

The Millennium Round and Developing Countries:  
Negotiating Strategies and Areas of Benefits

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# The Millennium Round and Developing Countries:

## Negotiating Strategies and Areas of Benefits

Arvind Panagariya

### **1. Introduction**

The Uruguay Round Agreement, which led to the creation of the World Trade Organization (WTO), stipulates that the member countries launch a round of negotiations for trade liberalization in agriculture and services beginning January 1, 2000. With that date approaching, WTO members are now seriously discussing the possibility of a "Millennium Round" of multilateral trade negotiations (MTNs). The next WTO Ministerial, to be held in Seattle at the end of November 1999, is likely to launch this round.

Prior to the Uruguay Round (UR), developing countries had not participated actively in multilateral negotiations. Virtually all liberalization commitments in the Kennedy and Tokyo Rounds were made by developed countries. On the one hand, this fact gave developing countries a "free ride" since, under the Most Favored Nation (MFN) rule of the General Agreement on Tariffs and Trade (GATT), a tariff reduction granted to one trading partner must be granted to all GATT members. But, on the other hand, it encouraged developed countries to leave the sectors of greatest interest to developing countries out of the negotiations. Indeed, they were able to protect textiles and clothing, the sector in which developing countries have the greatest export potential, via the abominable, GATT-sanctioned Multi-fibre Agreement (MFA). The MFA was not only protectionist, it was entirely against the spirit of the GATT. It allowed the United States, European Union and a few other developed countries to use quantitative restrictions, which effectively

violated Article XI; through country-specific quotas, it also introduced discrimination across trading partners, thus, effectively violating Article I.

All this changed in the Uruguay Round, however. Developing countries participated actively in this MTN, accepting the GATT tariff bindings on a large scale for the first time. Whereas they had generally refrained from signing various plurilateral agreements negotiated by developed countries during the Tokyo Round, they signed the UR Agreement in its entirety. This even included the Agreement on Trade-Related Intellectual Property Rights (TRIPs) that, taken by itself, was detrimental to their interests but was, nevertheless, a necessary cost of obtaining concessions in other areas, most notably, the Agreement on Textiles and Clothing, which promises to dismantle the highly distortionary MFA regime.

With the Seattle Ministerial meeting approaching, developing countries must consider possible strategies to maximize benefits from the negotiating round that this meeting is likely to launch. In the present paper, I make a modest attempt to address this ambitious subject. I discuss issues of overall strategy in the short and long run as also specific questions in the key areas that are on the table currently.

From the viewpoint of overall strategy (Section 2), I argue that developing countries should limit the agenda for the forthcoming round to the built-in UR agenda plus trade liberalization in industrial goods. In other areas, developing countries need to conduct their own careful studies before agreeing to negotiate. By engaging in wider negotiations, they also risk spreading their limited negotiating capacity thinly. Most importantly, a *prima-facie* case that they are likely to benefit from negotiations in other areas has simply not been made. From a long-run perspective, I argue strongly that developing countries need to commit substantial human and financial resources to create native research and negotiating capacity on WTO related issues. The experience of UR

negotiations teaches that stakes in this game are too high to let negotiations move forward by default.

Among specific areas of negotiation, I discuss trade liberalization in industry, agriculture and services, multilateral agreement on investment, other non-trade agenda, dispute settlement and anti-dumping. On the subject of trade liberalization in industrial products (Section 3), I argue that even though it is not a part of the UR built-in agenda, developing countries should agree to include it into negotiations. The game of negotiating trade liberalization is not new and, since trade liberalization is generally beneficial to the countries undertaking such liberalization, risks associated with it are minimal. In addition, developing countries can seek liberalization of key developed country markets including textiles and clothing, footwear, other leather products and fisheries.

In agriculture (Section 4), I discuss in detail the main issues of interest relating to market access, export subsidies and domestic support. I argue that for tariff reduction, it will make sense to seek a Tokyo-round-like formula whereby higher tariffs are reduced more and lower tariffs less. As for tariff quota, I suggest that it may be best to eliminate it by bringing the out of quota tariff rate down immediately to the level that supports at least current level of imports. The developing country interests should, in turn, be protected via a special GSP tariff rate that does not exceed the current in-quota tariff rate. I also note that there is much scope for reductions in export subsidies in developed countries though their effects are going to be asymmetric on developing countries: potential exporters will benefit due to their improved competitive position while importers will be hurt due to an increase in the world prices.

In services (Section 5), the UR built-in agenda requires negotiations on emergency safeguards, subsidies and government procurement. In addition, there are some key negotiating issues to be resolved in the area of electronic commerce. These include the classification of e-

commerce as trade in goods or services; if the latter, a decision with respect to the mode of delivery; and the possibility of additional obligations on intellectual property rights (IPRs). I argue that it makes sense to adopt a clean and clear-cut definition and suggest that e-commerce be classified as trade in services with GATS discipline applied to it. I also suggest whenever there is confusion with respect to the mode of delivery as between 1 and 2, we opt for mode 1. On IPRs, I suggest that developing countries must take a careful look at the two treaties introduced by the World Intellectual Property Organization (WIPO) in December 1996. Developed countries are bound to push for their eventual inclusion into the Agreement on TRIPs and the time to think about how to respond to that pressure is now.

Two key areas of interest to developing countries in which the UR built-in agenda requires review are the Agreement on TRIPs and Dispute Settlement Understanding (Section 6). Two provisions of the Agreement on TRIPs are to be reviewed: the provision on the protection of microorganisms and plant varieties and that on non-violation (as defined in GATT Article XXIII). Both reviews could have important implications for developing countries. At a minimum, developing countries need to ensure that the review does not lead to a tightening of IPRs, for example, by requiring the application of UPOV, 1991 to plant variety protection. A key question for developing countries in this area is whether they should go beyond the scheduled reviews by insisting on reopening the Agreement on TRIPs to achieve a better balance between the rights of producers and of users of knowledge and technology. And if so, what are the possible approaches. While the changes that will benefit developing countries are easy to identify, the answer to the question whether they should follow this road is not clear cut. Given the distribution of the bargaining power, it is not immediately obvious that once the Agreement is reopened, the outcome will not be even worse than what exists currently.

The review of the dispute settlement is ongoing and is likely to become a part of the Seattle Round agenda (Section 6.2). Following Bhagwati's (1999) suggestion, I argue that when disputes between two developed countries threaten to administer "shock therapy" to small, developing countries as in the Bananas case, a longer implementation period be permitted than is the current practice. More generally, implementation should take into account *economic* factors rather than just the legal rights of plaintiffs who win the case. There is also an acute need to improve the access of developing countries to the legal and professional services necessary to get a fair hearing in the Dispute Settlement Body (DSB). Developed countries have substantial in-house resource to devote to these cases whereas even large developing countries lack them. In the short run, this asymmetry needs to be corrected by the provision of resources that permit developing countries to hire private legal experts. But since this solution raises serious confidentiality issues, in the long run, developing countries must develop their own in-house expertise.

Regarding a multilateral agreement on investment (Section 7), I argue that it is premature to bring it to the negotiating table at the present time. If this is nevertheless done, its scope should be limited strictly to direct foreign investment. Even then, developing countries should insist on a parallel agreement on the movement of natural persons. Being by and large host countries, developing countries will be giving market access to developed countries in the area of investment. There is no reason for them, therefore, not to ask the latter for market access for temporary movement of natural persons in return.

On other non-trade agenda (Section 8), principally labor and environmental standards, I recommend that this be taken out of the WTO for good. There is now a substantial body of academic work that argues persuasively against bringing labor and environmental standards into the

WTO. Instead, these agendas should be pursued in other institutions, designed specifically for them. Developing countries should take a united stand in this regard.

Anti-dumping (Section 9) is an area in which developed countries, especially the United States, do not appear keen to negotiate. But since the anti-circumvention issue was on the UR built-in agenda and has not been resolved, it may be possible to bring other anti-dumping issues into the Seattle Round agenda. In that case, it will make sense to get an agreement that the sunset clause in the Anti-dumping Measures Code will not be misused to prolong protection even after injury to domestic industry has diminished. Developing countries may also want to negotiate a general tightening of anti-dumping procedures since they are likely to face its use in a big way in the textiles and clothing sector once the Agreement on Textiles and Clothing begins to liberalize trade in this sector in an effective manner.

The paper is concluded in Section 10.

## **2. Issues of Broad Strategy**

Before we launch into a detailed discussion of individual issues, it useful to focus on the broad strategy. This subject has both a short-run and a long-run dimension. In the short run, we must decide the ideal agenda for the next round from the viewpoint of developing countries. We must decide which issues should be included in the Seattle Declaration and which ones should be relegated to the future. In the long run, we must develop a strategy to respond to the pressures for concessions in selected areas that are likely to come on a continuous basis from developed countries. Accordingly, the discussion in this section is divided into two parts, one aimed at sorting out the Seattle-Round agenda and the other with long-run strategy.

## ***2.1 Narrowing Down the Seattle Round Agenda***

From the viewpoint of developing countries, it is perhaps best to keep the Seattle Round agenda limited to the Uruguay Round built-in agenda plus liberalization in industrial products. The UR built-in agenda requires negotiations for increased market access in the areas of agriculture and services. Adding industrial products will bring all sectors into negotiations. In addition, the UR built-in agenda requires reviews of certain aspects of the Dispute Settlement Understanding (DSU), Agreement on Trade-Related Intellectual Property Rights (TRIPs), Agreement on Trade-Related Investment Measures (TRIMs), Agreement on Subsidies and Countervailing Measures, and the Agreement on Anti-dumping Measures. Some of the reviews were supposed to have been completed by now. But since that has not happened, they are likely to become a part of the Seattle Round agenda.

The case for the inclusion of market access negotiations in industrial goods into the agenda is by no means uncontroversial and I will consider it in detail in the next section. Presently, let me explain why it makes sense not to expand the agenda beyond this sector plus the built-in agenda. First, to my knowledge, none of the developing countries has studied systematically either the desirable contents or the implications of likely multilateral agreements in areas such as investment and competition policy. Multilateral institutions and developed country think tanks have done some work but the message from this work is equivocal and, in any case, remains to be carefully studied and scrutinized by developing countries themselves.<sup>1</sup> It is only after a considerable analytic and country-specific empirical research that the desirability of agreements in these important areas can be judged and their proper design worked out. It is a mistake to enter into negotiations without

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<sup>1</sup> For example, focusing on developing country interests, in a study published by the Institute for International Economics, Washington, D.C., Moran (1998) argues in favor of a multilateral agreement on investment.

some prior idea of the desired outcome. The United States, for instance, rarely initiates negotiation in an area without a reasonably clear sense of the “endgame”. Indeed, it is this consideration that has led the Antitrust Division of the United States Department of Justice to resist the inclusion of competition policy in the Seattle agenda.<sup>2</sup>

Second, at present, virtually all the major proposals on the table that go beyond trade liberalization and the UR built-in agenda have been brought up by developed countries. Not surprisingly, on balance, they promise to serve the interests of developed countries without necessarily bringing symmetric gains to developing countries. Some proposals such as the linkage between market access on the one hand and labor and environmental standards on the other will hurt developing countries outright. In areas such as competition policy, where developing countries have traditionally asked for a multilateral code, developed countries are not interested in the inclusion of the disciplines desired by them. Finally, even if a particular agreement advances the interests of developing countries, the distribution of benefits is vastly in favor of developed countries. It is not immediately obvious that in a bargaining context, developing countries should accept such a deal. For instance, even if we accept the questionable proposition that a multilateral agreement on investment will bring benefits to developing countries, it does not follow that they should give away market access in this area without asking for something in return. For instance, symmetry dictates that alongside an investment agreement, there also be an agreement on the movement of natural persons. Such an agreement will result in developed countries giving market

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Bernard Hoekman of the World Bank and Kamal Saggi of the Southern Methodist University, on the other hand, argue against it [Hoekman and Saggi 1999].

<sup>2</sup> This was evident from a presentation made by Joel Klein, Assistant Attorney General, Antitrust Division, the United States Department of Justice at the conference “The Next Trade Negotiating Round: Examining the Agenda for Seattle” held at Columbia University, July 22-23, 1999. Klein expressed dismay that Leon Brittan of the European Community had insisted on a study group on competition policy in the Singapore Ministerial Declaration without a sense of what the endgame was.

access to developing countries and correct the imbalance resulting from the agreement on investment. But since the current ethos is unlikely to permit the inclusion of such proposals into the negotiating agenda, there is no reason to rush for the inclusion of investment into the agenda either.

