading partners.

A study by Horn et al. (1999b) examined the use to which the dispute settlement system has been put in order to determine whether it rewarded WTO Members differentially. The study found no systematic bias and concluded that the evidence was, at best, ambiguous. Nevertheless, persistent claims are made that the way the WTO dispute settlement mechanism is designed favours its use by larger, economically more powerful countries. A number of developing countries seek to increase their ability to make effective use of dispute settlement mechanism. They point to two basic shortcomings. First, use of the dispute settlement mechanism involves considerable costs in terms of human and financial resources, and some developing countries are unable to meet these costs.

Second, even where the system has been used successfully to bring a dispute, developing countries may find it difficult in certain circumstances to ensure compliance with outcomes on the part of larger trading partners. This problem may arise when a Member against whom a determination has been made in a dispute decides not to bring the offending policies into conformity. Retaliatory or compensatory rights can be difficult for small countries to exercise, raising the question of how effectively the system deters inconsistent behaviour when smaller parties are implicated. Concerns about both of these issues – costs of the system and asymmetries in the ability to exercise rights – are at the root of many proposals put forward by developing countries in the DSU negotiations.

(i) Resource implications

A precondition for defending WTO rights is the availability of information about trade barriers in export markets. The two main channels for a country to obtain such information are its own representatives abroad and the private sector. Many developing countries do not have a substantial government presence overseas nor are they well-equipped to compile and evaluate the concerns expressed by national firms regarding questionable trade policies and practices in foreign markets (Hoekman et al., 2000). But even if sufficient information is available to make an initial assessment in these matters, available national expertise may be insufficient to initiate and sustain a dispute settlement case. For the preparation of written submissions, in particular, expensive assistance from international law firms and consultants is often necessary (Michalopoulos, 1999).

In an attempt to address these resource implications, a proposal by a group of developing countries seeks to oblige developed countries losing a case against a developing country to pay part of the latter's litigation costs. Article 27.2 provides for legal technical assistance to be given to developing countries by the WTO Secretariat. However, there is a view that such assistance can only be given after a Member has decided to bring a dispute to the WTO. Assistance in evaluating whether a case should be brought may therefore not be available (Horn et al., 1999b). In addition, it is generally thought that WTO Secretariat resource persons can only give advice and explanations about WTO law and procedure, as the impartiality obligation contained in Article 27.2 of the DSU is said to prevent them from acting as counsel or assisting in the drafting of submissions (Van der Borght, 1999).

The recently created Advisory Centre on WTO Law modifies this situation. The Centre is an independent body created to provide legal assistance to developing and least-developed countries and countries in transition. User charges for a country are linked to the ability to pay and the frequency with which services are used. An endowment fund has been set up by the founding members of the Centre. In contrast to the general legal advice the WTO Secretariat is able to provide, the added value of the Centre stems from its ability to support legal proceedings and give non-neutral advice.

(ii) Increasing use of the dispute settlement mechanism by developing countries

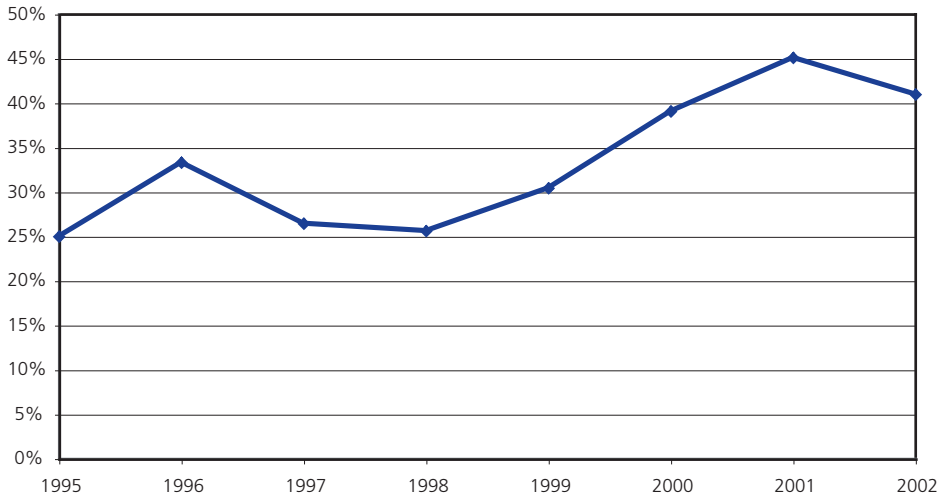
The average costs of WTO litigation for developing countries could also be reduced by trying to settle as many disputes as possible at the consultation stage and by speeding up the dispute process, which may take over two years to reach a final determination (Hoekman et al., 2000). A developing country proposal is currently under consideration in the DSU negotiations to make conciliation mandatory – a process whereby an impartial examination of a disputed matter and possible terms of a settlement are provided by an independent

authority. Up to now, resort to Article 5 of the DSU on good offices, conciliation and mediation has been sought only very rarely, and efforts in this regard have not been successful (WTO document, WT/DSB/25). The very limited success of the compulsory conciliation provisions contained in the 1979 Tokyo Round Agreement on Subsidies and Countervailing Measures has prompted many Members to look askance at the idea of making conciliation compulsory.

A 1966 Decision provided expedited dispute settlement procedures for developing countries (Article 3.12, DSU). However, proposals put forward by developing countries in the DSU negotiations go in the opposite direction, seeking to extend the overall time-frame for a dispute and provide longer time intervals for developing countries at each stage of the process. Other provisions in the DSU, such as Article 4.10, refer to the particular situation of developing countries which should be taken into account at the consultation stage. This is presumably designed to encourage reconsideration of an imminent complaint. While mandatory in nature, developing countries feel that the provision (and other obligations to afford special and differential treatment) has not been implemented effectively. They wish to see an obligation for developed country Members to justify how the special situation of developing countries has been taken into account and to what extent such consideration has lead them to pursue the case in a different manner.

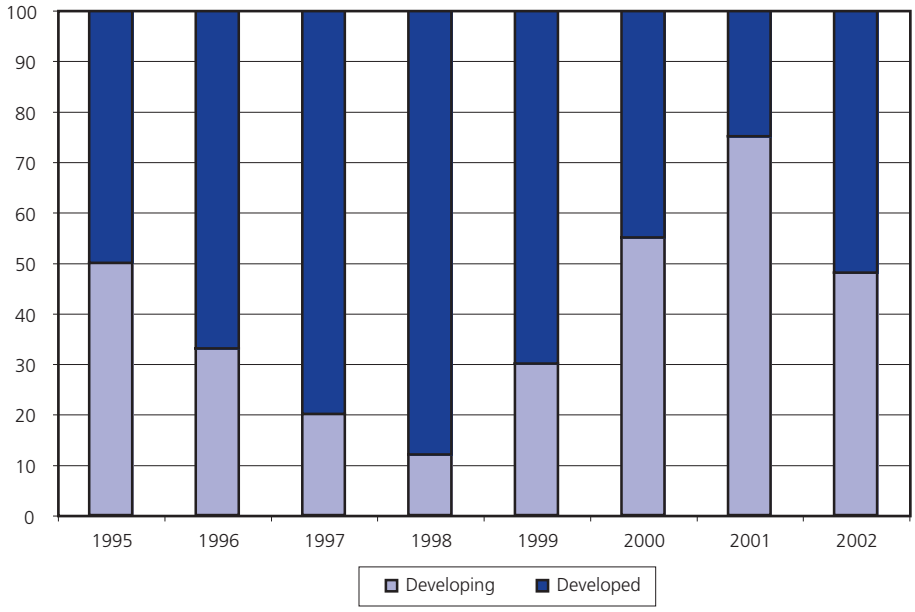
However, developing countries often simply fail to invoke special and differential treatment provisions. Part of the reason may be that they desire to be seen as equal partners in a litigation procedure, which may provide guidance for future rulings. Some 41 per cent of all complaints brought by developing countries since the entry into force of the WTO in 1995 have been directed against other developing countries, and this tendency has increased over the past years (Chart IIB.13). Since 1995, developing countries have on average brought about half of all complaints to the WTO (Chart IIB.14), with a larger share in the most recent years. Growing interest on the part of developing countries in the use of the WTO dispute settlement mechanism reflects a widening range of trade concerns and greater diversity of export products and trading partners.

Chart IIB.13
Developing country Member complaints against other developing country Members, 1995-2002
(Per cent of all developing country Member complaints [cumulative])



Source: WTO.

Chart IIB.14
Developed and developing country Members as complainants, 1995-2002
(Per cent)



Source: WTO.

(iii) Compliance considerations

In the WTO, the ultimate tool to induce compliance is the suspension of concessions pursuant to Article 22.6 of the DSU. The possibility of retaliating against non-complying WTO Members is intended as a credible threat that will induce greater compliance. Non-complying Members are likely to encounter pressure from affected exporter interests and perhaps others to bring offending measures into conformity when retaliatory measures are threatened or imposed. Judging by the number of cases that conclude with a suspension of concessions, it may be argued that the system works. Only a few cases have ended with a Member requesting authorization to suspend concessions.[144] Many other cases are resolved through mutually agreed solutions between the parties to a dispute. While the DSU requires that all mutually agreed solutions be consistent with the WTO Agreement (Article 3.5) and be notified to the Dispute Settlement Body (Article 3.6), there is concern that such agreed solutions might modify the disputed measure for the complaining party, but otherwise leave the measure unchanged. This concern underlies the view of a number of developing countries that Members should notify the terms of a settlement in sufficient detail for an evaluation to be made.