The final argument for a minimalist agenda for the Seattle Round is that developing countries lack negotiating capacity for a round with extended agenda. Even large developing countries have few experts who understand the game of negotiations as well as their developed country counterparts. An extended agenda spreads thinly whatever experts these countries do have, giving big developed country players such as the United States and European Union considerable advantage. The developing country experts also lack the experience of their developed country counterparts. The Uruguay Round was the first time the former participated in a negotiation of this kind whereas the latter have been at this game for half a century. As the discussion below of the negotiations on the Agreement on TRIPs illustrates, this asymmetry in experience had a detrimental impact on the outcome in the Uruguay Round from the viewpoint of developing countries.

Given the uneven distribution of bargaining power, it is not necessary that developing countries will be successful in limiting the agenda as described above. Therefore, it makes sense to consider a second line of defense. I will argue that under such circumstances, rather than adopt the *single undertaking* approach of the Uruguay Round, the negotiations be carried out on two separate tracks.<sup>3</sup> Trade liberalization and the built-in agenda should then be placed on one track and all other issues on a second track.

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<sup>3</sup> Ricupero (1998) offers a fascinating account of the evolution of the concept of *single undertaking* during the Uruguay Round negotiations. The Punta del Este Mandate divided the proposed negotiations into two parts. Part II dealt with trade in services while Part I with all other issues including industrial tariffs, agriculture, TRIPs, TRIMs, MFA and others. At the time the Mandate was adopted, the Latin American members of the Cairns Group were concerned that the liberalization of agriculture might be allowed to die in the course of negotiations as had happened in the previous rounds. Therefore, they insisted on the inclusion of paragraph B(ii) in Part I, which states that “The launching, the conduct and the implementation of the

Even under this two-track approach, developing countries must seek a clear statement at Seattle that the social clause will not be a part of these or future negotiations under the auspices of the WTO and that no linkage between market access and labor and environmental standards will be sought. As agreed at Singapore, the subject of labor standards should be sorted out through alternative instruments at the International Labor Organization (ILO).

From the viewpoint of developing countries, this two-track approach has two important advantages. First, it allows an agreement on the trade-liberalization package without requiring an agreement on other issues simultaneously. Indeed, it even leaves the door open to plurilateral agreements among developed and advanced developing countries on issues relegated to the second track. Second, it makes bargains more transparent by ensuring that concessions are balanced within broad areas without undue pressure for cross-sectoral demands.

In this latter respect, the Uruguay Round approach of a *single undertaking* served developing countries poorly. In effect, it resulted in developing countries accepting the Agreement on TRIPs in return for the removal of the Multifibre Agreement (MFA) by developed countries. The removal of the MFA promises to improve global efficiency by freeing up trade in textiles and clothing and benefit the developing as well as developed countries.<sup>4</sup> In contrast, the Agreement on TRIPs is expected to reduce global efficiency by extending the monopoly power of patent holders to

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outcome of the negotiations shall be treated as parts of a single undertaking.” Other developing countries went along with this provision presumably because they had no idea of the demands that were going to be made on them eventually as a part of the TRIPs negotiations (see below). Furthermore, between the Montreal (December 1988) and Brussels (December 1991) Ministerial meetings, the concept of single undertaking itself underwent a significant change. Based on the ideas supplied by the GATT secretariat, the EC and Canada proposed the incorporation of the results of the Uruguay Round into a new Multilateral Trade Organization (later renamed the World Trade Organization). It was understood that the countries signing the the Uruguay Round Agreement would effectively withdraw from the GATT and join the new organization, leaving the non-signatory countries as contracting parties to a de facto defunct agreement. Thus, the single undertaking not only came to encompass both Parts I and II of the Punta del Este Declaration but also became effectively mandatory for all members to sign.

developing countries for 20 years and is likely to result in a substantial redistribution of income from developing to developed countries.<sup>5</sup> Thus, while developed countries benefit from the bargain on both counts, developing countries benefit on one count but lose on the other. On balance, the bargain promises to be more beneficial to developed than developing countries.

A final important point from the short-run perspective is that developing countries must pay close attention to the final wording of the Seattle Declaration. This declaration will serve as the constitution for the negotiations that will follow. As such the wording of various provisions, especially those relating to non-trade issues in case they are included in the agenda, must be microscopically examined. The tighter the wording of the provisions the better. As I argue immediately below, the experience of the Uruguay Round shows that loose wording can leave the door open to wide ranging negotiations in ways that can hurt the interests of developing countries.

Thus, the absence of precise wording in the provision dealing with TRIPs in the Punta del Este Mandate was partially responsible for allowing developed countries to eventually force a wide ranging agreement in this area. In their entirety, the provisions on TRIPs in the Mandate read as follows:

In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines.

Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.

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<sup>4</sup> This statement refers to the aggregate welfare of developing and developed countries. Taken individually, some developing countries may lose from the removal of the MFA due to the loss of quota rents.

<sup>5</sup> The conclusion on the global efficiency assumes (realistically) that the markets in developing countries being small, the extension of Intellectual Property Rights (IPRs) to them cannot lead to sufficiently large number of new innovations to offset the losses from the extension of the monopoly power of innovators. See Panagariya (1999b) for further details.

These negotiations will be without prejudice to other complementary initiatives that may be taken in the World Intellectual Property Organization and elsewhere to deal with these matters.

Taken on their face value, these provisions seem to aim at the development of disciplines on the enforcement of Intellectual Property Rights (IPRs) rather than their norms and standards. The explicit attention to disciplines on trade in counterfeit goods also suggests that the United States and European Community simply wanted to bring closure to their failed negotiations on a plurilateral agreement in this area under the Tokyo Round. Indeed, this was generally the light in which developing countries saw the above provisions.

For instance, Rubens Ricupero, Secretary General, UNCTAD has recently noted that when the concept of a *single undertaking* was agreed at Punta del Este, developing countries were “not aware of the real intentions of the developed countries in the TRIPs negotiations.”<sup>6</sup> In a more detailed analysis, B. K. Zutshi, India’s Ambassador and Permanent Representative to the GATT from 1989 to 1994, echoes Ricupero when he describes the differences between the interpretations of the above provisions by developing and developed countries in the following words:<sup>7</sup>

While services proved controversial even before the Round was launched, IPRs became so during negotiations when the Punta del Este Mandate in this respect was interpreted by developed countries to cover also the norms and standards of IPRs. Developing countries, as a group, held the view that norms and standards of IPRs *per se* were not trade-related and, therefore, not covered by the mandate.

As we all now know, the wording in the Punta del Este Mandate eventually did permit developed countries to bring the norms and standards centrally into the Agreement on TRIPs.

A somewhat similar story can be told with respect to the inclusion of trade-related investment measures. There was just one sentence on these measures in the Punta del Este Mandate

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<sup>6</sup> See Ricupero (1998, p.17).

<sup>7</sup> See Zutshi (1998, p. 40).

that became the basis of the Agreement on TRIMs. While this agreement was itself less far reaching than that on TRIPs, developed countries inserted into it a provision for further study of the investment and competition policy issues. That provision, in turn, became the basis of setting up study groups for multilateral agreements on investment and competition policies in the Singapore Ministerial Declaration. Thus, the eventual outcome of the single sentence in the Punta del Este Mandate can be full-fledged multilateral disciplines on investment and competition policies. The implication of this experience is that if developing countries prefer not to negotiate at this stage in some areas and limit the scope of negotiations in others, they must act at the first stage of the game by paying a close attention to the language of the Seattle Declaration.

## **2.2 *The Long-Run Strategy***

Located in Geneva, WTO is far and away from most developing-country capitals; immediate, day-to-day domestic concerns in these capitals seem to leave little room for thinking on the long-term WTO issues even in the case of large developing countries. Given the extreme importance of the eventual decisions made under the auspices of the WTO, at least large developing countries need to pay greater attention to thinking long-term strategies with respect to WTO issues on a continuous basis. This is the approach taken by the United States and EU.<sup>8</sup>

Apart from isolated efforts of individual researchers, to-date, developing countries have relied almost exclusively on multilateral institutions for research on WTO matters. This is a risky strategy. Being dominated by developed countries and yet having broad acceptance as developmental institutions, at crucial moments, multilateral agencies such as the World Bank have successfully promoted the ethos that the interests of developed and developing countries are in

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<sup>8</sup> The United States maintains a permanent office straight across from the WTO in Geneva.

harmony.<sup>9</sup> While this may be true in matters such as trade liberalization, when it comes to issues such as the Agreement on TRIPs and the proposed social and environmental clauses in the WTO, the interests of developing and developed countries are in direct conflict.

The danger of reliance for research on institutions such as the World Bank and GATT/WTO is amply illustrated by the experience during the Uruguay Round negotiations. Researchers at these institutions emphasized only the benefits of the UR Agreement, often exaggerating them beyond what careful analysis will justify. In the quantitative studies, based on the computable general equilibrium (CGE) models, the costs associated with the Agreement on TRIPs, which would have substantially lowered the estimated net benefits to developing countries, were systematically excluded. And in the qualitative discussions, repeated claims were made that the Agreement on TRIPs was in the long-run interest of developing countries.<sup>10</sup> The upward bias in stating the benefits was further magnified by public relations officers of the respective institutions. When presented by their researchers with multiple estimates based on alternative assumptions, these officers invariably chose to give the largest rather than the most plausible estimates to the press.

The ethos created by the studies that systematically overstate the net benefits of an agreement to developing countries while understating them for developed countries is likely to have an adverse effect on the bargaining power of the former.<sup>11</sup> It is for this reason that developing countries must devote substantial human and financial resource to research on WTO issues. They

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<sup>9</sup> UNCTAD is the major exception but strapped for resources, its influence has been so far limited.

<sup>10</sup> The sole exception was a lone researcher at the GATT, Arvind Subramanian, who, working under an exceptionally evenhanded leadership of the then Director General of the GATT, Arthur Dunkel, predicted several billion dollars worth of losses to developing countries from the Agreement on TRIPs [see Subramanian 1990, 1994]. It will be naïve to expect similar openness from the WTO today. Recently, while speaking at the WTO on the impact of TRIPs, I was struck by the steadfast refusal of the WTO staff to accept the proposition that the Agreement had harmed the interests of developing countries.

not only need to be able to assess critically the research done by the institutions that have a vested interest in promoting the interests of developed countries but must also offer and disseminate their own research to influence the international public opinion. This means inviting developed country researchers and policy makers to their conferences and even organizing seminars in Geneva and Washington to present their viewpoint. It is not sufficient, as is presently the practice, for merely developing country researchers and specialists to travel to developed country conferences to hear the viewpoint of the latter.

It is also important in this context for developing countries not to rely excessively on the resources provided by developed countries directly or through multilateral institutions as a part of their “capacity building” initiatives. The agency that funds the research is likely to exert influence on its outcome. One way this can be accomplished is by opting for researchers who are favorably disposed towards the view supported by the funding agency itself. Alternatively, given the researchers depend for funding on the agency, they are prone to being persuaded to the agency’s view. Yet another instrument the funding agency has at its disposal is the selection of research topics themselves for funding. For instance, to my knowledge, no multilateral agency has funded research on the benefits of promoting labor mobility from developing to developed countries while the same is not true of investment flows from developed to developing countries. If the agencies are keen to promote the interests of developing countries, they should be as keen to fund research on labor mobility as they are on capital mobility.

To summarize, in this section, I have made two broad recommendations. First, at Seattle, developing countries should endeavor to limit the agenda for the next round to trade liberalization

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<sup>11</sup> Note that since the losses to developing countries from the Agreement on TRIPs were in large part due to redistribution of income from them to developed countries, the exclusion of the Agreement from the analysis also understated the benefits to the latter.

and the Uruguay Round built-in agenda. If they do not succeed, they should still reject the *single undertaking* approach of the Uruguay Round in favor of a two-track approach whereby any additional items should be relegated to the second track. Under no circumstances should they allow the social clause to be placed back on the agenda. Second, in the long run, at least large developing countries must make a substantial commitment of human and financial resources to promote research of their own in the area of WTO issues. With WTO agenda rapidly moving into areas where the interests of developing and developed countries are in conflict with each other, developing countries need to be able to make their case effectively. That, in turn, requires research and its effective dissemination.

### **3. Trade Liberalization: Extending the Agenda to Industrial Products<sup>12</sup>**

In the previous section, I suggested that it is in the interest of developing countries to include industrial products into the Seattle Round trade liberalization agenda. There are many reasons why the inclusion of these products, even though not required by the UR built-in agenda, is beneficial for developing countries.

First, starting with TRIPs and TRIMs, developed countries have increasingly focused negotiations on what is essentially non-trade agenda. Two obvious examples are labor and environmental standards. Though the concerted action by developing countries and the support from some key developed countries at the Singapore Ministerial resulted in the issue of labor standards being delegated to the International Labor Organization, pressures for a social clause are very much there. In addition, other non-trade issues, which almost always involve one-way concessions by developing countries, continue to form a part of the developed country agenda. One

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<sup>12</sup> This section draws heavily on Panagariya (1998a, 1999a).

way to defuse this agenda is to re-focus attention on the conventional border-trade measures from whose liberalization all parties concerned can gain. This is also the area in which the GATT had the greatest success.

Second, the proliferation of preferential trade agreements (PTAs) in recent years has substantially undermined the Most Favored Nation (MFN) principle of trade policy.<sup>13</sup> There are now so many Preferential Trade Arrangements (PTAs) such as the North American Free Trade Agreement and the European Union's numerous association agreements that a virtual "spaghetti bowl" of crisscrossing preferential trade barriers has come to exist. In member countries of these PTAs, different duties apply to different trading partners depending on the origin assigned to the imported product and the stage of liberalization within a particular PTA. We therefore run the risk of reproducing the chaos created by the absence of the MFN status during the 1930s, produced then by protectionism but now, ironically, by free-trade intentions. From the viewpoint of developing countries, the proliferation of PTA among developed countries has led to a partial loss of market access. Many studies show that the EU and its various enlargements resulted in very substantial trade diversion. Given the politics that often drives these PTAs, any attempts at reducing their spread do not seem to be likely to succeed. Further trade liberalization, therefore, seems to be the most effective remedy for eliminating the chaos and recovering the market access for developing countries.

Third, in recent years, the impression has been conveyed that, with developed-countries' post-Uruguay-Round average tariff rates coming down to 3 or less, these countries have reached a

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<sup>13</sup> For instance, Sapir (1998) notes that today, the European Union applies its MFN tariff to barely six countries (Australia, Canada, Japan, New Zealand, Taiwan and the United States) which account for approximately one third of its total imports. Tariffs on products from all other countries differ from the MFN tariff in one or the other way.

state of virtual free trade in industrial products. Yet, from the viewpoint of developing countries, nothing could be farther from truth. Despite an end to the MFA, to be completed by January 1, 2005, tariffs in the United States, European Union and Japan on textiles and clothing will remain very high. According to the calculations done by the United Nations Conference on Trade and Development (UNCTAD) (1996) (see Tables 1-3), the average tariff rates on products in this category are 14.6% in the United States, 9.1% in EU and 7.6% in Japan. Within this category, many products have much higher tariffs. In the United States, post-Uruguay-Round rates on 52% of textiles and clothing imports are between 15 to 35%. Other categories of interest to developing countries with high post-Uruguay-Round tariffs are leather, rubber and footwear, and fish and fish products. Post-Uruguay-Round tariffs on leather, rubber and footwear are 7.1% in the United States, 5.1% in EU and 8.3% in Japan. Tariffs on fish and fish products are 10.2% in EU.

Finally, despite much liberalization in recent years, developing countries continue to have sufficiently high tariffs on industrial products to engage developed countries in a bargain. In the countries in South Asia, with the possible exception of Sri Lanka, tariffs are extremely high. In East and Southeast Asia, they are lower, but still high by developed-country standards. Tariffs in Latin America are also high when compared to those in developed countries. Thus, room for the first and perhaps last major North-South bargain exists.

On the surface, it may seem that trade barriers in developing countries are higher than in developed countries, so that in a negotiation leading to more or less free trade across the board, the former will end up giving more concessions than they will receive. Thus, the ensuing bargain will be uneven. There are three possible responses to this argument. First, developed-country markets are much larger than developing-country markets. Therefore, a one-percent tariff reduction by the former, especially in products of interest to developing countries, is worth more than a similar

reduction by the latter. Even if the extent of additional liberalization by developed countries is smaller, the gains to developing countries may be larger. Second, developing countries being *individually* small, if a further round of multilateral trade negotiations is delayed, many of them are likely to carry out a substantial liberalization on a unilateral basis anyway. Therefore, it may be in their self-interest to push for such a negotiation. Finally, in a comprehensive round, concessions in industrial products can be exchanged against concessions in agriculture and services.

Some may argue that with Information Technology Agreement successfully concluded, at least on a plurilateral basis, there is no need for comprehensive negotiations in industrial products. Negotiations can proceed along sectoral lines on a piecemeal basis. In my judgement, such an approach is both inefficient and against the interests of developing countries. First, to the extent that developed countries set the agenda, the sectors in which they have export interest will be liberalized first. The Information Technology Agreement was clearly pushed by developed countries with developing countries accepting it as *fait accompli* at the Singapore Ministerial. An extension of this approach is sure to place the sectors of interest to developing countries—in particular, textiles and clothing—at the bottom of the liberalization timetable. Second, a comprehensive negotiation offers a much greater scope for bargains than sectoral negotiations. For instance, concessions in industrial products can be exchanged against those in agriculture or services. Finally, from the standpoint of efficiency, simultaneous liberalization in several sectors is superior to sector-by-sector liberalization. The former approach directly increases the profitability of sectors of comparative advantage and reduces the profitability of sectors of comparative disadvantage, allowing a rapid reallocation of resources. Being limited to a few sectors at a time, sectoral approach gives weaker signals for resource allocation. Even more importantly, liberalization that is limited to a few sectors

that already have very low tariffs "divert" trade from sectors with high tariffs and are likely to be harmful rather than beneficial during transition to complete free trade.

In concluding this section, let me note that the proposal for liberalization I have made should be distinguished sharply from the one made by Bergsten (1996) prior to the Singapore Ministerial Conference. Bergsten proposed what he called a "grand bargain" in which "the old rich pledge to avoid new barriers while the rapid growers commit to eliminate theirs." (Here "rapid growers" refers to developing countries, especially in Asia.) In my view, such a bargain is "grand" only for developed countries and hardly a "bargain" for the developing countries. It is not clear how a "pledge to avoid new barriers" by one set of countries can be bartered for actual reduction in barriers by other countries. The "pledge" would be of some value if the countries offered to outlaw or at least limit substantially the use of some of the existing instruments of protection such as antidumping. But, consistent with the official position of the United States, Bergsten's proposal included no such offers and, under the guise of a grand *bargain*, it sought one-way concessions from developing countries.

#### **4. Trade Liberalization in Agriculture<sup>14</sup>**

The UR Agreement on Agriculture, which effectively brought agriculture into the WTO fold, mandates negotiations in agriculture starting January 1, 2000. This agreement has three main components: increases in import market access, reductions in farm export subsidies, and cuts in domestic producer subsidies. In addition, other UR agreements, particularly, the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical

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<sup>14</sup> This section draws heavily on UNCTAD (1999).

Barriers to Trade, have an important bearing on trade in agriculture. The new round must make progress along each of these dimensions.

In each of the three areas—import barriers, export subsidies and domestic support measures—, the level of intervention is higher in developed than developing countries. Purely in terms of import restrictions, this means larger benefits from liberalization to developing countries, especially for potential exporters of agricultural products (Argentina, Brazil, Colombia, Chile, and Philippines, for instance). But the removal of subsidies on exports and output will hurt the developing countries that import the subsidized products. Thus, distributive effects of liberalization in agriculture even among developing countries will be uneven.

In the following, I consider briefly each of the three areas of liberalization.

#### **4.1 Market Access**

There are three aspects of market access in agriculture that deserve consideration (i) tariff liberalization, (ii) reform of tariff quota and (iii) reform of special safeguard provisions.

##### Tariffs

The UR Agreement on Agriculture required that, taking 1986-88 as the base period, all non-tariff barriers be converted into tariff equivalents.<sup>15</sup> These tariff equivalents were to be added to the existing tariffs and the total tariff bound. The bound tariffs were then to be reduced by 36% on average with the rate on each item reduced by at least 15 percent by developed countries by January

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<sup>15</sup>Japan and the Republic of Korea got exemption in rice and developing countries in commodities that are staples in traditional diets.

1, 2000. Developing countries were to reduce tariffs by 15% on average and at least 10% on each item and were given until January 1, 2005 to accomplish the task.<sup>16</sup>

According to the available measures, tariff equivalents for the base period 1986-88 chosen by Members are far higher than the "true" tariff equivalents. Table 4 presents these calculations for EU and the United States. As shown in the fourth column, the proportion by which the announced base tariff rate exceeds the actual tariff rate (i.e., "dirty tariffication") is 61% for EU and 44% for the United States.

The second column in Table 4 shows the final tariff bindings for the major agricultural products in EU and the United States. In addition, Table 5 provides the rates for all members of APEC (Asia Pacific Economic Cooperation) forum using a slightly different classification than in Table 4. For many products, post-UR rates are high in both developed and developing countries but they are higher in the former. There is substantial room for further negotiations and liberalization.

A key question concerns the approach that developing countries should take to future tariff reductions. Given pervasive dirty tariffication, the ideal first step may be to insist on bringing the bound rates in line with actual rates. For further liberalization, it will seem to make sense to push for the adoption of a formula similar to the one adopted in the Tokyo Round for industrial products. According to this type of formula, the higher tariffs will be reduced more and lower tariffs reduced less.

This approach makes sense on efficiency as well as (mercantilist) strategic grounds. Many of the peak tariffs in developed countries are extremely high so that the formula will reduce the

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<sup>16</sup>The average cut is calculated in a way that leaves a considerable flexibility. Tangermann (1994) offers the following interesting example. In a developed country, if there are four items of which three have 100% tariffs and one 4%, a 15% reduction in the former and the elimination of the latter yields  $(15+15+15+100)/4 = 36.25\%$  *average* reduction and satisfies the requirement. This method of liberalization introduces a bias in favor of lowering the higher tariffs less and lowers tariffs more, thus, increasing the dispersion in tariff rates.

dispersion of protection across sectors and avoid the pitfalls of the UR approach noted above (see the last footnote on the previous page). Given the existence of tariff escalation with the stage of processing, especially in food sector, a Tokyo-Round-like formula will also help reduce effective protection more than a simple radial reduction. Finally, since the tariffs in developed countries are higher than in developing countries, it would also induce greater liberalization in the former.

### Tariff Quota

The Agreement on Agriculture recognized that “dirty tariffication” could result in reduced market access in the products which some imports had been permitted previously through non-tariff measures such as voluntary export restraints and no new market access in other products. To alleviate this problem, the Agreement introduced two provisions for import quotas. First, to maintain “current access opportunities” in products previously subject to non-tariff measures, it required that imports must be maintained through explicit quotas at least at the level prevailing in the base period, 1986 to 1988. Second, to provide “minimum access opportunities” in products with negligible imports before the UR, the Agreement required the introduction of a tariff quota that raises the share of imports in domestic consumption to at least 5% by the year 2000. To ensure fulfillment of these provisions, the Agreement stipulated that countries adopt a two-tier tariff structure. A ‘lower’ tariff rate (a maximum of 32 percent of the bound tariff rates) was to be applied for the in-quota imports and a higher ‘bound’ rate to the rest of imports.

These provisions have resulted in two types of import quotas in country Schedules: bilateral and global. The bilateral quotas have resulted from the provision to maintain “current access opportunities.” These quotas are pre-allocated to traditional export suppliers on the basis of

historical market shares that were achieved within the limits of pre-UR quantitative restrictions and voluntary export restraints. The global, unallocated quotas, available in principle for distribution on an MFN basis, have resulted from the provision for "minimum access opportunities." In all, there are 1,366 tariff quotas specified under the Agreement on Agriculture. Of these, fruits and vegetables account for 25.6 percent, meat products for 18.2 percent, cereals for 15.7 percent and dairy products for 13.4 per cent.

The tariff quota suffers from the usual problems that quotas bring. The pre-allocated quota has an adverse effect on the entry of new, more efficient suppliers. The global quota raises administrative problems and has resulted in a variety of schemes ranging from allocation on a first-come, first-serve basis to giving the licenses to one's own producers. A further complication has arisen because the WTO has allowed member countries to incorporate their preferential trade arrangements (PTAs) into the market access opportunities available through the tariff quota system. Although preferential quotas under those trading arrangements get counted as a part of the global, MFN tariff quota, the preferential treatment of designated exporters erodes the minimum access opportunities available on an MFN basis. Moreover, in-quota imports from PTA partners are also sometimes levied at a preferential rate that is lower than the going in-quota MFN rate.