Developing countries may refrain from suspending concessions because of the adverse consequences for themselves of such action, while an economically powerful country with a large domestic market and multiple trade relationships may not be hurt by the suspension of concessions by a small country to which it supplies a minor share of its exports. A number of developing countries depend on unilateral preference schemes provided by other countries and may hesitate to displease the latter in filing a complaint (Pauwelyn, 2000; Mavroidis, 2000; Horn et al., 1999b).

In order to minimize costs that an increase in trade barriers invariably entails for a country's own economy and increase the effectiveness of retaliatory threats by small countries, the DSB has, on occasion, authorized suspension of obligations in areas other than goods. In the banana dispute, for instance, Ecuador was granted authorization to take countermeasures against the EC on TRIPS. This implied minimal costs for the domestic economy. At the same time, TRIPS was seen as an area where retaliatory action, even by a relatively small country, could have an effect in a large country by targeting well-organized lobby groups (Subramanian et al., 2000).

144 These four cases were: European Communities – Regime for the Importation, Sale and Distribution of Bananas; European Communities – Measures Affecting Meat and Meat Products (Hormones); United States – Tax Treatment for "Foreign Sales Corporations"; and Canada – Export Credits and Loan Guarantees for Regional Aircraft.

Systemic concerns have been expressed about the idea of authorizing a WTO-inconsistent measure to remedy a WTO violation by another Member. In approving suspensions of concessions, the goal of open trade is subverted and welfare costs are incurred. Moreover, as retaliating Members enjoy wide latitude in determining what imports to restrain, domestic industries may seize the opportunity to secure greater protection from imports. This can fuel more protectionist pressures. On the other hand, liberalizing forces in the country threatened by suspensions of concessions may be strengthened and affected exporting industries may gain greater prominence than protectionist lobbies. The idea of activating the fears of a maximum number of foreign exporters seems to be behind the concept of "carousel legislation", whereby the exporting industries hit by punitive duties periodically change, and more products are indicated as targets for retaliation than will actually be subject to restrictions (Charnovitz, 2001a).

Compensation is seen as preferable to retaliation by many developing countries.[145] Compensation in this context refers to the reduction of trade barriers in other areas. Instead of moving to a more protectionist situation when concessions are suspended, compensation would restore the overall situation to that which existed before a violation occurred, or perhaps even improve upon it. Compensation could take a financial form, and proposals along these lines have been made in the current negotiations.[146] The DSU expresses a preference for compensation over suspension of concessions, but notes that compensation is voluntary. So far, compensation has never been a remedy. Part of the reason may be that trade compensation would have to be given consistently with the most-favoured nation rule (Charnovitz, 2001a). However, by providing greater market access opportunities to all countries, the level of "nullification or impairment" suffered by the complaining party that needs to be compensated is likely to be exceeded, and consequently, an element of punishment would be introduced (Horn et al., 1999b).

Furthermore, if compensation were mandatory, it is unclear what consequential action could be taken if the defending country refused to provide the compensation. The single biggest advantage of suspending concessions is that the action can be implemented by the complaining party itself and creates an incentive for the defendant to redress the original violation. Bearing in mind the difficulties that would likely arise in enforcing compensation, the only alternative to a suspension of concessions would appear to be curtailment of the WTO rights of a defendant (Charnovitz, 2001a; Pauwelyn, 2000). Apart from these rather academic reflections, the proposal has been made in the DSU negotiations that countries unable to obtain compensation and disinclined to exercise their right to suspend concessions should be in a position to transfer this right to another interested Member. In exchange, a benefit, possibly a cash payment, would be negotiated not higher than the authorized level of suspension. While the third country who may have an interest in affording protection to its own industry would acquire the full award, it presumably would pay for it at a discount. Making retaliatory rights tradeable in such a manner may leave a developing country better off with an inflow of cash, which, albeit nominally lower, would nonetheless be superior to the reduced net benefit or even loss the country would incur by raising trade barriers and inflicting harm upon its own economy.

It has also been suggested that the point in time from which compensation is due should be when the WTO-inconsistent measure came into force (retroactive application). The lack of retroactivity in the current dispute settlement system affords the possibility that Members could go unpunished for acting inconsistently with their obligations, at least for the duration of a dispute. Given that it may take more than two years from the start of a dispute settlement process until the withdrawal of a WTO-inconsistent measure, considerable damage may have been inflicted upon the complaining country in the meantime.[147]

145 Currently, compensation is only allowed as an interim measure if panel recommendations are not implemented within a reasonable period of time (Art. 22.1 of the DSU). The idea is to rebalance trade between the litigating countries until recommendations are implemented.

146 The idea of monetary compensation was debated in the GATT in the 1960s. The remote likelihood that legislators would be willing to earmark budgetary outlays for this purpose was considered a serious obstacle to the pursuit of the idea. Recently, Bhagwati has proposed that the defending country provide cash compensation to the complaining party, which could then be donated to the exporting industry (quoted in Charnovitz, 2001a). That may, however, negatively affect industries in other countries.

147 The panel report on "Australia – Subsidies Provided to Producers and Exporters of Automotive Leather: Recourse to Article 21.5 of the DSU by the United States" (WTO document, DS/WT126/RW) illustrates that remedies under the DSU are not necessarily limited to purely prospective action. See in particular paragraphs 6.29-6.32.

Compensation may also be appropriate when a country prefers to endure the suspension of concessions because the political advantage of catering to a protectionist lobby is larger than the political cost incurred in having exporters subjected to retaliatory measures. Bhagwati (1999) proposes that a Member embark upon a re-negotiation of concessions whenever it finds it politically inopportune to implement panel recommendations. Compensation would be provided not only to affected parties but, on an MFN basis, to all WTO Members. Compensation through the renegotiation of concessions would not provide relief to the export industry affected by a violation, but from an overall economic perspective, it would be preferable to retaliation (Hoekman et al., 2000).

(iv) Likely developments in the negotiations

In exchange for the binding and automatic dispute settlement system negotiated in the Uruguay Round, Members agreed not to act unilaterally (Article 23 of the DSU). Restraint on unilateralism is likely to be further developed. For instance, the issue of whether multilateral determination of possible compliance with the rulings of the DSB should be undertaken before the suspension of concessions is authorized is about to be resolved ("sequencing").[148] Hitherto, it had not been entirely clear whether the non-conformity of measures taken to implement DSB recommendations could be established unilaterally, and retaliation sought by the complaining party immediately after the implementation period lapsed.

The system will, however, continue to rely on the good faith of Members, especially if economic insights are to feature more prominently (Barfield, 2002). As regards the DSU negotiations, it will be interesting to see whether the WTO dispute settlement mechanism will move even closer to a judicial system which would provide for increased protection of Members' rights, but would also result in potentially increased economic costs and rigidity. Alternatively, will creative ways be found to strengthen incentives for reaching political solutions and amicable settlements?

(b) Contingency trade policy in the field of goods

As noted above, contingency trade policies refer to rules that permit governments to apply anti-dumping duties, countervailing duties and safeguard measures. In the goods area, anti-dumping duties can be applied when a product is sold in an export market at less than normal value, thereby causing or threatening material injury to a domestic industry. Countervailing duties may be applied against exports that have benefited from a subsidy that is injurious to a domestic industry. Safeguard measures are permitted when increased imports cause or threaten serious injury to a domestic industry.

These measures all share one thing in common – they seek to restrict trade flows. Considering the declared objective of the WTO to liberalize trade[149], not to mention the strong body of economic theory and evidence demonstrating the welfare gains from trade, the question arises as to how these WTO provisions might be justified. A number of different arguments could be offered, building on the existence of market failure, imperfect markets, dynamic factors, high adjustment costs, and the behaviour of other governments. Such justifications generally rely on quite specific circumstances and may not always be easy to establish and defend. Moreover, a pervasive concern exists that because it is often hard to bring precision to bear in these cases, including on account of measurement difficulties, arguments can be manipulated and captured by special interests.

148 For an in-depth analysis of the history of discussions and the legal background of the "sequencing" issue see Valles et al. (2000).

149 The preamble to the Marrakesh Agreement Establishing the World Trade Organization speaks of "entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade".

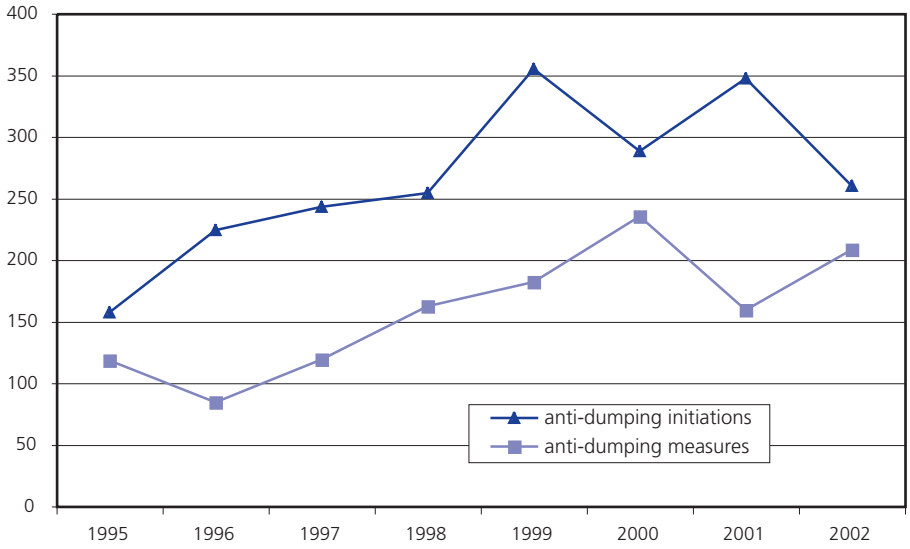
However, at a more basic level, it may be argued that contingent protection can lead to a higher quantum of market access at any given point in time than would be the case without these "escape" provisions. Governments may be willing to go further in opening markets if they know they are protected against unforeseen circumstances and can deal effectively with unfair trade practices. This is a basic economic justification for rules that envisage less open markets. But there are more and less efficient ways of exercising this option. Contingent measures might go further than necessary to address the situation at hand. They might be poorly designed and entail avoidable costs. At the limit, the increment of welfare won from additional market openness might be exceeded by the costs of contingent protection measures. Thus, much depends on the design of contingency trade policy measures.

A second consideration in favour of these instruments is that their very existence may discipline the policy behaviour of trading partners. If a government knows that its subsidies could be countervailed, for example, it might apply subsidies with greater restraint. Once again, however, the validity of the argument turns on specific circumstances. An economic justification requires that a bad subsidy (or other policy behaviour) is deterred and that the remedy is not worse than the infringement.

(i) Trends in contingency protection

Some years ago, contingency trade policy was almost the exclusive province of some developed countries. Developing countries hardly used safeguards, anti-dumping duties and countervailing duties. As developing countries have liberalized their trade regimes, however, a number of them have become frequent users of the instruments. Chart IIB.15 illustrates this development with respect to anti-dumping actions. The basic point to be made here is that the degree of reliance on contingency trade policy would seem to be at least in part a function of the degree of openness of an economy.

Chart IIB.15
Trends in the use of anti-dumping action by WTO Members, 1995-2002
(Number of cases)



Source: WTO.

This observation is consistent with the suggestion above about how the existence of the contingency trade policy option might induce additional trade liberalization, although the correlation does not prove a causal relationship. It does not necessarily follow that developing countries have opened their economies more because they have been able to use contingency protection measures. Some relatively liberal economies, both developed and developing, do not make much use of contingency trade policies. Moreover, to the extent that governments use these policies to a greater or lesser degree as a result of the policy behaviour of their trading partners, the geographical distribution of trade flows may also be a factor. As far as negotiations are concerned, positions taken tend to coincide with the degree of reliance on contingency protection.

Paragraph 28 of the Doha Declaration calls for "negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants". Like some other areas of the Doha negotiations, differences are sharp on key elements of policy. The negotiating mandate makes clear the reservations of some Members when it comes to significant changes in existing provisions. Others would like more far-reaching changes aimed at rectifying what they see as excessive scope for imposing trade restrictions. The challenge of finding an appropriate balance in the negotiations will be considerable.

(ii) Anti-dumping

Anti-dumping is the most frequently used contingency trade policy and there is a large literature on this issue, reflecting long-standing contention. Economists have questioned the logic of anti-dumping in relation to the concept of predation. Predatory pricing behaviour involves a monopolistic strategy to price output below cost in the short-term in order to eliminate potential or actual competition. Once the monopolist has secured a market, monopolistic pricing is introduced, implying super profits for the producer and welfare losses for the economy. Critics of anti-dumping have argued that predation is a phenomenon very rarely encountered in international markets because of the difficulty of controlling entry into a market when many actual and potential competitors exist in many different countries and where the policy environment is less certain.

Others have argued that anti-dumping statutes are not about predatory pricing behaviour, but rather about the ill effects upon competition of trade-distorting government policies. Dumping is defined as sales below normal value, which is the difference between the export price of a good and its price in the ordinary course of trade in the domestic market. Although dumping, however defined, is a practice of firms, the argument is that this price differential is made possible because for one reason or another firms that dump are not subject to the full force of competition in their domestic markets. Government actions that could give rise to dumping opportunities include tariffs and other trade barriers, subsidies of one sort or another, regulations that stifle competition, and the absence of effective means to control collusive or monopolistic private sector practices. To the extent that such factors are responsible for prices below competitive levels, international negotiations to address them would be a better approach than restricting trade. Such negotiations would require a significant degree of co-operation among governments. In effect, some issues taken up in the Doha Round or suggested for negotiation do address these problems.

Critics of anti-dumping tend to focus on four main lines of argument. First, a definition of dumping that relies simply on the existence of a price wedge between domestic sales and exports will confuse opportunistic pricing behaviour made possible by distortions in the domestic market with normal commercial practice by firms facing different demand conditions in segmented markets. The argument is that markets can be segmented for reasons other than government-imposed policy distortions and so an undifferentiated definition of dumping catches both unfair trade practices and legitimate commercial activity.

Second, there exist a myriad of methodological issues relating to the measurement of dumping margins, the determination of injury and the causality relationship between dumping and injury. Much has been written on this topic. Anti-dumping administrations apply a variety of assumptions in the absence of precise information and use calculation methodologies that allegedly inflate the estimate of the amount of dumping. On the causality issues, it is argued that ills befalling firms detected in an injury investigation may be attributed too easily to low-priced imports, while other factors may be at work.

Third, it is argued that anti-dumping procedures do not take proper account of the balance between consumer and producer interests. This argument includes a point of principle and a procedural point. The principle turns on the assertion that anti-dumping statutes are framed only with producer interests in mind. This cannot be entirely true, since the injury test would not exist were it not for concern about consumer welfare. Nevertheless, to the extent that anti-dumping rules do not incorporate explicit consideration of the trade-off

between producer benefits and consumer costs, import restrictions will likely serve the former interest without clear knowledge of how much consumers pay and what the welfare calculus is for the economy as a whole. The procedural point is that consumers and user industries are unrepresented or under-represented in anti-dumping investigations.

Fourth, given some of the difficulties cited above that critics identify in relation to the anti-dumping statutes and the manner of their application, a political economy point is that by framing this rationale for import restrictions in terms of unacceptable behaviour on the part of foreign interests, it is easier to take a less critical view of the provisions. Anti-dumping is contrasted with safeguards in this context, since the latter measures are not predicated on any notion of unfair trade, but rather on an economic and political choice, where governments are required to take direct responsibility for imposing restrictions on trade.

Whatever view is taken of this debate, it is important to recall that this is not an issue that divides readily on North-South lines. Developing countries have revealed preferences on both sides of the argument. In formulating negotiating positions, certain considerations appear particularly relevant. One is that the possibility exists of taking an economy-wide view of anti-dumping, and establishing a clear picture of who wins and who loses from such actions. Such an approach would be very unlikely to lead to the elimination of all anti-dumping actions, but it would help to ensure that the benefits of liberalization are not unnecessarily dissipated. Another point to bear in mind is that countries not only take anti-dumping actions of their own if they so choose – they are also subject to such action taken by their trading partners. This argues for a balanced approach to the issue that does not overlook consumer and export interests while seeking to avoid unjustified and costly damage to producer interests. Some developing countries have been arguing for increases in the current thresholds below which exports will be exempted from anti-dumping actions. Such arrangements are clearly advantageous for developing countries with limited export potential. Finally, to the extent that anti-dumping actions are driven by policies of other governments that interfere with the conditions of competition and lead to unjustifiably low import prices, a question to ask is how much scope exists for addressing such policies directly.

(iii) Subsidies and countervailing duties

Many developing countries have manifested a close interest in subsidy issues, particularly the use of export subsidies and restrictions imposed on this by WTO agreements. Export subsidies on manufactures will eventually be phased out for all countries with a per capita national income level above one thousand US dollars (at constant 1990 prices). Apart from the desire manifested by some developing countries to continue using export subsidies to diversify their production base and establish a marketing presence in foreign markets, an additional issue is the rules on export credits, which are considered unfair to developing countries. In agriculture, export subsidies are not permitted unless they were being applied prior to the entry into force of the Uruguay Round Agreement on Agriculture.

Basic economic theory is not well disposed towards export subsidies. The immediate effects of an export subsidy are to raise the price of the subsidized product in the domestic market, lower it in the foreign market and reduce the government's disposable revenue. Each of these effects represents a net welfare loss and on its face is bad for the economy, so this raises the question why many developing countries nevertheless seek the flexibility to subsidize exports.