There have also been numerous cases of imports falling short of the tariff quota commitments. In some cases, imports have been subject to the higher above-quota tariff rate even though the

tariff quota was under-filled. This can occur if the government of the importing country considers that the quota to be "filled" once it has issued all the import licenses to exhaust its total quota. Whether or not the license holders actually make imports under the quota quantity is viewed as a "market choice". Meanwhile, non-license holders are charged the higher out-of-quota rate.

The next round will have to address all these problems. Possible solutions are characterized by tensions between efficiency considerations and developing country interests. The global efficiency will be best served by first unifying the bound tariff and the rate applicable to the tariff quota to the level that will ensure the minimum import requirement and then bringing the new tariff rate gradually down. In view of the fact that safeguard measures can be generally invoked to deal with unexpectedly large expansion of imports, it is unnecessary to limit imports through quantitative restrictions.

This approach may hurt the interests of many developing countries, however, by eliminating their market access at the current, in-quota tariff rate. A solution to this dilemma may be to complement the above reform with a scheme via which the current in-quota exports by developing countries are placed under GSP with the current in-quota tariff rate serving as the GSP tariff rate.

#### Special Safeguard Provisions

The Agreement on Agriculture gives developed countries, but not developing countries, access to the Special Safeguard (SSG) provisions. The SSG allow an importing country to impose an additional duty on out-of-quota imports of a product, if the country faces a sudden surge of import quantities or a substantial cut in import prices. Ideally, the SSG should have been strictly a transition device to aid the tariffication

process. From the discussions resulting from the analysis and information exchange (AIE) Process at the WTO, it appears that these measures will stay beyond the year 2000.<sup>17</sup> At one level, it may be argued that only a few countries in a handful of cases have used the SSG and, therefore, it is not worthwhile to expend significant amount of the negotiating capital of developing countries. Nevertheless, careful thinking is required on the issue since the frequency of use may rise dramatically after more liberalization.

#### **4.2 *Export Subsidies***

The Agreement on Agriculture bans new export subsidies but allows the old ones to exist. Budget outlays on export subsidies are to be cut by 36% in developed countries and 24% in developing countries. The volume of subsidized exports of each commodity is to be cut, in the case of developed countries, by 21% between 1995 and 2000 and, in the case of developing countries, by 14% between 1995 to 2004 relative to their 1986-90 base-period averages.

There is a sharp difference in the use of export subsidies between developed and developing countries. Export subsidies by six industrial countries in 1995 accounted for more than 75% of the global value of export subsidies subject to reduction commitments. Approximately 100 developing countries combined, on the other hand, accounted for just over 20 per cent of the global subsidies. Few developing countries had previously used export subsidies and hence did not include them in their Schedule of

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<sup>17</sup> The Singapore Ministerial Declaration had provided for the initiation of the analysis and information exchange (AIE) Process to allow member countries to better understand the issues to be discussed in future

Commitments. The use of export subsidies by developed countries is concentrated on a few products, cheese, butter, wheat and beef.

As noted before, the effects of export-subsidy reductions across various developing countries will be especially asymmetric depending on whether they are exporters or importers of the products subject to subsidies. Of particular importance is the need to protect the interests of net food importers that often also happen to be the poorest of the countries. The role of food aid in this context could be potentially important.

The eventual aim of the next round should be to bring export subsidy provisions in agriculture in line with those applicable to industrial products. In this area, much of the action is to be taken by developed countries and developing countries should vigorously seek in agreement from them. It may even make sense for net exporters, who stand to benefit from export-subsidy reductions, to create a pool of resources to provide a cushion to net food importing least developed countries.

While export subsidies are still in force, additional issues must be addressed. For instance, the Agreement on Agriculture leaves room for carrying over the “unused” export subsidies in one year to the other year. This effectively permits countries to increase export subsidies in a given year. From the viewpoint of potential exporters in developing countries, it will make sense to ban such flexibility provisions. The Agreement on Agriculture also required the members to reach an agreement on export credit but this has not been accomplished so far. The issue must be addressed now in the next round.

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negotiations and identify their own interests.

### 4.3 *Domestic Support*

The Agreement on Agriculture also sought to reduce the aggregate level of domestic support extended to agriculture. Most developed countries make extensive use of distortionary domestic policies to help farmers. The Uruguay Round provided them an opportunity to carry out reforms of these policies, which had resulted in mounting surpluses and stockpiles of some commodities. For most developing countries, domestic support policies are not a major issue. As many as 61 of them have notified the WTO that they provide no domestic support that is subject to reduction commitments.

There were three steps involved in the implementation of this provision. First, the member countries were to compute the total domestic support extended to agriculture in the base years (1986-1988), termed as the 'Aggregate Measure of Support' (AMS). Second, AMS was to be capped at existing levels. Finally AMS was to be reduced by 20 percent over a six-year period in developed countries and by 13% over a ten-year period in developing countries.

The AMS applies at an aggregate level and not to individual commodities. This means that countries have considerable flexibility in choosing the level of support they wish to extend to any particular commodity as long as the obligations towards the overall ceilings are met. Furthermore, the *deminimus* provision allows countries to exclude from the calculation of AMS (a) product specific support if it does not exceed 5 percent of the value of production of that commodity, and (b) non-product specific support where it does not exceed 5 percent of the value of the country's total agriculture production. For developing countries, the *deminimus* level is 10 percent. Specified agricultural input subsidies are also excluded from AMS.

The next round must continue the task of reducing the domestic support measures. Purely from an efficiency standpoint, it makes sense to shift the focus from of this reform from the aggregate level to across-the-board reductions in the supports. Alternatively, it makes sense to take up the sectors subject to the highest levels of supports first.

The Agreement on Agriculture also allowed exclusion of two important agriculture support payments programs in calculating AMS, the EU compensation program under the 1992 CAP reforms and the US deficiency program. The next round must also bring them into the fold of AMS calculations.

#### **4.4 *Sanitary and Phytosanitary (SPS) measures***

As agricultural imports into developed countries are liberalized, the role of SPS measures in agricultural protection will become increasingly dominant. Already, in some cases the SPS require production technology that is not available to developing country exporters. Developing countries must not only have information on the existing SPS regulations in major developed countries but also technical guidance on how to satisfy them. The Agreement on SPS recognizes the need for technical assistance to developing countries but leaves its provision to donor Members' discretion. In the next round, developing countries may find it worthwhile to negotiate a formal mechanism for ensuring the implementation of various provisions on technical assistance.

From a long-run perspective, developing countries will need to build local technical capacity to deal with the SPS measures whose use is bound to expand as trade in agriculture is liberalized. They will need to acquire technical know-how to be

able to satisfy these measures when they are legitimate as also to challenge them in the WTO when they are protectionist in intent.

## **5. Trade Liberalization in Services**

Negotiations on three items relating directly to the General Agreement on Trade in Services (GATS), emergency safeguards, subsidies and government procurement, were to have been completed by now under the built-in agenda. But since these negotiations have remained uncompleted, they may become a part of the new round. Since my own expertise in this area is limited, I discuss the three subjects briefly without suggestions on the strategy developing countries might want to pursue.

### **5.1 *Completing the GATS***

At present, GATS does not have a safeguards provision similar to Article XIX in GATT. Developed countries have been opposed to the introduction of such a provision while developing countries want it. The former argue that GATS schedules contain built-in safeguards through limitations and qualifications such as economic needs tests, quotas and exclusion of sub-sectors. The latter argue that the absence of safeguard measures acts as a deterrent to liberalization. Logically, both positions are defensible so that the ultimate resolution would seem to lie in empirical evidence. To strengthen the position taken by developing countries, it will be useful to document specific cases in which countries have been discouraged from liberalization due to a lack of safeguard measures.

GATS recognized that subsidies may have distortive effects on trade in services but left the development of multilateral disciplines applicable to them for future negotiations. The broad position taken by developing countries is that developing countries need flexibility in the use of

subsidies to develop service industries while stricter disciplines should apply to developed countries as is true of the GATT discipline on goods. At present, the issue is unsettled but the resolution of it is likely to have serious implications since it also covers the provision of services through commercial presence and hence impacts subsidies on foreign investment in services.

Like GATT, GATS also exempts government procurement from non-discrimination and market-access provisions. It provided for multilateral negotiations within two years but little progress has been made. In December 1996, the Singapore Ministerial Declaration established a work program to “conduct a study of transparency in government procurement practices, taking into account national policies, and based on this study, to develop elements for inclusion in an appropriate agreement.” Discussions in the Working Group on Transparency in Government Procurement have covered matters such as information on national legislation, prior information on procurement opportunities, tendering and qualification requirements, conditions for fairness, accountability and integrity in evaluation procedures, and surveillance and enforcement mechanisms. It is not clear at this point whether negotiations on government procurement will become an integral part of the next round. Regardless, developing countries need to study the subject in detail since, to my knowledge, little effort has been made by them to analyze the pros and cons of the inclusion of the subject in negotiations and in which direction to take them. The countries should also bear in mind that the UR built-in agenda refers to the treatment of the government procurement practices in services and does not extend to goods.

## **5.2 *Electronic Commerce***

An important area of negotiations in services in the forthcoming round is bound to be electronic commerce. Two key issues that will have to be resolved are whether the GATT or GATS discipline should apply to electronic commerce and, assuming it is GATS, should such trade be

classified under mode 1 (cross-border transactions) or mode 2 (consumption abroad). In addition, subjects relating to the protection of Intellectual Property Rights and mutual recognition of standards may also be negotiated.

A consensus appears to have emerged among member countries that trade via electronic mediums, particularly Internet, should be classified as trade in services with GATS discipline applied to it. My own view is that even though there is some merit in the argument that the products with physical counterparts (for example, books, computer software and music) should be classified as goods even when they are transmitted by Internet, it makes sense to adopt a clean definition. Any attempts at defining some products as goods and others as services are likely to result in disputes.<sup>18</sup>

From negotiating standpoint, developing countries need to guard against any attempt at defining all electronic trade as goods with GATT discipline applied and an agreement for no custom duty signed. Adopting the GATT discipline automatically extends the national treatment and MFN to electronic trade. And the agreement on zero custom duty forbids the application of custom duty. In effect, the countries commit themselves to free trade in all services trade by Internet even if they did not make such a commitment in their GATS Schedules. At one point, the United States had pushed for this approach. The attempt was thwarted by the European Union, which did not want its audio-visual imports to be freed automatically. But it does not mean that the approach will not be tried once again, perhaps giving an exception to audio-visual industry thereby getting the European Union on board. If a decision to revert back to adopting the GATT discipline on electronic trade is made, developing countries should make sure that they do not sign the agreement for zero custom duty without negotiating something in return.

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<sup>18</sup> For further details, see Panagariya (1999c).

Assuming the GATS discipline is applied to electronic trade, the member countries will still need to decide whether electronic trade is treated as cross-border trade (mode 1) or consumption abroad (mode 2). The classification has two principal implications. First, it will determine the liberalizing impact of the commitments made in the UR and post-UR GATS negotiations on services. In these negotiations, countries have already made commitments based on the modes of supply of services. Therefore, it matters whether electronic trade is treated as being supply by mode 1 or mode 2. For example, if a country gave full market access under mode 2 for a particular financial service that is traded electronically, the commitment would have no liberalizing impact if electronic commerce is classified as supply under mode 1 rather than 2. Thus, the liberalizing impact of previous commitments will depend on the mode supply under which electronic commerce is classified. It is my impression that countries undertook more obligations for liberalization under mode 2 than under mode 1. Accordingly, the liberalizing impact of the commitments will be greater if electronic commerce is classified under mode 2. Developed countries, which are net exporters of electronic services, stand to gain greater market access if these services are classified as being supplied under mode 2.

Second, the classification determines the country of jurisdiction for purposes of regulation and dispute settlement. For supply under mode 1, the transaction is deemed to have taken place in the country where the buyer resides. Therefore, it is the regulatory regime of the importing country that applies to the transaction. In contrast, for supply under mode 2, it is the relevant regulatory regime is that of the country where the supplier resides. If countries feel that they want to protect their buyers' interests, they are likely to opt for mode 1. Thus, there is some tension in the choice of classification depending on the objective. The market access objective pulls towards mode 2 while consumer protection objective pulls towards mode 1.