The WTO rules allow Members to offset the anti-export bias implicit in an import regime that raises prices of imported inputs into production for export. Duty drawbacks and remission schemes on directly incorporated inputs will not always completely neutralize the disadvantage to exporters arising from the import regime. Some developing countries have sought to provide additional support to exports in order to take account of this reality.

More generally, an effective challenge to the basic welfare analytics that suggests export subsidies carry net economic costs for the subsidizing country can be mounted from arguments relating to externalities and market failure. The most frequently encountered argument of this nature concerns the dynamic externalities associated with learning-by-doing in new industries and the failure of capital markets to finance such initial

costs efficiently. In these circumstances a subsidy will compensate for what otherwise would be an inadequate investment in the future. An additional argument which is related concerns the absorption and diffusion of new technologies. These are arguments essentially about increasing productivity and growth through diversification into new activities. Much of this literature is couched in terms of production subsidies and not export subsidies. Externalities associated with export markets alone are more likely to revolve around marketing considerations and issues of reputation. However, given revenue constraints and growing reliance on trade in many countries, the above considerations may be relevant whether it is exports or total output that is being subsidized.

There is no doubt that subsidies can be expensive and inefficient and may fail to deliver benefits. The literature in this area points to several ways of avoiding such risks. First, the case discussed above for subsidizing industries would be very difficult to defend other than as a temporary measure in a transitional process. Second, subsidies will be unlikely to yield results if they are not provided within a policy framework that rewards efficiency, encourages investment, promotes human capital development and offers adequate infrastructure. Third, clear eligibility criteria and full transparency in the design and implementation of subsidy policies are essential accompaniments of success. Fourth, many countries are likely to use subsidies and if the policies are not properly targeted and kept within defined bounds, government revenue may be wasted in a fruitless game of competitive subsidization. As developing countries seek to define their WTO rights and obligations in this field, these considerations would seem essential for development.

Finally, it is important to note that whatever the legal status of particular subsidies for particular countries, governments may still retain the right to use countervailing duties against the subsidy practices of their trading partners. Since a countervailed subsidy amounts to nothing more than a financial transfer from one government to another, subsidy practices need to be tempered by this consideration. Developing countries enjoy certain exemption thresholds in the area of subsidies and countervailing measures, just as they do in anti-dumping. An analysis of optimal thresholds from a development perspective would seem to be a worthwhile undertaking.

(c) Trade and environment

The relationship between trade and environment has been discussed in Section IIA.4. Members espouse quite different positions on certain aspects of this relationship, but at the same time recognize synergies and ways in which policies in both areas could be mutually reinforcing. Some Members stress first and foremost the importance of environmental protection, while others are concerned to avoid protectionist capture and the misuse of environmental arguments to impose unjustifiable trade barriers. Economic analysis is particularly helpful in teasing out the issues and identifying efficient and least-cost means of addressing the concerns of all parties.

The Doha Agenda on the relationship between trade and the environment reflects the variety of Member interests and priorities in this area. Members have committed to negotiations on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). They also intend to establish procedures to guide aspects of the relationship between MEA secretariats and the relevant WTO committees. The negotiating mandate calls for the reduction or elimination of tariffs and non-tariff barriers to environmental goods and services. The declared aim to clarify and improve WTO disciplines on fisheries subsidies is also relevant to this negotiating agenda.

In addition to the negotiating mandate, the Committee on Trade and Environment (CTE) is instructed to continue work on all aspects of its agenda, but to stress three particular issues. The first is the effect of environmental measures on market access, especially in relation to developing and least-developed countries, as well as situations where trade liberalization would benefit trade, the environment and development. Second, particular attention is to be given to the relevant provisions of the TRIPS Agreement. The third element of work singled out for special attention concerns labelling requirements for environmental purposes. The question whether negotiations are appropriate in any of these areas is to be taken up at the Fifth Ministerial Session. The paragraphs that follow will discuss certain aspects of the negotiating mandate and work programme from a development perspective.

Conceptually, most of the issues discussed by both the CTE Special (i.e. negotiating) Session and the regular CTE fall into either one of two categories: in a first group, the extent to which a reduction in trade barriers and distortions can lead to environmentally beneficial outcomes is examined. Examples are the issue of fisheries subsidies that lead to fleet overcapacity and fish stock depletion, or the removal of barriers to the trade in environmental goods and services. Second, potentially negative effects of environmental policies on trade, especially in relation to market access for exports from developing countries, are identified. Such environmental policies can be both direct trade measures, such as import bans, and measures with an indirect effect on trade, such as environmental taxes, labelling or recycling requirements. These policies may be pursued at the national level or be mandated in the context of multilateral environmental agreements (MEAs).

(i) Removal of trade restrictions and distortions leading to positive environmental effects

General issues related to market access

For developing countries, poverty is often the single biggest obstacle to environmental protection. As discussed in Section IIA, improvements in the conditions of access to markets will contribute to economic growth and a reduction in poverty in developing countries. Trade liberalization leads to a more efficient allocation of resources, which can have a direct and positive environmental effect. It can help developing countries to generate the necessary resources to protect the environment and provide an incentive to manage natural resources in a sustainable manner. Higher incomes also result in increased demand for environmental quality (WTO, 1999c).

Apart from these "general equilibrium" linkages between trade and environment, the removal of trade-restrictions in specific sectors may help bring about immediate environmental improvements. The CTE is examining a range of sectors in that regard. In many instances, the beneficial environmental effects will be a "side-effect" of the WTO's core business of liberalizing trade, for instance through the removal of trade barriers to environmental goods and services, or the reduction of production-related agricultural subsidies.[150]

The importance of fisheries to developing countries

Fisheries are important to developing countries. First, for many of them, the fisheries sector has significant export potential if prices are set competitively.[151] Subsidies granted by other countries to the domestic fishing industry that are either cost-reducing or revenue enhancing lower the price at which the domestic industry can still make a profit. Moreover, the depletion of fish stocks severely affects developing countries that depend on fishing for a large part of their income and employment, as well as for nutritional purposes. Subsidies provided by other countries contribute to excess fleet capacity and aggravate the problem of over-fishing (OECD, 2000a; OECD, 1998). Discussions in the CTE have also touched upon this wider link between subsidization and over-exploitation and the indirect negative impact of production distortions on export opportunities of poor countries.

In order to challenge a fisheries subsidy under the WTO Agreement on Subsidies and Countervailing Measures (SCM) as an actionable subsidy[152], certain definitional criteria would have to be met and the subsidy in question would have to result in one of three possible adverse effects – injury to the domestic industry from subsidized exports, "serious prejudice" to the domestic industry through displacement of its exports to the subsidized market or third markets, and nullification or impairment of benefits expected from market access commitments (particularly tariff bindings). It is often maintained that, in the case of fisheries, the data requirements and procedures associated with such claims may be particularly costly and cumbersome, making the SCM Agreement a somewhat attenuated option to secure a remedy, especially for resource-constrained developing countries. Article 6.1 of the SCM Agreement created a rebuttable presumption of serious prejudice under certain conditions, including when the total *ad valorem* subsidization of a product exceeded 5 per cent.

150 See for instance OECD (2003), OECD (2001c), Chaytor (2002), Bhagwati (1996), Edwards (1995).

151 The importance of fisheries exports for developing countries is illustrated in FAO (2002): For fish and fish products, the net exports by developing countries increased from $3.7 billion in 1980 to $18 billion in 2000. In 2000, they were several times larger than those of other agricultural commodities such as coffee, rice and tea.

152 Fisheries subsidies do not to any major extent seem to fall in the "prohibited" category of export or local content subsidies.

This provision had the advantage of placing the burden of proof that no serious prejudice resulted from a subsidy upon the subsidizing party, but this provision was allowed to lapse at the end of 1999.

In addition to the possibility of reviving the presumption of serious prejudice, suggestions for improvements include strengthened notification procedures in order to improve transparency. WTO Members remain, however, divided on the fundamental question of whether any such inadequacies of the SCM Agreement should be addressed on a horizontal basis only or, as the proponents hold, through sector-specific disciplines on fisheries.[153] While, as the latter argue, it may be true that the heterogeneity of fish products and the widespread practice of cross-subsidization render the task of establishing the information base for taking remedial action against fisheries subsidies difficult, it is not clear to what extent this differs from certain other sectors.

A special case for fisheries, and for developing further subsidy disciplines, may need to be built on the issue of sustainability and resource depletion. An intensive but somewhat inconclusive debate is continuing on the environmental effects of subsidies (both positive and negative), over-exploitation of fishery resources and the role of fisheries management in that regard.[154] A link to trade has been made by claiming that in contrast to other sectors, fishing subsidies in one country do more than affect the conditions of competition for other countries – they also limit access by poorer countries to a common property resource (Schorr, 1999). The issue is complicated by the fact that since exclusive economic zones (EEZs) were extended to 200 miles in 1994, a predominant part of the global fish catch takes place within national zones. In other words, property rights were conferred upon individual countries, and open access to a shared resource should therefore be relatively less significant (Gréboval et al., 1999).

Within EEZs, the preservation of fish stocks depends primarily on adequate national resource management and effective prevention of illegal, unreported and unregulated (IUU) fishing. Additional support may, however, be called for from other international and regional bodies to address migration of fish between zones and on the high seas. However, a fairly widespread practice is for governments to pay, in whole or in part, for fishing fleets to have access rights to EEZs, including those of developing countries. The fact that governments make payments reduces the costs that those fleets would otherwise incur for a given type and amount of fish catch and translates into distorted final prices of fish and fish products. It has also been noted that it is difficult to determine access payments in a way that would adequately reflect the value of the catch taken at undistorted prices and to verify that actual catch corresponds to the compensation made.[155]

(ii) Environmental policies and WTO rules

The pervasive scepticism of developing countries towards the trade and environment debate is anchored in the fear that developed countries press the issue at the WTO with a protectionist intent. Cherishing their right to challenge trade-restrictive measures under the WTO's dispute settlement mechanism, developing countries firmly resist what they see as an attempt to create a *prima facie* presumption of WTO-compatibility of specific measures, such as labelling programmes, or in general, trade measures taken under MEAs. Proposals have been made, for instance, to deem eco-labelling programmes, despite their effects on trade, as being in compliance with the Agreement on Technical Barriers to Trade, provided that these programmes were developed in accordance with multilaterally agreed guidelines. On MEAs, it was proposed to amend Article XX in order to preserve trade measures specifically mandated under MEAs from a WTO challenge if the MEA in question was found to correspond to a number of procedural and substantive criteria (Schoenbaum, 2002).

The question whether current WTO rules already provide adequate scope to address genuine environmental concerns remains open. WTO Members are free to adopt environmental protection policies provided that they do not discriminate between imported and domestically produced like products. A number of specific

153 For various arguments raised by WTO Members see their submissions on fisheries subsidies to the Rules Negotiation Group in WTO documents carrying the symbol TN/RL/W/*, in particular TN/RL/W/3, 9, 11, 12, 17, 21, 52, 58, 69 and 77.

154 For on overview of the state-of-play of discussions in the WTO and other international fora, see WTO (2000a) and WTO (2001d).

155 For more details see Milazzo (1998), Flaaten et al. (2000), OECD (2000b) and Porter (2002).

circumstances establish grounds for discrimination. Article XX(b) and (g) are designed to allow WTO Members to adopt otherwise GATT-inconsistent policy measures if this is either necessary to protect human, animal or plant life or health, or if the measure relates to the conservation of exhaustible natural resources. Thus, discrimination can be exceptionally allowed even between like products if the conditions of Article XX are fulfilled. These measures, should not, however, result in arbitrary or unjustifiable discrimination nor constitute a disguised restriction on international trade.[156]

Non product-related processes and production methods (NPR-PPMs)

Trade conflicts may arise from environmental policies that distinguish between identical products on the basis of how they were produced (non product-related processes and production methods, NPR-PPMs). It is clear that such products would be considered "like" for the purposes of Articles I and III, GATT 1994. But it is not evident whether a discrimination between such products for environmental reasons would qualify for an exception under Article XX, and, especially, how it could be ascertained whether or not such regulations were put in place for protectionist purposes (Charnovitz, 2001b). This question is key for developing countries, as they fear that their products may be excluded from developed country markets on the grounds that their production processes are considered comparatively more harmful to the environment than the ones used by producers operating in developed country markets. Given that the environmental impact of such production may be locally confined, developing countries argue that the relative abundance of environmental resources in their countries form part of their comparative advantage and that the attempt to exclude their products, besides being economically inefficient, amounts to an extra-jurisdictional imposition of developed country environmental standards. Where the production of an identical good in a developing country contributes relatively more to a trans-boundary or global environmental problem than production in a developed country, it has been argued that financial and technological support may be more appropriate than trade restrictions to address the problem. The environmental consequences of such assistance are likely to be more positive than punitive action, insofar as the support, contrary to trade sanctions, promotes development and increases resources for environmental protection (Shahin, 1999).

Labelling and consumer sovereignty

While no cases of outright import bans of products based on their NPR-PPMs have arisen to date, certain products may *de facto* be discriminated against through labelling schemes informing the consumer that a product, unlike competing goods, was produced in an environmentally more benign way (Snape et al., 1994).[157] A host of voluntary labelling initiatives are offered by the private sector as marketing tools to advertise positive environmental characteristics. It remains unclear to what extent governments could be held responsible under WTO rules for private sector initiatives that conform to the fundamental market principles of consumer sovereignty and the right to information, but which, if promoted by dominant players in the market, may have a significant impact on developing country trade (Okubo, 1999; Rege, 1994). On the other hand, labelling programmes can help establish niche markets for environmentally friendly products from developing countries, especially if combined with positive measures to assist developing countries in taking advantage of such initiatives.[158]

156 For an in-depth analysis of GATT/WTO dispute settlement practice relating to GATT Article XX, Paragraphs (b), (d) and (g), see WTO (2002i).

157 For a literature review on the market access effects of eco-labelling requirements and a tabulation of various eco-labelling schemes, including mandatory and voluntary schemes by governments, see WTO (2000b). It may be assumed that grievances about trade effects of governmental schemes could be raised in the appropriate WTO bodies. For some schemes, it is, however, not entirely clear whether they are run by the government or the private sector, given that, for instance, the certifying entity may be private, but accredited to certain standards by a supervisory governmental authority.

158 For example with regard to organic foods, the FAO has repeatedly stressed the potential as a niche market for developing countries. In a recent publication the FAO states that "some 100 developing countries produce organic commodities in commercial quantities, most of which are exported to industrial countries" and that "the tendency so far has been for the rate of demand growth to outstrip the rate of growth in available supplies" (FAO, 2003: 313). It is also highlighted that for a further expansion of supplies, developing countries are in need of assistance in complying with foreign standards and in establishing international equivalency.

Multilateral environmental agreements (MEAs)

While the NPR-PPMs issue may also be of relevance to MEA discussions, a more general complication arises with respect to the relationship of any trade measure mandated under an MEA and WTO rules.[159] Unlike national environmental policy measures, which a government may revoke if it so chooses, an MEA creates obligations of similar standing to WTO obligations (Marceau, 2001). At Doha, Members agreed to clarify the legal relationship between WTO rules and specific trade obligations in MEAs. The negotiations are, however, confined to the applicability of existing WTO rules among parties to an MEA. Although most MEAs contain provisions for dispute resolution, two parties, who are also WTO Members, may opt to pursue a trade-related matter of dispute under either the MEA or the WTO or both, as witnessed in the recent case on swordfish between Chile and the EU.[160] In addition, certain MEAs require parties to apply trade measures against non-parties. If both are WTO Members, the MEA non-party also retains the possibility of bringing a dispute to the WTO. While several trade measures in MEAs may be inconsistent with the non-discrimination principle, it may still be possible to gain permission for their application under Article XX. This could be the case, for instance, if discrimination against like products between parties and non-parties to an MEA were found to be justifiable on the grounds of differing conditions prevailing in the two sets of countries – related, say, to toxic waste handling facilities. Pursuant to the shrimp-turtle ruling by the Appellate Body, the will to resolve an environmental problem through the conclusion of an MEA, or good faith efforts to negotiate with the non-party concerned (WTO, 2002i) may also help tip the balance for the defending WTO Member.

(iii) Developing countries are not "demandeurs" on trade and environment

Although developing countries have not tended to be active proponents of the trade and environment agenda, they have a direct interest in the removal of trade restrictions and distortions that have a positive effect on the environment, development and trade ("win-win-win"), as well as in measures that may help them fulfil or even benefit from environmental requirements in developed country markets. Developing country concern about the possibility of a protectionist intent in this area makes them particularly vigilant in dealing with proposals for amendments or new interpretations of WTO rules on the altar of environmental considerations. They also seek to protect their dispute settlement rights by questioning any presumption of WTO-compatibility in respect of trade measures adopted for environmental purposes or environmental policies with trade effects. This debate is not going to disappear quickly, and developing countries do not need to be branded anti-environment in order to defend their legitimate trade interests.

5. MULTILATERAL TRADING SYSTEM AND DEEPENING GLOBAL INTEGRATION

The history of the GATT/WTO has been punctuated by the periodic adoption of new areas of focus and rule-making responsibility. Such initiatives are generally presented by their proponents as necessary to maintain the relevance of the multilateral trading system as the world economy becomes more integrated and trade relations more intense. Members react in different ways to proposals of this nature, and such reactions are inevitably tempered by perceptions of the national interest. At the same time, when governments feel unsure about the implications of new areas of activity, or the motives of proponents, they will tend to take a defensive posture. This is both prudent and natural, but it does create an obligation on the part of all concerned to demystify issues and subject them to careful analysis. Such efforts are underway in respect of the two new issues proposed for inclusion on the WTO Agenda which are briefly surveyed here – trade and investment and trade and competition.

159 For an overview of trade measures pursuant to MEAs and of relevant provisions in the WTO and MEAs concerning compliance and dispute settlement, see WTO (2003c) and WTO (2001e).