A negotiating issue of great concern to developing countries relates to the recognition granted under Article VII of GATS either unilaterally or through bilateral agreements to education or experienced obtained, requirements met, or licenses or certificates granted in another country. Such recognition, when granted, may boost a country's exports via electronic means. Since the recognition is permitted by GATS on a non-MFN basis and is likely to be confined to developed countries, however, it can potentially cause trade diversion from developing countries. Article VII of GATS requires that the recognition of standard not have unduly trade-diverting effects on third parties and developing countries should guard their rights in this respect.

Finally, the issue of IPR protection on Internet is also likely to be raised in the next round. The main issues in this area relate to copyright and related rights, trademarks, access to technology, and enforcement. There is work in progress on these issues at the World Intellectual Property Rights Organization (WIPO). In particular, developing countries must study carefully the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty adopted in December 1996. These treaties are to come into force after 30 countries have approved them. These treaties commit the signatories to the enforcement of IPRs on the Internet in the relevant areas. During the new round, pressures are likely to come on developing countries to sign these treaties and perhaps to bring them into the WTO. In principle, developing countries could argue that IPRs in this area are not a part of the UR built-in agenda and, therefore, should be relegated to second track.

## **6. Other Items on the Uruguay-Round Built-in Agenda**

Two additional areas in which the UR built-in agenda requires action with important implications for developing countries are the Agreement on TRIPs and Dispute Settlement. I will discuss the issues related to these reviews the present section.

As a result of the built-in agenda in the Agreement on TRIMs, the Singapore Ministerial Declaration also set up study groups on investment and competition policy at the WTO. While the subject of investment policy will occupy us in Section 7, I will not cover competition policy in the paper since there is little chance that it will be on the Seattle Round agenda. There is also a small review component in the UR Agreement on Anti-dumping Measures, which I will take up in the separate section towards the end of the paper.

### **6.1 *The Agreement on TRIPs*<sup>19</sup>**

The built-in agenda requires the members to review Article 27.3b of the Agreement on TRIPs. This article makes exception for plants and animals but obliges members to provide intellectual property protection to microorganisms and plant varieties. For plant varieties, members may apply patents, an effective sui-generis regime or a combination of the two.

In the Council for TRIPs, there is no agreement among members regarding the meaning of “review”. Developed countries take the position that it stands for the “review of implementation” while developing countries view it as an opening to revise the text. If the latter interpretation does prevail, it is not clear whether the outcome will be necessarily favorable to developing countries. The possibility cannot be ruled out that developed countries will then push for plant variety protection in accordance with the UPOV Convention, as revised in 1991. They may also ask for the introduction of patents on plants and animals. Both changes will hurt the interests of developing countries. Developing countries, on the other hand, would like to push for some form of protection for the “traditional knowledge” of indigenous communities. Some NGOs would also like to see the article revised to ensure that naturally occurring materials are not patentable.

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<sup>19</sup> This section is based on Correa (1999).

A second built-in agenda item on TRIPs concerns the application of the non-violation clause of the GATT [Article XXIII: 1(b) and XXIII: 1(c)] to the Agreement on TRIPs at the end of the transitional period. Under Article 64.3 of the Agreement on TRIPs, the TRIPs Council is required to examine the scope and modalities of complaints under the non-violation clause and submit its recommendations to the Ministerial Conference for approval. It is expected that several developing countries will fail to comply with the provisions of the Agreement on TRIPs by December 31, 1999 when the transitional period end. The USTR has already announced that it will assess the situation at the end of the year to take action under the dispute settlement mechanism. One possibility for developing countries is to negotiate an extension of the non-application period under Article 65.2 of the Agreement on TRIPs.

A key issue for developing countries is whether to go beyond the built-in agenda in the area of TRIPs. Several proposals have been offered to revise the Agreement on TRIPs in a future round. Correa (1999) considers three possible strategies along which revisions of the Agreement can be demanded from the viewpoint of developing countries. First, a comprehensive revision may be sought. In defining the objectives, Article 7 of the Agreement states that IPRs should promote innovations and dissemination and transfer of technology “to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.” Developing countries may argue that in its current form the Agreement serves primarily the interest of producers of technology and does not pay adequate attention to the rights of users of technology. Nor does it fully promote social and economic welfare. Under this scenario, developing countries could push for a reduction of the duration of patent protection from 20 years to a smaller number. They may also seek clear statement on various

elements of flexibility in the Agreement including parallel imports, non-patentability of the uses of known products, price regulations, and compulsory licensing on various grounds.

A second strategy will take de minimis approach, opening for renegotiations only a few items. The rationale for this approach is that once the Agreement is opened for extensive revisions, the final outcome is uncertain. Developed countries may then be able to rewrite other parts of the Agreement in a way that the ultimate outcome may be worse than the existing Agreement.

Finally, developing countries may seek revisions in the Agreement based on specific objectives such as the transfer of technology, biodiversity, environment, health and competition. Correa (1999) lists some of the specific changes that could be sought to achieve these objectives. Proposals have also been made by developing countries, especially India, along these lines.

## **6.2 *Dispute Settlement*<sup>20</sup>**

The present dispute settlement system replaced the old GATT dispute settlement system on January 1, 1995. Several developments relating to the operation of the system can be noted. First, there has been a dramatic increase in the number of consultations sought by members. In the first four and a half years of its operation ending on June 30, 1999, there were 175 requests for consultation, involving 130 distinct matters. This averages to approximately 40 consultations per year, which is approximately four times the rate under the GATT dispute settlement system. Second, Consultations have played a central role in dispute settlement. Of the 138 consultation requests made until June 30, 1998, 72 had not been brought before a panel as of July 1999. Though some of these cases may still end up before a panel, this figure suggests that more than half of the cases were settled via consultation. Third, developing countries have been active participants in the

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<sup>20</sup> This section is based on Davey (1999), Hudec (1999) and Jackson (1998).

process. They have brought cases against not only developed countries but, for the first time, other developing countries as well. Finally, the rate of compliance has been generally high. This has been true for the cases won by developing countries against developed countries as well. According to Davey (1999), all parties not in compliance with their WTO obligations have indicated that they intend to comply with the recommendations of the Dispute Settlement Body (DSB) within a reasonable period of time.<sup>21</sup>

Jackson (1998) views all these developments as positive. For instance, he views larger number of consultations as perhaps reflecting increased confidence by the WTO members in the new procedure. He also suggests that the settlement of a large proportion of the cases at the consultation stage could be an indication that the procedures are enhancing and inducing settlements. 'Governments start a procedure, and then as the procedure advances more becomes known about the case. At some point, the jurisprudence will suggest to the participants the likely outcome of the case and this will induce settlement, consistent with the rules as interpreted in the prior cases.'<sup>22</sup>

At the conclusion of the Uruguay Round negotiations, it was decided that the Dispute Settlement Understanding (DSU) should be reviewed by the end of 1998 and a decision taken on whether to continue, modify or terminate it. The review is still ongoing, however, and may become part of the Seattle Ministerial process. Davey (1999) identifies five issues that have been raised in the review: the operation of the surveillance function, the professionalization of panels, the

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<sup>21</sup> Davey (1999) offers the following record as of June 30, 1999. Implementation had occurred in 8 out of the 23 cases completed by the DSB. In another 4 cases, no implementation was required since the complainants had lost. In 7 of the remaining 11 cases, the reasonable period of time for implementation had not expired. The remaining 4 cases are EC-Bananas (2 cases), EC-Hormones and EC-Poultry. In the Bananas and Hormones cases, the DSB has accepted retaliation by the affected parties against specified value of imports from the EC as being equivalent to the nullification and impairment suffered by them. Negotiation on EC-Poultry case between Brazil and the EC were ongoing as of June 30, 1999.

problems of developing-country member participation in the system, transparency and access issues, and the adequacy of the resources available to the WTO for processing disputes. Of these, first three have direct implications for developing countries and I consider them below in detail.

### The Surveillance Function

In the case of disagreement on non-implementation, the DSU rules on suspension of equivalent concessions do not work well. On the one hand, Article 21.5 of the DSU says that such a disagreement should be referred to the original panel, which must issue its report in 90 days. On the other hand, Article 22.2 of the DSU says that, on request, the DSB must authorize suspension of the concessions, absent consensus to the contrary, within 30 days of the expiration of the reasonable period permitted for implementation. At present there is disagreement among members on how to resolve this conflict. The source of contention is not the procedure itself but the timeframe within which this final step in the process is to be completed. The issue may become a part of the Seattle agenda.

From the viewpoint of developing countries, Bhagwati (1999) has raised an important issue with respect to the strict timetables followed by the DSB procedure. Referring to the Bananas case, he notes that strict timetables can sometimes result in substantial “shock therapy imposed by legal means” on third countries that cannot cope with rapid and substantial adjustment costs. In the Bananas case, the parties directly involved are the United States and the EC while the countries that must bear adjustment costs are tiny, island economies. The tight DSB timetables reflect the rights of successful plaintiffs rather than the economic difficulties of the true targets of adjustment.

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<sup>22</sup> Jackson (1998, p. 340).

Bhagwati makes two suggestions to deal with this problem which developing countries may wish to take up in the forthcoming negotiations. First, the WTO members should recognize that the adjustment period must reflect the economic problems resulting from the finding and that the problems may lie *outside* of the economies of the parties directly involved in the dispute. The current timetables are determined by legal, rather than economic, considerations. Second, the WTO Director General should simultaneously coordinate short-term relief from the World Bank or the International Monetary Fund, while also getting the World Bank to direct some long-term aid to offset the loss of the real income.

#### Professionalization of Panels

Panel members are usually three diplomats drawn from the GATT delegations of countries perceived to be neutral to the dispute. Hudec (1999) observes that while panel members today are usually well-versed in WTO policy and procedures, and are generally persons with reputation for good judgement among their fellow diplomats, most of them lack legal training, or experience, to render professionally competent judgements on complex legal issues. As a result, secretarial legal advisors have often exercised considerable influence on the outcomes. Critics have questioned this role of the Secretariat and charged that Secretariat officials have no mandate to perform this decision-making role.

This role of the Secretariat officials should be of considerable concern to developing countries. To begin with, there is a general dominance of developed country views and interests at the WTO Secretariat. In addition, the officials of the Secretariat, especially lawyers, are predominantly from developed countries. Therefore, they are easy targets of lobbying by developed countries, giving the latter extra advantage in disputes with developing countries.

To address this problem, some governments have suggested that the current system of *ad hoc*, part-time panelists be replaced by well one in which panelists will be professionals with long-term appointments like the four-plus-four year contracts held by Appellate body members currently. Hudec (1999) estimates that, continuing the current practice of three-member panels, at the current level of disputes, this will require the appointment of 18 panelists and will constitute a substantial burden on the WTO resources. Developing countries must study this proposal carefully since it may be desirable to adopt even if it means sharing in the costs of employing professional panels. It is crucially important to distance the Dispute Settlement process from the WTO Secretariat and ensure that panels rather than the Secretariat staff assisting them exercise the real decision-making power.

#### Barriers to Developing Country Access

Though the DSU operation has sometimes been advertised as an unequivocal success and equally accessible to all members, the experience of at least some developing countries has been otherwise. Despite facial equality, due to a lack in-house technical expertise, developing countries have not been able to access the process as effectively as developed countries. It is instructive to quote Jackson (1998, p. 343) in this context:

Small governments in particular often do not have in-house expertise that is adequate to handle some of the complex cases (or even some of the simple cases) which are finding their way into the WTO Dispute Settlement arena. Such states are put at a substantial disadvantage against large entities like the USA or the European Community which have such in-house expertise. These smaller states consequently have in some circumstances been eager to retain the services of private attorneys, usually Europeans or Americans. But there has been some objection made, most often by the USA, to the practice. During the course of the last year, developments seem to have moved very substantially in the direction of permitting this practice of governments retaining private attorneys, with certain limitations.

Even after countries are permitted to retain private attorneys, two problems remain. First, most developing countries face severe fiscal constraints and, thus, lack resources to hire the

attorneys. Second, the retention of private attorneys raises concerns with respect to their relationship *vis-a-vis* government clients and the WTO system. Once again, it is useful to quote Jackson:

It will be wise for the DSB or other appropriate bodies to develop certain standards and ethical rules, perhaps including conflict-of-interest rules as well as confidentiality rules, which would generally be recommended to governments as part of the contract they use to retain attorneys. Hopefully this matter will receive appropriate attention and the appropriate practices and documents will evolve.

In the short run, developing countries face the problem of resources to use the DSU process effectively. Recently, a group of developed and developing countries have announced plans to launch an Advisory Center on WTO Law. This Center will function as an international intergovernmental organization and provide legal assistance to developing countries in WTO matters (Davey 1999).