160 The MEA in question was the United Nations Convention on the Law of the Sea (UNCLOS), and dispute settlement proceedings were initiated under both the International Tribunal for Law of the Sea (ITLOS) and the WTO Dispute Settlement Understanding (DSU). Chile and the EC ultimately agreed to an arrangement that has effectively suspended both proceedings and is geared towards an amicable settlement of the disputes.

Although both issues are termed 'new' in the WTO context, in reality neither is new. Both were discussed in the Havana Charter[161], but did not find their way into the General Agreement on Tariffs and Trade. The issues resurfaced in the early 1980s during preparations for the Uruguay Round. Trade related investment issues were part of the negotiating mandate[162], while competition policy was not to appear on the formal agenda until nearly a decade later.

The treatment of investment issues in the Uruguay Round context was limited to only those that were deemed to be trade related. The final outcome was the Agreement on Trade Related Investment Measures, which adopted an illustrative list to clarify investment-related policies in the context of relevant GATT Articles.[163] Parallel negotiations in the area of services, however, led to the explicit inclusion of investment in the GATS Agreement and the establishment of a range of market access and national treatment commitments in favour of foreign investors. A more concerted effort at a broader approach to investment and competition policy was incorporated in the First Ministerial Declaration in Singapore in 1996, which created the Working Group on the Relationship between Trade and Investment and the Working Group on the Interaction between Trade and Competition Policy.

Work in these two groups and their future were discussed in preparations for subsequent Ministerial Meetings, but a concrete mandate for further work was not agreed until the Doha Ministerial Meeting Declaration. This mandate calls for negotiations on both investment and competition following a decision to be taken on modalities at the Fifth Ministerial Meeting on the basis of explicit consensus.

The next two Sections examine investment and competition policy issues and the nature of their possible contribution to the multilateral trading system. Before proceeding, however, a basic question to consider is whether the reasons for multilateral engagement spelled out at the start of Section IIB.1 apply to investment and competition. Four reasons for engagement were spelled out. The first related to the economic and political advantages of reciprocal action at the international level. The second concerned the advantage of international co-ordination as a means of reducing transaction costs associated with trade. The third dealt with the benefits of greater policy certainty arising from international agreements and pre-commitment to a set of principles and rules for the conduct of business. The fourth was to do with the benefits of tying in national policy at the international level as insulation against domestic political pressure for policy reversals.

These arguments were offered against the background of a prior determination that governments saw a clear national economic advantage from specialization through trade – international co-operation in the WTO was simply a way of consolidating and extending those gains. This reasoning may well apply to investment and competition, but only in the context of that prior question about the welfare gains from international engagement. Let us consider investment first. Are there advantages to the national economy from allowing foreign investment in the same way as there are for allowing trade? Trade and investment can potentially be substitutable means of accessing a foreign market (Markusen, 2002a, b; UNCTAD 1996; WTO, 1996). This line of reasoning takes one in the direction of concluding that co-operation through binding international agreements is desirable, and that the question is essentially one of content and architecture. A case against this conclusion would have to turn on other factors not so far mentioned, such as the pre-existence of bilateral co-operation arrangements that might be considered preferable, or the notion that this area of negotiation did not represent a priority because of scarce negotiating resources and the costs of negotiation. These are altogether more delicate questions, amenable only to careful and specific analysis of the trade-offs involved, not general conclusions.

161 The history of the World Trade Organization is founded in the twin initiatives of the negotiations that led to the General Agreement on Tariffs and Trade (1947) and the preparations for a trade institution to complement the Bretton Woods institutions that were established in 1944 on monetary and reconstruction issues. The charter for the proposed trade institution, the International Trade Organisation (ITO), was completed in Havana, Cuba in 1948. Due to ratification problems in national legislatures the ITO failed to materialize. Instead, the general treaty obligations under the GATT were accepted by the 23 Contracting Parties. The GATT articles were only a subset of the provisions in the ITO charter, which were broader and included aspects of both competition and investment policy. For more detail on the history of the GATT and the WTO, see Jackson (1996).

162 The mandate given to negotiators was "Following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade."

163 See WTO (1996).

The case of competition policy is somewhat different, in that the application of measures to deal with anti-competitive practices is in principle a matter of "systemic" interest – i.e., effective measures to deal with anti-competitive practices should, in principle, benefit all Members, and may be necessary to ensure that government barriers to trade and investment are not replaced by private ones. Moreover, the issue is not limited to questions of market access: practices such as international cartels undermine the benefits that should flow from trade liberalization not only with respect to access to markets but in terms of the lowering of prices and expansion of output. As with the reduction of tariff and non-tariff barriers, the role of international agreements in this area is to help countries do what in any case may be in their own self-interest, such as the adoption of well-crafted measures to deal with cartels and monopolies that are economically inefficient and undermine their development prospects, but which may be difficult to do for political-economic reasons.[164] As with investment, the case against negotiations may well turn on considerations relating to priorities and the costs of negotiation. Central to the debate are issues concerning the level of ambition of international engagement and the specific content and architecture of a possible agreement.

(a) Investment

Three principal drivers of the intensified interest in investment issues at the multilateral level can be identified: the dramatic growth in FDI flows over the past 15 years; the fundamental change in the perception towards a more liberal policy that the establishment and operation of foreign affiliates is conducive to development; and the increase in international investment rule making at the bilateral and regional level. Each of these drivers will be considered in turn followed by a brief overview of investment issues in the Doha Agenda.

The volume, composition and pattern of private foreign direct investment flows has changed rapidly over the past 15 years. This is the first driver and arguably the most important one. FDI flows are estimated to be $531 billion in 2002, down from the peak year of 2000 when they were $1,492 billion.[165] The average annual growth rate of FDI between 1991 and 2000 was estimated to be 20.8 per cent, whereas the rates for GDP and merchandise exports were, respectively, only 4.4 and 9.6 per cent (World Bank, 2002). This growth in importance of FDI has also been accompanied by a number of structural changes in its volume and composition. FDI in services is becoming increasingly more important (Mallampally and Zimny, 2000). Furthermore, South-South FDI flows have increased dramatically since 1995. In 1994 they were less than $10 billion. After peaking in 1998 at $60 billion they are estimated to be approximately $50 billion in 2001 (Aykut and Ratha, 2002).

Part of the explanation for the growth in FDI lies in the shift towards a more receptive regime for FDI, the second driver, in both developed and developing countries. This change is manifested in not only policy changes that lowered the barriers to FDI, but also the reduction in tariff barriers to merchandise trade. Between 1991 and 2001, 95 per cent of the regulatory changes affecting FDI were implemented to favour FDI flows (UNCTAD, 2002b). Another indicator of the importance that developing countries place on the role of FDI in development is their eagerness to attract FDI. The policy changes that favour FDI are an important element of a positive framework for investment. To complement these policies many national governments offer fiscal and financial incentives (Subrahmanyan, 2002).

Support for these policy changes has been drawn from an extensive literature on how private foreign direct investment flows (FDI) contribute to the development process, which emerged over the past two decades.[166] Its main elements run parallel to the literature on trade and development that has been surveyed in Section IIA.[167] Foreign investment in general, and FDI in particular, is a way of transferring to host countries needed

[164] As Birdsall and Lawrence (1999) observe, "When developing countries enter into modern trade agreements, they often make certain commitments to particular domestic policies – for example, to antitrust or other competition policy. Agreeing to such policies can be in the interests of developing countries (beyond the trade benefits directly obtained) because the commitment can reinforce the internal reform process. Indeed, participation in an international agreement can make feasible internal reforms that are beneficial for the country as a whole that might otherwise be successfully resisted by interest groups."

[165] Estimated by UNCTAD Press Release No. TAD/INF/PR/63, 24 October, 2002.

[166] Recent studies include Bora (2002b), Moran (1998), UNCTAD (1999) and World Bank (2002).

[167] FDI differs from portfolio capital movements in a number of ways. The principal difference is the long term nature of FDI, since it has, by definition, a degree of controlling interest in the enterprise.

capital as well as other assets, such as technology, managerial skills, and improved access to export markets for host countries. The enhanced mobility of FDI has the potential to contribute to the development process in ways similar to the effect of import competition and exports. It improves efficiency, has the potential to stimulate growth and provides a mechanism for the transfer and diffusion of technology. As with the case of openness to trade, as discussed in Section IIA, special cases and exceptions to the general conclusion can also be identified (Hanson, 2001; UNCTAD, 1999). Of particular concern is the impact on the stability and position of the balance-of-payments position, especially in developing countries. Other concerns include the impact of foreign investment on domestic investors, competition in host-country markets, domestic savings and consumption patterns, and the ownership of productive and financial assets (UNCTAD, 1999).[168]

The question of whether or not the contribution of FDI to the development process can be enhanced by government policy has also been extensively investigated (Moran, 2002; UNCTAD, 2001b, 2002c; UNCTAD and WTO, 2002). Some of the more common instruments that have been used by developed and developing countries include local content schemes, export performance requirements and trade balancing requirements. Many national governments have also been active in encouraging FDI flows through the use of various types of financial and fiscal incentives. Empirical evidence on the overall positive impact to the development process arising from the use of such instruments is weak (Hanson, 2001; Moran 1998, 2002).

The third driver is the level of international activity in the area of investment rule-making. Plurilateral efforts to develop rules on investment range from Bilateral Investment Treaties (BITs) to investment provisions in regional trading agreements and investment related provisions in the WTO Agreements. The breadth and discipline of the provisions varies across these agreements. Most BITs and some investment provisions in regional trading agreements include national treatment and most favoured nation treatment for investors. Many also include provisions related to performance requirements (UNCTAD and WTO, 2002). Some regional trading agreements, such as the North American Free Trade Agreement (NAFTA) include disciplines on investment policies, others such as the Australia New Zealand Closer Economic Relations Agreement do not. Taken together the current picture on international efforts at co-operation in investment policy is one of considerable interest and activity.

Investment issues were included in the Doha Ministerial Declaration in the context of these three drivers First and foremost, the mandate provided in the Declaration recognized the case for a multilateral framework to secure transparent, stable, and predictable conditions for long-term, cross-border investment, particularly foreign direct investment (FDI), that contributed to the expansion of trade. It identified a range of issues as being of importance to the link between trade related investment issues and development. These include market access issues in the form of pre-establishment commitments. The Doha Ministerial mandate also stressed that any prospective investment framework in the WTO must preserve the "right" and ability of Members to govern and regulate in the public interest.

The Doha Ministerial mandate placed particular emphasis on the importance of a multilateral framework reflecting the special development, trade and financial needs of developing and least-developed countries, and on allowing Members to undertake obligations and commitments commensurate with their individual needs and circumstances. It emphasized that creating a more open and stable climate for foreign investment is itself an important development objective. Not only do developing countries have an interest in encouraging inward investment and the important benefits that accompany it, developing countries also have a growing interest in creating a more secure international framework for outward investment, as they increasingly become exporters of FDI and home countries to transnational corporations.

[168] One interesting aspect to the impact of FDI is the extent to which it depends upon the motive for FDI. Classifying the various motives for FDI is not a simple task. Prior to the 1980s, FDI flows were either resource or market seeking. The former in order to exploit location specific advantages associated with natural resources and the latter typically to circumvent barriers to service a market via exporting such as tariffs or non-tariff measures. As a more liberal policy landscape for trade and foreign direct investment evolved towards the end of the last century, an increasing proportion of FDI flows were motivated by the opportunity to exploit comparative advantage factors such as low labour and transport costs; hence FDI became more export oriented.

The structure of the work programme provided by negotiators can best be described as pragmatic. If a genuine attempt at establishing an overarching and broad based multilateral framework for investment had existed, the mandate would have been much broader.[169] The pragmatism arises from the recognition that existing WTO rules already substantially cover a number of trade related investment issues. For example, market access in the context of services is covered under commercial presence under the GATS. Disciplines on government policies as they relate to merchandise trade could be challenged under the Agreement on Subsidies and Countervailing Measures and the Agreement on Trade Related Investment Measures.

Paragraph 22 of the Doha Ministerial Declaration mandated the Working Group on the Relationship Between Trade and Investment to focus on clarifying the following issues: scope and definition; transparency; non-discrimination modalities for pre-establishment commitments based on a GATS-type, positive list approach; development provisions exceptions and balance-of-payments; consultations and the settlement of disputes between Members. In addition, the Working Group also continued work on the relationship with other WTO Agreements and International Investment Agreements and also on the issue of FDI and the transfer of technology.

(b) Competition policy

The concern that private anti-competitive practices can erode the benefits of trade reform is one of long standing, as the proposed competition policy sections of the Havana Charter in the 1940s make clear. Competition policy is in many ways a natural complement to the reduction of tariff barriers and to some extent non-tariff barriers. Both encourage an environment where firms operate in such a way as to deliver consumers the benefit of a larger variety of goods at a lower price. Competition policy may also be seen as a governance mechanism that can help to ensure that the intended benefits of trade liberalization are not circumvented by cartels, monopolies and other anti-competitive conduct. A related consideration is that anti-competitive behaviour often has cross-border dimensions, whereas the mandate of national competition authorities, where they exist, is to apply remedies that have the objective of addressing the interests of those within their jurisdiction. For these reasons, it is important to assess the extent to which co-operation within a multilateral framework on competition policy could better ensure that the benefits of trade liberalization (i.e., lower prices and supply expansion) flow through to consumers, and could otherwise contribute to the development prospects of poor countries by promoting appropriate approaches to governance in a market economy.

The issue of trade and competition policy has been under study in the WTO since 1997, in a Working Group established at the Singapore Ministerial Conference. In the course of the debates in the Working Group, a number of more specific reasons have been put forward which, in the view of some Members, justify the development of a multilateral framework on competition policy. First, reference has been made to the growing body of empirical evidence that documents the harm caused by anti-competitive practices with an international dimension (particularly international cartels) to countries that lack the appropriate tools to deal with such practices.[170] The view has also been expressed that enhanced international co-operation is vital to addressing this impact, since the conduct involved often originates outside the borders of the jurisdictions affected. The argument has also been made that, although the adoption of a well-crafted national competition policy should normally be in the self-interest of all countries, developing countries may suffer, for political-economy reasons, from an under-investment in competition policy institutions relative to the harm caused to them by anti-competitive practices. This reflects the fact that, in many cases, anti-competitive practices that harm economic welfare are likely to be associated with concentrations of economic (and sometimes political) power, whereas the interests of the consumers who are the victims of such practices are likely to be more diffused.

[169] Three main channels through which international co-operation and co-ordination could exist have been proposed by the World Bank (2002): protecting investors' rights in order to increase incentives to invest; liberalizing investment flows to permit enhanced access and competition; and curbing policies that may distort investment flows and trade at the expense of neighbours.

[170] See the discussion of provisions on hardcore cartels below.

With reference to the role of WTO principles in this area, the view has been expressed that adherence to the principles of transparency, non-discrimination and procedural fairness in the field of competition law and policy is important to give confidence to international traders and investors, particularly given the recent proliferation of competition laws around the globe (currently, approximately 90-100 countries have on their books a competition law of one kind or another). Moreover, adherence to these principles is widely viewed as being central to the sound application of competition law and policy at the national level. On this basis, it has been argued that the objectives of both trade liberalization and the effective application of competition policy could be facilitated by explicit commitments in the WTO regarding adherence to the principles.

On the other side of the debate, two main sets of concerns or reservations have been voiced by developing countries in the WTO Working Group. The first relates to the implications of a WTO agreement on competition policy for national sovereignty and economic "policy space". Here, a particular concern has been that a multilateral framework on competition policy might intrude on developing countries' freedom to implement industrial or other policies that are considered necessary to promote dynamic (as opposed to static) efficiency goals. Another reservation has been a concern with the potential resource costs of implementing a multilateral framework. A further concern that has been raised in the Working Group relates to the implications of a possible multilateral framework on competition policy for countries that currently lack comprehensive domestic competition laws. In particular, the question has been posed as to whether such countries would be required, as a consequence of such a framework, to adopt a comprehensive law. In addition, a number of specific questions have been posed in the Working Group with respect to the practicality and benefits to be achieved by specific aspects of the current proposals.

As a further contextual point, it is worth recalling that competition policy considerations are already incorporated in several of the existing WTO agreements, albeit in an *ad hoc* fashion. For example, Article 40 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) recognizes the authority of Members to take measures against anti-competitive practices relating to the licensing of intellectual property rights. In addition, it enables Members to seek consultations with other Members in circumstances where the requesting Member believes that its laws are being infringed by the licensing practices of a foreign intellectual property right owner. The Reference Paper on regulatory principles, which was adopted by a number of the WTO's Members as an outcome of the Negotiations on Basic Telecommunications Services that were concluded in 1997, commits those Members to adopt measures to prevent anti-competitive practices by major suppliers in this sector. Article 11:3 of the Agreement on Safeguards prohibits Members from encouraging or supporting the adoption of non-governmental measures equivalent to voluntary export restraints, orderly marketing arrangements or other governmental arrangements prohibited under this Article. The existence of these and other provisions suggests that competition policy considerations cannot be excluded altogether from the multilateral trading system; the question is whether they will be integrated into the relevant agreements in a systematic or a piecemeal manner. A possible downside of a piecemeal approach is that sectoral initiatives might be implemented in isolation, perhaps limited to areas where only the more powerful Members or producer interests are effectively represented, and not benefit from the greater coherence, discipline and exposure to cross-sectoral experience which are often cited as potential advantages of more horizontal approaches to competition policy.[171]

Given the diversity of views on the international dimensions on competition policy, the mandate provided by Ministers in the Doha Declaration is modest and instructs the Working Group on the interaction between Trade and Competition to focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness; provisions on hard core cartels; modalities for voluntary co-operation and long-run support for the strengthening of competition agencies in developing countries through technical assistance and capacity building.

[171] For a related discussion, see "Special Study on Trade and Competition Policy", in *Annual Report of the World Trade Organization for 1997* (Geneva: 1997), Chapter IV, and Anderson and Holmes (2002).