Despite substantial pledges, it is not clear at present whether sufficient funding for the Center will be forthcoming. But even assuming the funding comes through, in the long run, developing countries need to create native technical capacity in this area. Reliance on the U.S. or European private attorneys or the proposed Center should be viewed as a short-term solution only. In the ultimate, like their developed country counterparts, developing countries need qualified in-house staff with deeper knowledge of the circumstances and interests of the country concerned.

## **7. Responding to the Demands for a Multilateral Agreement on Investment<sup>23</sup>**

The phenomenal expansion of foreign direct investment (FDI) in recent years has turned multinationals into a powerful lobby for a multilateral agreement on investment. Today, these firms operate under a host of bilateral investment treaties and access to capital in many parts of the world

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<sup>23</sup> This section builds on Panagariya (1998b).

is not entirely free. They, therefore, have a strong vested interest in the establishment of a uniform set of international rules governing the flow of investment that can be enforced the dispute settlement body of WTO.

### **7.1 *The Failed OECD Agreement***

Soon after the conclusions of the Uruguay Round, responding to pressures from multinationals, developed countries had begun to seek a uniform set of rules governing the movement of capital, especially direct foreign investment (FI). As early as 1995, they launched negotiations for a Multilateral Agreement on Investment (MAI) among the members of the Organization for Economic Cooperation and Development (OECD).

Though there was much enthusiasm for the MAI initially, the 29 OECD members failed to reach a consensus and negotiations broke down in late 1998. The negative outcome was partially the result of far-reaching nature of the proposed agreement, which was expected to cover not just direct foreign investment but technical know how and portfolio investment as well. Many governments felt that the agreement will greatly restrict their ability to regulate the flow of portfolio capital for which they were not prepared.

Many non-governmental organizations (NGOs) also opposed the agreement, arguing that it gave excessive powers to multinationals. Following the provisions in NAFTA, the proposed agreement would have given multinationals the right to sue host governments for damages caused by its violation. Drawing on several cases brought against NAFTA governments, some NGOs argued that foreign investors would seek compensation for the costs associated with satisfying domestic environmental, health and safety regulations. Some NGOs also argued that the proposed agreement was one-sided in giving multinationals rights without spelling out their obligations towards consumers, workers and the environment.

Eventually, the member countries could agree only on a minimal package whose provisions were weaker than those of many bilateral treaties between developed and developing countries. This, in turn, led to the erosion of support from multinationals themselves. Towards the end, feeling the pressure of aggressive campaign by NGOs and upon a belated realization that GATS obligations entail automatic extension of the liberalization within the MAI framework to non-OECD WTO members, many governments, especially France, became reluctant to go ahead with the agreement. The fate of MAI was, thus, sealed.<sup>24</sup>

This failure of the MAI does not signify an end to the efforts by developed countries to seek a uniform investment regime, however. Instead, they are now likely to pursue this goal more vigorously in the WTO. It may be recalled that, taking advantage of a provision in the TRIMs Agreement of the UR Agreement, at the maiden WTO Ministerial Conference held at Singapore in December 1996, developed countries had successfully placed the study of an eventual investment agreement on the WTO agenda. Despite misgivings, expressed by some key developing countries, in the Singapore Ministerial Declaration, WTO Members went on to agree to establish a working group to examine the relationship between trade and investment.

## **7.2 *Developing Country Interests***

Even though some developing countries engage in outward FDI, they are largely recipients of this type of investment. Developed countries, on the other hand, serve as "source" countries for FDI into developing countries. As I will explain later, this asymmetry leads to a divergence of interests between developing and developed countries. There is, thus, a clear North-South dimension to the multilateral agreement on investment.

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<sup>24</sup> See Hoekman and Saggi (1999) for further details.

It may be argued that, beyond what has already been agreed in the Uruguay Round General Agreement on Trade in Services (GATS) and Agreement on TRIMs, any agreement on investment will be unrelated to trade. Therefore, a separate agreement on investment falls into “non-trade” agenda and, as argued in the next section, does not belong in the WTO.

If discussions for such an agreement, nevertheless, proceed, it is important for developing countries to place their own agenda on the table. I will argue that there are at least four key items that belong on that agenda at the present moment. First, developing countries must ensure that any investment agreement is confined to FDI. The benefits of liberalization in areas of trade and FDI are much better understood than in the area of financial-capital flows, which have a very large speculative component. Until such time as internal distortions in the banking and financial sectors are largely removed, free flows of financial capital bring with them added risk of financial crises. Many developing countries are long ways from having distortion-free banking and financial sectors and cannot afford to give up national discretion in policy making with respect to financial-capital flows. The countries wishing to go beyond DFI are naturally free to negotiate a separate plurilateral agreement.

Second, even on FDI, developing countries should insist that no negotiations proceed until China has been admitted to the WTO. That country is the world's second largest recipient of direct foreign investment. Among developing countries, it is by far the largest recipient. Therefore, if developing-country interests are to get a fair hearing, it is essential that China be a party to the negotiations. Without that, the bargaining power of developing countries is likely to be seriously limited.

Third, any agreement must pay adequate attention to the "host" country interests rather than serving as the bill of rights for multinationals. For example, it must provide for an end to subsidies

on DFI that countries pay to multinationals to attract foreign investment. Being entirely silent on the issue, the failed OECD agreement was not a good model in this regard. These subsidies are a direct transfer from host countries to the corporations. Moreover, they distort DFI in the same way that export subsidies distort trade. Given that the latter are prohibited under the GATT, any agreement on investment should prohibit the former. The agreement should also spell out clearly the obligations of multinationals.

Finally, and most importantly, developing countries should agree to an investment agreement only in return for an agreement on the movement of natural persons. This stance is justified for at least two reasons. First, the benefits from international movement of labor are much larger than from the movement of capital. The only calculations of these benefits, done by Hamilton and Whalley (1984), show that the benefits of international movement of workers dwarf the benefits from liberalization in any other area. They summarize their findings in following terms:

“In spite of the sensitivity to the values of substitution elasticities, these results suggest large gains from the removal of global immigration controls. In most cases the gain exceeds the worldwide GNP generated in the presence of the controls suggesting that immigration controls are one of the (and perhaps the) most important policy issues facing the global economy. A large portion of the gains is accounted for by labor migration occurring between aggregate rich and poor regions. Relatively little additional gain results from labor migration occurring between individual countries beyond the gains from migration between the seven major regions. The impact of restrictions on labor mobility is thus clearly an issue between rich countries as a bloc and poor countries as a bloc rather than between individual countries.”

The second reason for placing labor mobility on the agenda is that the distribution of gains from factor mobility is heavily in favor of the source country. This is because the migrating factor receives the high return prevailing in the host country rather than the low return in the source country. And since developed countries are likely to be the source country for investment, they will reap a much larger share of benefits from the mobility of capital. In contrast, since developing

countries are likely to be the source country for the movement of natural persons, they will capture the lion's share of the benefits from labor mobility.

It is fashionable in developed countries to dismiss even the idea of labor mobility on grounds that there is no political support for it. But there are at least three reasons why developing countries should not take such dismissals seriously. First, in the Uruguay Round, some developing countries had felt that political costs of the Agreement on TRIPs were too high for them to sign the UR Agreement. But those countries eventually signed the Agreement because they viewed the deal, taken as a whole, to be beneficial. If developed countries see the benefits from an agreement on investment to be sufficiently large, they, too, can overcome the political costs of an agreement on labor. Second, with the issue of a multilateral investment rules having been placed on the agenda, symmetry dictates that labor mobility also be placed on the table. The history of GATS negotiations supports this argument. Initially, the movement of natural persons was not on the table but was included later at the insistence of developing countries. Finally, political pressures in the United States and EU are largely concentrated in the market for unskilled labor. The same need not apply to professional services for which shortages exist.

To make the movement of natural persons a central item in the WTO agenda, work is needed at three levels. First, it is necessary to identify specific areas where both sides can engage in mutually beneficial bargains. Second, in recent years, numerical estimates of likely benefits from liberalization have become an important strategic tool of negotiations. Therefore, it is important to calculate numerically the likely benefits of increased labor mobility. Developing countries must undertake this exercise themselves. Given the constraints imposed on multilateral institutions such as the World Bank and WTO, they are unlikely to carry out this exercise even as they do a parallel exercise for a multilateral agreement on investment. Finally, and most importantly, developing

countries need to arrive at a mutually agreed position which can serve as the basis of negotiations with developed countries. Without a general agreement among the OECD countries, investment policy is unlikely to be included in the agenda for the next WTO round. Without a general agreement among the developing countries, labor mobility will not be included in it.

## **8. Other Non-trade Agenda**

In recent years, developed countries have increasingly insisted on bringing “non-trade” agenda into the WTO. The process began with the inclusion of IPRs and is continuing to move in that direction with proposals for social and environmental clauses in the WTO put on the table. Developing countries have good reason to fear from this trend and to ensure that its advance is arrested immediately.

To begin with, trade liberalization and "non-trade" agenda are fundamentally different. Trade liberalization benefits everyone including the country that undertakes such liberalization. When undertaken multilaterally, trade liberalization produces positive efficiency effects without significant redistributive effects. "Non-trade" agenda, by contrast, produces efficiency effects of a dubious nature and large redistributive effects that often benefit rich countries at the expense of poor countries. For instance, taken in isolation, the Agreement on TRIPs promises to lower the welfare of not just developing countries but the world as a whole. The same can also be said of the proposed link between trade and labor and environmental standards. There is no guarantee that the particular social and environmental agendas, pushed principally by labor and environmental lobbies in developed countries, will improve welfare in the latter countries or the world as a whole. Moreover, it could place the current market access and trade at risk.

Quite apart from this fundamental difference between trade liberalization and non-trade agenda, there is a marked asymmetry between the effects of the proposed agenda on developed and

developing countries. In virtually every non-trade area on the table currently, concessions are likely to flow from developing to developed countries. Thus, the Agreement on TRIPs will essentially redistribute income from developing to developed countries. Innovators, who stand to benefit from the extension of their monopoly power to developing countries, are overwhelmingly the citizens of developed countries. Consumers over whom the additional monopoly power has been extended are, by contrast, citizens of developing countries. The focus of the social agenda is similarly on child labor in developing countries without a corresponding attention being paid to the welfare of the children in inner cities or to that of migrant labor in developed countries. In the same vein, environmental agenda aims to impose higher standards in developing countries, which may compromise their development objectives. Finally, even when it comes to factor mobility, the push is being made for freer flow of investment in which, as net recipients of capital, developing countries will give market access to investment from developed countries. Developed country governments or multilateral agencies including the World Bank have not even mentioned the issue of labor mobility, which will require developed countries to yield market access to developing countries.

A recent statement, co-sponsored by Jagdish Bhagwati, others and myself and signed by many prominent Third World intellectuals and NGOs, offers a persuasive case against linkage between market access and labor standards. Rather than repeat the arguments here, I reproduce the statement in its entirety as an appendix to this paper. The key conclusion of the statement is that the WTO is best suited to achieving and maintaining open markets around the world. By using this institution to also achieve social objectives, we risk openness of markets without promoting the social agenda in the desired way. Therefore, it is best to leave the WTO alone to achieve open

markets and promote the social agenda through an alternative instrument: International Labor Organization (ILO), as agreed in principle in the Singapore Ministerial Declaration.

The issue of linkage is one on which there are few differences among developing countries. It is also an area in which economic analysis overwhelmingly supports their position.<sup>25</sup> Therefore, it offers fertile ground for them to come together and lobby for the inclusion of a clear statement against linkage in the Seattle Declaration.

## **9. Anti-dumping**

WTO rules allow countries to act unilaterally to restrict imports by imposing antidumping duties if imports are priced below “normal value” and they cause or threaten material injury to the domestic industry. With the hands of WTO members increasingly tied with respect to conventional instruments of protection such as tariffs and quotas, the use of antidumping measures has intensified. Most ominously, some developing countries have themselves emerged as heavy users of this pernicious instrument.

Prior to 1990, four developed countries initiated most of the anti-dumping cases: U.S.A., EC, Canada and Australia. For instance, these countries accounted for 80% of the cases initiated between 1 July 1985 to 30 June 1992. The pattern began to shift during 1990s with the result that between 1987 to 1996, of the approximately 2000 anti-dumping cases, these four countries and New Zealand accounted for 70 percent cases. In the post-Uruguay Round era, developing countries rapidly emerged as intensive users of this predatory instrument. Since 1995, developing countries

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<sup>25</sup> This is not to suggest that economists speak with a single voice on this issue. Rodrik (1997), who offers the most effective defense of the contrary position, argues that having outlawed child labor in their own territory, developed countries should have the right to refuse goods produced by child labor elsewhere. He also sees linkage favorably on the ground that freer trade with developing countries adversely affects the fortunes of unskilled workers in developed countries.

have accounted for almost two thirds of anti-dumping measures taken worldwide. Developing countries engaged in anti-dumping include Argentina, Brazil, Colombia, India, Indonesia, Korea, Malaysia, Mexico, Peru, the Philippines, Thailand, Turkey and Venezuela. As of mid 1997, there were 842 anti-dumping measures in force. The United States accounted for 307 of these measures, EU for 157 and developing countries for 200.<sup>26</sup>

From the perspective of the developing countries, several concerns remain. First, the proliferation of anti-dumping in developing countries themselves is a bad omen. It threatens to reverse recent trade liberalization and the efficiency gains associated with it. Sometimes, anti-dumping duties have been so high as to effectively substitute for tariffs that were removed. Additionally, a majority of the anti-dumping measures by developing countries have been taken against other developing countries. This hurts developing countries as targets of the measures as well.

Second, developing countries bear a disproportionate burden of anti-dumping measures. According to the 1997 WTO Annual Report, out of a total of 239 cases initiated in 1997, 143 were targeted at developing countries. A key source of fear for developing countries is that the phase out of MFA restrictions and prohibition on the use of voluntary export restraints may lead to a further intensification of anti-dumping actions against developing country exports. There have already developments that give substance to these fears. Thus, recently, EU brought an anti-dumping case against imports from India of a product still subject to an MFA quota. Common sense would tell that a product subject to an effective and binding quota cannot be "dumped". But this did not rule out a dumping charge under the technical definition of GATT. Similarly, in steel industry, which

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<sup>26</sup> The data in this paragraph have been taken from UNCTAD (1998, pp. 67-8).

has often been protected by voluntary export restraints in the past, has been subject to anti-dumping actions recently.

Third, the sunset clause in the ADM Code may itself be used to legitimize anti-dumping duties for five years even though the industry has recovered from the injury, which led to the duties. Anti-dumping petitioners can conceivably misuse the five-year rule. The rule may essentially rationalize the continuation of duties for five years even if the injury has in fact diminished.

Fourth, complexities of the system and the cost of compliance with antidumping investigation proceedings mean that small and medium firms in the developing countries have difficulties defending their interests. Developing country governments can provide at best limited assistance to these firms. This observation is consistent with a larger share of cases resulting in prosecution for developing country firms than for industrial country firms.

Finally, the issue of anti-circumvention measures, which had been left unresolved in the Uruguay Round, needs to be resolved. Circumvention occurs when the firms subject to antidumping duties bring components rather than the final product into the importing country and assemble the final product there. Alternatively, the same firms may take the components to a third country, assemble them there, and then export to the country where they face antidumping duties on direct exports from their home countries. The Ministerial Declaration concluding the Uruguay Round recognized that the matter had not been successfully addressed and relegated it to the Committee on Antidumping Practices.

Given the high degree of global integration and the number of multinationals operating simultaneously in many countries, determining the origin of a good is often difficult. Thus the potential reach of anti-circumvention measures is deep. This kind of unilateral action should be subject to WTO discipline, with appropriate surveillance by the WTO dispute settlement body.

There is no doubt that a restraint on anti-dumping measures in the interest of developing countries. The proliferation of anti-dumping in developing countries itself has uncertain implications for eventual containment of anti-dumping measures. To the extent that these actions are taken against developed country firms, the latter may lobby in favor of such containment. At the same time, these actions undermine the ability of developing countries to restrain anti-dumping as an instrument. Developing country firms that profit from anti-dumping actions are likely to join hands with their developed country counterparts in opposing restraints on anti-dumping under the auspices of WTO.

## **10. Conclusions**

In this paper, I have argued that, given their general lack of preparedness for negotiations, developing countries should opt for a minimalist agenda for the Seattle Round that includes the UR built-in agenda and industrial tariffs. This approach also makes strategic sense since the subjects that go beyond trade liberalization have been put on the table by developed countries and essentially involve concessions to them from developing countries. From a long-run perspective, I have argued that developing countries must invest substantial human and financial resources of their own in the development of expertise related to the WTO. Research expertise is needed to understand the new issues that will continuously be put on the agenda by developed countries; negotiating expertise is needed to maximize the gains from future negotiations; and legal expertise is needed to defend the countries' interests at the WTO dispute settlement.

It is in the interest of developing countries to include industrial tariffs into the agenda even though they are not a part of the mandate in the UR built-in agenda. This is an area in which developing countries have had some negotiating experience. Moreover, trade liberalization is a stated goal of many developing countries. In the negotiating context, they can even expand their

access to developed country markets in textiles and clothing, leather and fisheries while pursuing their liberalization goals.

The UR built-in agenda requires negotiations for further liberalization in agriculture and services. In both of these areas, developing countries can benefit further. With respect to agriculture, there are two main concerns. First, for the countries heavily dependent on agriculture, adjustment costs of liberalization may be high. Second, reductions in exports subsidies and domestic support in developed countries may raise the prices of food crops placing some of the poor, food-importing countries at risk. The former concern can be addressed by placing the poor, agriculture-dependent economies on a slower track under the Special and Differential approach that has been an integral part of the GATT and WTO. The latter problem will require resource transfers to the affected countries, especially the poor ones.

In the area of services, the GATS agreement still awaits completion with respect to subsidies, emergency safeguards and government procurement. These are likely to remain contentious between developing and developed countries. The next round must also decide upon the status of electronic commerce. I have argued that it is preferable to choose a clean definition and have all electronic commerce classified as trade in services. Moreover, on practical grounds, between cross-border and consumption abroad characterizations, the former is preferable.

Among the remaining items on the built-in UR agenda, the most important from the viewpoint of developing countries are reviews of the Agreement on TRIPs, Dispute Settlement process, and anti-circumvention measures in anti-dumping. With respect to TRIPs, there is temptation to reopen the issue of the standards of IPRs. My own view here is that the possibility of concessions by developed countries in this area are so remote that it is not worthwhile to waste negotiating capital on it unless it leads to some strategic advantage. In the area of dispute settlement,

developing countries may wish to push for the professionalization of panels and for improved access to resources necessary to use the process effectively.

The time is not yet ripe for a multilateral agreement on investment. From the viewpoint of developing countries, the only positive reason for such an agreement is that it may bring about an end to subsidies on direct foreign investment. But there appears to be no constituency for such a change: developing countries want to continue with the subsidies to attract foreign capital while developed countries are happy to see their multinationals benefit from the subsidization. Even if these subsidies could be capped, however, it is not clear whether the change will be sufficient to compensate developing countries for the market access they will grant to foreign capital. I have argued that developing countries should not give such access without receiving reciprocal guarantees for at least limited access to developed country markets for skilled labor.

Finally, developing countries should reject unequivocally the demands for a linkage between trade policy and labor and environmental standards. In particular, they should seek a clear statement at Seattle that, as agreed in the Singapore Ministerial Declaration, the issue of labor standards will be left to the ILO. Trade is the wrong instrument for promoting labor and environmental standards.

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## **Appendix: Third World Intellectuals and NGOs—Statement Against Linkage**

### **(TWIN-SAL)**

1. As intellectuals (including economists, political scientists and others) and NGOs from the Third World, we declare our unambiguous opposition to Linkage of Labour and Environmental Standards to WTO and to trade treaties. We also wish to disabuse the media and the governments in the developed countries of the notion that those who oppose Linkage are corporate interests and malign governments.

2. The demand for Linkage via a Social clause in the WTO (and corresponding preconditions on environmental standards for WTO-protected market access) is a reflection of the growing tendency to impose an essentially trade-unrelated agenda on this institution and on to other trade treaties. It is the result of an alliance between two key groups:

- (i) *Politically powerful lobbying groups that are "protectionist" and want to blunt the international competition from developing countries by raising production costs there and arresting investment flows to them; and*
- (ii) *The morally-driven human rights and other groups that simply wish to see higher standards abroad and have nothing to do with protectionist agendas.*

3. The former groups are not interested in improving the wellbeing in the developing countries; they are actuated by competitiveness concerns and hence are selfishly protective of their own turf. This is manifest, for example, in the selective nature of the contents of the proposed Social Clause: only issues, such as Child Labor, where the developing countries are expected to be the defendants rather than plaintiffs, are included. Thus, enforcement against domestic sweatshops, which is notoriously minuscule and lax in the United States where they abound in the textiles apparel

industry, is not in the Social Clause; nor are the rights of migrant labor which is subject to quasi-slavery conditions in parts of US agriculture.

Nor does the Social Clause look askance at yet other unpleasant social facts in the developed countries. For example, the United States has almost as little as 12% of its labor force in unions today. A country that insists on measuring trade openness of Japan by looking at "results" (i.e. actual imports), the US ought to be equally willing to treat the absence of unions in an industry as a *prima facie* presumption that there is some *de facto* deterrence to union formation. As it happens, unionization there has almost certainly been handicapped, among several factors, by legislation (on matters such as the right to hire replacement workers during a strike) that has impaired unions' chief weapon, the ability to strike.

Nor has any developed-country proponent of the Social Clause proposed that the developed countries ought to take a far greater commitment to labour rights than the developing countries that are at a much lower stage of development. Thus, while unionization must surely be permitted in developing countries, should not the United States require, in the interest of genuine economic democracy, union representation on Boards of Directors the way some European nations do? Ironically, in the United States, one cannot even begin to do this in a meaningful way since unions are absent from most factories in the first place. Thus, in these ways, we see that the moral face of these developed-country lobbies agitating for higher labour and environmental standards in the developing countries, whether they are labor unions or corporate groups, is little more than a mask which hides the true face of protectionism. They stand against the trading and hence the economic interests of the developing countries and are in fact advancing their own economic interests; and they need to be exposed as such.

4. On the other hand, there are also *morally-driven groups* that genuinely wish for better standards for labor and the environment in the Third World; and they must be fulsomely applauded. But their demands for Linkage, i.e. the inclusion of provisions for improvements in standards as preconditions for trade access in the WTO and other trade treaties and institutions, while not deceptive and self-serving, are nonetheless mistaken and must also be rejected. Superior ways of advancing these objectives and agendas exist, which lie outside of the trade context and can be proactively pursued instead. Thus, consider:

(i) *Self-serving Selectivity: Contaminating the Moral Agenda:* If we treat these standards from a moral viewpoint as "social" and "ethical" agendas to be advanced everywhere, we still confront the fact that the agendas will continue to be selected from the viewpoint of trade-competitiveness concerns. Therefore, they will inevitably tend to be selectively biased against the developing countries. They will also protect the developed countries from symmetric scrutiny of their own violations of non-selected social and ethical, "human rights" norms that have been incorporated in international agreements such as the United Nations International Covenant on Civil and Political Rights, and the United Nations Covenant on the Child. This has already happened. What a neutral and universal approach to the use of trade sanctions requires instead is that their use in the case of all significant human rights norms be subjected to an agreement among nation states. Thus, the possibility of juvenile capital punishment in the United States, an egregious violation of the Covenant on the Child that offends the moral sense of nearly all civilised nations today, should equally be a subject for suspension of trade access to US products generally.

If trade proscription against the United States is rejected, as we agree, on the ground that it cannot proscribe even the widely-condemned possibility of juvenile capital punishment because it is politically extremely difficult to do so, how can the inability of India and Bangladesh to effectively

eliminate (even "exploitative") child labor, an immensely more difficult economic and social problem, become a subject for rapid-fire proscription via the Social Clause?

Surely, it makes sense to treat all such lapses from the human rights covenants, by every country, in their total economic, political and social context, advancing sophisticated and nuanced public policy programs that enable sustainable progress to be made on implementing the desired change; and this approach should be symmetrically applied to the problems endemic to the developed countries as much as to those afflicting primarily the developing countries. In short, the human-rights approach must reflect a genuine commitment to the entire slate of important human rights, treating the matter of sanctions impartially and symmetrically sans borders and without favouritism towards the rich and the powerful nations.

We are distressed that we see no evidence that, except for a few groups such as Amnesty International, this symmetric approach is taken to the issue of trade sanctions. The developing countries, looking at the Social Clause for instance, cannot but regard it as having therefore been contaminated by the selectivity imposed by the rich nations.