(i) Core principles, including transparency, non-discrimination and procedural fairness

In the field of competition policy, a transparency commitment would apply to laws, regulations, and guidelines of general application. There would be an obligation upon WTO Members to ensure the publication of such laws, regulations and guidelines in a comprehensive and timely manner.[172] It could be argued that such a commitment is not inconsistent with the WTO system since the principle of transparency is well-established in WTO agreements such as the GATT (Article X regarding publication and administration of trade regulations), the GATS (Article III regarding transparency) and the TRIPS Agreement (Article 63 regarding transparency).

Transparency is perhaps of particular importance in regard to "behind-the-border" measures such as competition law and policy, since it is a means to ensure that such measures are not used as a trade-restrictive measure. Reliance on transparency mechanisms could help ensure that the reach and coverage of substantive disciplines in an agreement are not unnecessarily intrusive, thereby ensuring that an appropriate balance is struck.

Certain aspects of transparency, including the publication of laws, regulations and guidelines of general application, might entail administrative costs, and therefore would have implications for capacity-building. Transparency obligations should be defined in a way that was not overly burdensome. Nonetheless, developing transparent procedures, and having a transparent legislative framework is a key requirement for promoting compliance with the law and for the establishment of credible enforcement institutions. To this extent, the objectives of both the multilateral trading system and of credible and efficient competition law enforcement might be served by appropriately designed transparency obligations in a multilateral agreement on competition policy.

Non-discrimination as applied to competition policy involves two components: most-favoured-nation treatment and national treatment. In the context of applying national competition laws, MFN would not pose a great problem; it is unlikely that an authority would accept certain anti-competitive practices of firms originating in one country, while prohibiting those originating in other countries.[173]

On the other hand there are diverging views on the application of national treatment in the competition policy context. These views typically turn on the issue of whether or not national treatment of foreign firms would be pro-development. Even in the case where national treatment is applied in the context of *de jure* discrimination (discrimination embodied in laws, regulations and guidelines of general application) opponents of a multilateral framework on competition argue that it could still limit options for developing countries to pursue their objectives (Singh and Dhumale, 1999). Their argument typically revolves around the potential for second best effects arising from implementing policies that violate the national treatment principle.

A common feature of all effective competition policy regimes is that they include guarantees that the rights of parties facing adverse decisions and sanctions will be recognized and respected. Such guarantees typically vary both in content and in form, because they reflect the legal culture and traditions that have generated the competition regime. Arguably, the incorporation of basic requirements on procedural fairness in a multilateral framework on competition policy would both enhance the credibility of competition institutions worldwide and give reassurance to international traders and investors that they will not be dealt with arbitrarily. On the other hand, it would seem important that any such guarantees not entail disproportionate implementation costs.

A further issue in the debate on a possible multilateral framework on competition policy is whether the discussion should be limited to the proposed principles that are referred to specifically in the Ministerial Declaration (i.e., those of transparency, non-discrimination and procedural fairness). In the view of some Members, an additional principle, namely that of special and differential treatment (S&D) should be explicitly incorporated into any possible multilateral framework. Possible dimensions of this principle include increasing trade opportunities for developing countries, safeguarding their developmental interests, flexibility in any commitments for developing countries and LDCs, and transitional periods.

[172] This might be done either in print in an official gazette, journal or the like, or possibly on a publicly accessible website.

[173] On the other hand, issues could arise with regard to the status of bilateral and regional co-operation arrangements in relation to MFN treatment; these may need to be clarified.

(ii) Provisions on hardcore cartels

In recent years, a growing body of evidence has documented the extent of harm caused by private international cartels to the world economy, and particularly to developing countries that may lack the tools needed to address these arrangements. This, in turn, has raised the questions of whether binding international agreements are needed to complement national initiatives to tackle cartels and other anti-competitive practices.

During the 1990s, the United States and the European Commission prosecuted over forty international cartels made up of private firms located in 31 different economies. Several of these cartels – for example, in lysine, vitamins, and graphite electrodes – were worldwide in reach. Twenty four of these cartels lasted four or more years, suggesting that market forces alone cannot be guaranteed to undermine these international conspiracies (Evenett, Levenstein and Suslow, 2001). Although estimates vary, prices tend to fall between 20 to 40 per cent after international cartels are broken up (Levenstein and Suslow, 2001).

The overcharges caused by these cartels run into the billions of dollars annually. Some indication of this is given by the magnitude of the fines imposed in Europe and the United States, which are based in part on estimates of the amount that a cartel overcharges its customers. Since 1993 fines imposed by American authorities on members of international cartels have exceeded $1.9 billion. Last year, the European Commission fined international cartel members over a billion euros. Recently, the overcharges on vitamins trade during the ten year global conspiracy involving these products were conservatively estimated to be $2.7 billion, a substantial amount for a single international cartel. Moreover, there is evidence that this cartel deliberately raised prices by more in jurisdictions without active cartel enforcement regimes (Clarke and Evenett, 2003.) Finally, evidence from 12 private international cartels suggests that between 1995-2000, developing countries imported between $8-12 billion of goods that were subject to higher prices due to international cartels (Evenett and Ferrarini, 2002).

The damage done by private international cartels may reinforce the case for national enforcement measures, but does it provide a case for international collective action? Specifically, is there an argument for having some minimum standards for national cartel enforcement? Two arguments, borne out in the enforcement experience of the 1990s, suggest that this may well be case. First, public announcements in one nation about cartel enforcement actions tend to trigger investigations by trading partners. For example, the Republic of Korea began investigating the graphite electrodes cartel after reading about American enforcement actions against this cartel. Trading partners therefore benefit from active enforcement abroad – and these benefits are likely to be reinforced over time as formal and informal co-operation between competition authorities deepens.

The second argument is based on the fact that prosecuting an international cartel almost always requires securing testimony and documentation about the nature, extent, and organization of the conspiracy. To the extent that an international cartel hides such documentation in a jurisdiction that cannot or will not cooperate with foreign investigations into the cartel's activities, this jurisdiction's actions have adverse effects on their trading partners' interests. The key point is that when a nation does not rigorously enforce its cartel laws then the damage done is rarely confined to its own borders. An international accord on the enactment and enforcement of cartel laws can go some way to eliminating safe havens for domestic as well as international cartels.

Some are concerned about the cost of enforcing national anti-cartel laws. This concern might be more pressing were it not for the fact that countries at every stage of development have found it advantageous to prosecute cartels in recent years. Indeed, 12 developing economies reported in submissions to the OECD's Global Fora on Competition that they have prosecuted 28 cartels during the 1990s. Interestingly, six of these cartels involved bid-rigging; that is, deliberate attempts to defraud the state. Furthermore, the reduction in overcharges on a single international cartel in nations where the threat of cartel enforcement activity was higher accounted for a large proportion of many of these nations' state outlays on their entire competition enforcement regimes (Clarke and Evenett, 2003). This suggests that the total benefits of cartel enforcement are likely to exceed any implementation costs.

With regard to the possible contents of provisions of a multilateral framework on competition policy relating to hard core cartels, two main elements could be required: (i) a ban on such cartels; and (ii) measures to promote the exchange of information between WTO Members in relation to such cartels. More specifically, a WTO agreement could incorporate a clear statement that hard core cartels were prohibited. The exact contours of a definition of hard core cartels could only be determined through negotiations. In regard to penalties, while these were inherently a matter for domestic law and were closely linked to the domestic legal system, an eventual WTO competition policy committee (if such comes into being) could provide guidance to countries wanting to introduce penalties in terms of identifying what had proved effective in various jurisdictions.

(iii) Modalities for voluntary co-operation

The term "co-operation" has been used in a broad and a narrow sense in the debate on trade and competition policy in the WTO. In its broad sense, it has been used to refer to the full range of elements on which it has been proposed by some Members that Members might undertake to work together in the framework of the WTO – including technical co-operation and capacity building and possible commitments on hardcore cartels in addition to narrower forms of co-operation such as notifications, consultations and mutual assistance in particular cases. In the more specific sense that has been used in relevant contributions of Members to the WTO Working Group, co-operation has two main elements: (i) provisions to facilitate case-specific co-operation on anti-competitive practices having an impact on international trade; and (ii) provisions relating to general exchanges of information and experiences and joint analysis of global trade-related competition issues as might be conducted, for example, by a possible WTO committee on competition policy.

(iv) Long-run technical assistance and capacity building

The importance of a commitment to long-term support for the technical assistance and capacity building in the area of competition policy as a counterpart to any multilateral rules has been discussed extensively in the WTO Working Group. In the period leading up to the Cancún Ministerial Conference, the Secretariat's technical assistance activities in this field have focused on the immediate objective of informing Members regarding the nature of the current proposals and helping them to better evaluate the pros and cons of these proposals for their development prospects and interests. In the event that negotiations are launched at Cancún, technical assistance and capacity building in this area would likely have a different focus. In particular, the current proposals envision that, working in co-operation with other intergovernmental organizations active in this field, the WTO would contribute to the long-run process of strengthening competition institutions in developing and least-developed countries.