And this is not a matter for surprise. For, deep down, this selectivity reflects the competitiveness concerns that inevitably dominate trade negotiations and treaties and institutions: competitiveness is the name of the trade game! You cannot expect anything but hard play if you go to a poker game; to expect the poker players to burst into singing hymns while they drink whiskey and utter profanities is to be naive.

*(ii) You Cannot Kill Two Birds with One Stone:* By thus contaminating and devaluing the moral objectives, even though the subset of groups advancing them have truly a moral rather than a disguised competitiveness objective, we wind up harming both trade liberalization (which is the true objective of the WTO) and advancement of the social and moral agendas. Thus, the proponents of

trade liberalization divide over the appropriateness of these agendas: developing countries oppose them and developed countries end up with internal division. In the United States, we have Democrats who want to go after the developing countries on their standards even more vigorously than the Clinton administration and many Republicans who instead oppose Linkage altogether. Not surprisingly, the Clinton administration failed to get fast-track authority for trade liberalization renewed for the first time in US history last year.

At the same time, the advancement of the social and moral agendas gets held up because it is being pursued (under protectionist pressures) in an evidently cynical and self-servingly selective fashion by the developed countries that push for it, mainly the United States and France.

So, we undermine both of these important tasks that we, as progressive intellectuals and NGOs in the Third World would like to see advanced. The underlying reason for such an unsatisfactory outcome is that you are trying to kill two birds with one stone. Generally, you cannot. So, trying to implement two objectives, the freeing of trade and advancing social and moral agendas, through one policy instrument such as WTO, you will undermine both. You will miss both birds.

*(iii) Our Proposal: Get Another Stone:* This leads to our main proposal: Linkage is like trying to kill two birds with one stone, so we need another stone or a whole slew of sharp pellets. That stone has to be a pro-active set of agendas, at appropriate international agencies such as the ILO, UNICEF and UNEP; moral and financial support for NGOs in the developing countries; and so on. The opponents of this idea argue that the ILO, for instance, lacks teeth. But the teeth fell out because the ILO was sidelined when the United States had pulled out of it. Today, if we are serious, we can open ILO's mouth and give it a new set of teeth.

ILO can be asked, like the WTO with its built-in trade reviews under the Trade Policy Review Mechanism (TPRM), to bring out annual Review Reports on member countries' conformity to the ILO conventions; UNICEF could do the same for Children's Covenant; UNEP for Environmental Standards, and so on. Appropriate agencies putting out such impartial reviews would enable numerous NGOs to build their crusades on impartial analyses that are truly symmetric just the way the WTO has managed with the TPRM. Do not underestimate the value of information and exposure as long as it is impartial between nations. The Dracula Effect --- expose evil to sunlight and it will shrivel up and die --- can be very potent indeed.

5. *Therefore, we urge that Linkage be buried.* It should be replaced by Appropriate Governance at the international level, where each agenda is pursued efficiently in appropriate agencies. This does not mean that there are no necessary interfaces. This is especially true between UNEP and WTO to address inherently overlapping problems: e.g. the solution to conflicts between trade-sanction provisions in MEAs and WTO obligations, and the “values”-related unilateralism on sanctions that led to the contentious Dolphin-tuna and Shrimp-turtle cases. It is important to remember, at the same time, that these interfaces can be addressed often by imaginative solutions that can be pursued without sacrificing either trade or the environment.

In lieu of the confrontations that have become common now between groups pushing for trade and those pushing for the social agendas, it is time at Seattle that we banish the Linkage issue from the WTO agenda. Instead, we must devote all energies to these "necessary-interface" questions with goodwill and creative solutions.

6. If the developed countries' governments, intellectuals and NGOs are allowed to do otherwise, the Third World will have to bear the burden. This is evident from what happened to the successful crusade to get Intellectual Property Protection (IPP) into the WTO.

This subject does not really belong to the WTO whose organizing principle must be the basic attribute of free trade: that each member benefits since trade liberalization is a mutual-gain policy. By contrast, the WTO Trade-Related Intellectual Property Rights or TRIPs Agreement, which enshrines IPP into the WTO, essentially redistributes income from the developing to the developed countries. We cannot even claim that the TRIPs Agreement advances the world good: nearly all economists agree, for instance, that the 20-year Patent length, which was built into the TRIPs Agreement, is almost certainly inefficient and exploitative of the vast majority of the developing-country nations. But it got into the WTO, as part of the Uruguay Round agreement, simply because it was backed by developed-country power as reflected in Special 301 retaliations by the United States, and also because of endless repetition in the public arena-despite economic logic to the contrary-that it was good also for the developing countries (an assertion in which the World Bank economics leadership joined, evidently under the shadow of Washington). The intellectual objections of Third World economists, the negotiating objections of some of their governments, were simply brushed aside. The same is likely to happen on Linkage unless the Third World unites and is vociferous. This time, the NGOs of the developed countries, like the developed-country corporate lobbies under IPP, are into the game instead. In fact, they now argue that, having delivered IPP to Corporations, the WTO must now give Linkage to Labor and for Nature. So, having been successfully harmed once, we are to be harmed again for equity among the lobbies of the developed countries. The NGOs pushing for Linkage need to be reminded that IPP was pushed into the WTO, not for corporations everywhere, but for their corporations!

*7. It is time to raise our voices and call a spade a spade.* The WTO's design must reflect the principle of mutual-gain; it cannot be allowed to become the institution that becomes a prisoner of every developed-country lobby or group that seeks to advance its agenda at the expense of the

developing countries. The game of lobbies in the developed countries seeking to advance their own interests through successive enlargement of the issues at the WTO by simply claiming, without any underlying and coherent rationale, that the issue is "trade-related", has gone too far already. It is time for us to say forcefully: Enough is enough.

*Table 1. Post-UR Tariff Rates: United States*

Products	Average Tariff	Proportion of Imports Subject to Tariff Rates					
		Duty Free	0.1-5.0	5.1-10.0	10.1-15.0	15.1-35.0	Over 35
Total	3.50	39.50	42.90	10.20	1.30	6.00	0.10
Fish and Fish Products	1.20	87.50	1.90	4.00	6.40	0.20	0.00
Wood Products	0.50	89.50	5.60	4.80	0.10	0.00	0.00
Textiles and Clothing	14.60	4.90	9.20	25.90	8.00	52.00	0.00
Leather, Rubber, Footwear	7.10	12.70	33.20	47.30	2.90	1.50	2.40
Metals	1.50	59.70	30.80	8.90	0.60	0.00	0.00
Chemicals and Photographic Supplies	2.80	31.50	49.10	19.40	0.00	0.00	0.00
Transport Equipment	3.50	8.70	85.20	0.30	0.70	5.10	0.00
Non-electric Machinery	1.00	62.80	35.00	2.20	0.00	0.00	0.00
Electric Machinery	2.00	35.90	61.10	2.80	0.20	0.00	0.00
Minerals and Precious Stones	2.50	59.80	14.30	23.50	1.30	1.10	0.00
Other Manufactured Articles'	1.50	59.40	31.30	8.80	0.40	0.10	0.00

Source: UNCTAD (1996)

*Table 2. Post-UR Tariff Rates: European Union*

Product	Average Tariff	Proportion of Imports Subject to Tariff Rates					
		Duty Free	0.1-5.0	5.1-10.0	10.1-15.0	15.1-35.0	Over 35
Total	3.60	37.70	34.20	19.00	8.20	0.90	0.00
Fish and Fish Products	10.20	6.90	14.50	29.60	31.20	17.80	0.00
Wood Products	0.70	88.50	3.00	8.50	0.00	0.0	0.00
Textiles and Clothing	9.10	1.30	19.10	25.50	54.10	0.00	0.00
Leather, Rubber, Footwear	5.1	24.50	40.70	23.00	0.00	11.80	0.00
Metals	1.10	73.70	19.60	6.70	0.00	0.00	0.00
Chemicals and Photographic Supplies	4.50	27.20	4.00	68.80	0.00	0.00	0.00
Transport Equipment	6.50	23.40	15.70	59.90	0.80	0.20	0.00
Non-electric Machinery	1.40	33.90	63.10	3.00	0.00	0.00	0.00
Electric Machinery	5.20	3.90	69.90	8.30	17.90	0.00	10
Minerals and Precious Stones	0.60	85.20	10.40	3.30	1.10	0.00	0.00
Other Manufactured Articles	3.50	24.20	58.90	12.00	4.30	0.60	0.00

Source: UNCTAD (1996)

*Table 3. Post-UR Tariff Rates: Japan*

Product	Average Tariff	Proportion of Imports Subject to Tariff Rates					
		Duty Free	0.1-5.0	5.1-10.0	10.1-15.0	15.1-35.0	Over 35
Total	1.70	71.00	16.60	9.70	2.00	0.70	0.00
Fish and Fish Products	4.00	1.90	70.70	25.70	1.70	0.00	0.00
Wood Products	0.70	89.20	4.30	6.50	0.00	0.00	0.00
Textiles and Clothing	7.60	4.50	19.10	54.70	21.50	0.20	0.00
Leather, Rubber, Footwear	8.30	40.60	0.90	34.00	2.90	21.5	0.10
Metals	0.50	84.20	14.00	1.80	0.00	0.00	0.00
Chemicals and Photographic Supplies	1.90	47.20	49.70	3.10	0.00	0.00	0.00
Transport Equipment	0.00	100.00	0.00	0.00	0.00	0.00	0.00
Non-electric Machinery	0.00	100.00	0.00	0.00	0.00	0.00	0.00
Electric Machinery	0.10	97.30	2.70	0.00	0.00	0.00	0.00
Minerals and Precious Stones	0.20	94.50	3.10	2.40	0.00	0.00	0.00
Other Manufactured Articles	0.60	86.90	9.10	4.00	0.00	0.00	0.00

Source: UNCTAD (1996)

**Table 4: Uruguay Round Tariff Bindings and Actual Tariff Equivalents of Agricultural Protection, 1986-2000**

Product	Actual Equivalent (percent) 1989-1993	Tariff Binding (percent) Final Period 2000	Proportional Reduction by 2000	Dirty Tariffication <sup>a</sup> 1986-1988	Binding 2000/Actual Tariff Equivalent 1989-1993
<b>European Union</b>					
Wheat	68	109	36	1.60	1.60
Coarse Grains	89	121	36	1.42	1.36
Rice	103	231	36	2.36	2.24
Beef and Veal	97	87	10	1.00	0.90
Other Meat	27	34	36	1.32	1.26
Dairy Products	147	205	29	1.63	1.39
Sugar	144	279	6	1.27	1.94
All Agriculture					
Unweighted Average	45	73		1.61	1.63
Standard Deviation	57	96		1.58	1.68
<b>United States</b>					
Wheat	20	4	36	0.30	0.20
Coarse Grains	2	2	74	2.00	1.00
Rice	2	3	36	5.00	1.50
Beef and Veal	2	26	15	10.33	13.00
Other Meat	1	3	36	0.67	3.00
Dairy Products	46	93	15	1.09	2.02
Sugar	67	91	15	1.50	1.36
All Agriculture					
Unweighted Average	13	23		1.44	1.77
Standard Deviation	22	35		1.20	1.59

a: Announced base tariff rate as a ratio of actual tariff equivalent in the base period.

Source: Ingco (1995)

*Table 5: Unweighted Average Percentage Post-UR Tariffs in Agriculture: APEC*

*Members*

Country	Austr- alia	Canada	Indo- nesia	Japan	Korea	Mexico	Malay- sia	New Zealand	Phili- ppines	Singa- pore
Product										
Paddy rice	1.0	0.0	9.0	444.0	49.0	8.0	49.0	1.0	49.0	2.2
Wheat	0.0	26.0	0.0	193.0	13.0	0.0	13.0	0.0	13.0	2.7
Grains	0.0	24.0	6.0	180.0	95.0	0.0	95.0	0.0	95.0	5.3
Non-grain crops	3.3	3.0	38.3	38.7	47.7	3.0	47.7	3.3	47.7	7.5
Processed rice	0.0	7.0	0.0	36.5	41.0	0.0	41.0	0.0	41.0	3.9
Meat	0.5	26.0	10.7	193.0	32.5	19.5	13.0	0.5	13.0	3.1
Milk	7.0	157.0	0.0	207.0	111.0	4.0	111.0	7.0	111.0	4.2
Other food	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	6.1

Source: The Pacific Economic Cooperation Council for APEC, 1995, Survey of Impediments to Trade and Investment in the APEC Region.