



THE FUTURE OF THE WTO AND THE NEW TRADE ROUND

REPORT OF A CEPS WORKING PARTY

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This report is based on discussions in a CEPS Working Party on the WTO and the New Trade Round. The members of the Working Party participated in extensive debate in the course of several meetings and submitted comments on earlier drafts of this report. Its contents contain the general tone and direction of the discussion, but its recommendations do not necessarily reflect a full common position reached among all members of the Working Party, nor do they necessarily represent the views of the institutions to which the members belong. A list of participants and invited guests and speakers appears at the end of the report.

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Principal Conclusions

1. WTO members should launch an extensive, but not overburdened, new round of trade negotiations in Qatar in November this year for the purpose of:
 - maintaining the momentum behind the rules-based trading system and pushing ahead in further reducing trade barriers so as to reap the substantial economic benefits that remain to be gathered,
 - enabling the problems and needs of developing countries to be carefully addressed and allowing for improvements in the functioning of the WTO, including dispute settlement, and
 - facilitating the broadening of the discussion of multilateral trade and investment policies.
2. WTO members should simultaneously consider how to ensure that the raising of social welfare through trade liberalisation does not conflict with legitimate environmental objectives or undermine social development whilst ruling out the use of trade sanctions to achieve implementation of environmental and labour rules.
3. A new round will provide for substantive negotiations on a range of issues such that all members of the WTO will be able to identify areas in which they perceive benefits and generate opportunities for mutually beneficial liberalisation within a context framed by long-term development considerations.
4. The launch of a new round requires an injection of political will and direction in the form of a shared vision on broad long-term objectives.
5. The developing countries form the majority of the members at the WTO and now have a much greater interest in international trade and the world trading system. In this context, the launch of the new round should recognise that:
 - WTO commitments must be evaluated in the context of the overall development process;
 - mechanisms are required that allow for the effective inclusion of all members in trade negotiations whilst ensuring that the pressure of numbers does not undermine efficient decision-making;
 - developing countries need and require suitable assistance to enhance their capabilities in dealing with WTO and trade policy issues, including effective participation in the Dispute Settlement Procedure and capacity-building for implementation of commitments;
 - developed countries must honour, and make clear now that they will honour, their commitments on textiles and clothing; and
 - there is enormous potential for further trade *between* developing countries.
6. On trade and environmental and labour issues,
 - the way forward is to adopt an approach of parallelism. There should be a commitment at the launch of the round to address these issues as the new round proceeds but without any linkage with the negotiations themselves.
 - The WTO should be involved to help ensure that the trading system itself does not undermine internationally agreed rules regarding labour rights or the environment, but any link between implementation of labour rights and environmental rules to trade sanctions must be rejected.
7. Corresponding companion discussions of competition policy and investment issues related to trade should also take place and if consensus is achieved, they could be added to the agenda of negotiations in an appropriate way.
8. With regard to the Dispute Settlement Procedure,
 - members should consider whether, and how, the working of the system would be improved if compensation, in terms of lower trade barriers elsewhere, rather than retaliation, were to be encouraged when panel rulings are not implemented.
 - The case for professional panels should be considered whilst the broader issue of the balance between the political and legal bodies within the WTO needs to be assessed but without undermining WTO disciplines or enforcement mechanisms.

THE FUTURE OF THE WTO AND THE NEW TRADE ROUND

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Executive Summary

The world trading system is at an important juncture. The WTO is in many ways quite distinct from its predecessor the GATT and needs to reassess itself in the light of the importance of developing country members, the lessons that have been learnt from the first years of operation of the WTO and implementation of the Uruguay Round Agreement and the need for wider support from civil society, including the business community.

Why is there a need for a new round?

Doing nothing or implementing a very limited agenda of issues for negotiation are not realistic alternatives to a comprehensive new round of multilateral trade negotiations. A continued pause in trade liberalisation risks the real danger of 'backsliding' with an increase in the prevalence and severity of non-tariff barriers to trade. A minimalist approach fails to address the fundamental problems with the WTO that are perceived by the developing countries, and for different reasons, civil society groups. Progress on a limited range of issues may be difficult to achieve in the absence of a wide-range of possible trade-offs.

Launching a new round would be a positive approach to addressing the institutional issues that the WTO faces and would help to reinforce its legitimacy and fairness. In particular a new round would:

- help to maintain the momentum behind the rules based trade system and push ahead with further trade liberalisation in areas such as agriculture, services and industrial tariffs and so reap the substantial economic benefits that remain to be gathered
- enable the problems and needs of developing countries, and in particular of the least developed nations, to be carefully addressed
- allow the international community to consider carefully appropriate ways of broadening the discussion of multilateral trade and investment policies
- identify methods of involving civil society groups in discussions on trade policy issues and, if feasible, formulate mechanisms by which NGOs, including business organisations, can contribute expertise that improves the quality of, but does not interfere with, WTO decision-making.
- consider how the WTO can ensure that the raising of social welfare through trade liberalisation does not conflict with legitimate environmental objectives or undermine social development whilst ruling out the use of trade sanctions to achieve implementation of environmental and labour rules
- ensure that the continuing trend in signing regional (preferential) trade agreements does not undermine the global trading system
- address issues relating to the operation of the Dispute Settlement System
- discuss policies and possibly disciplines regarding new issues of particular importance, such as electronic commerce and biotechnology
- help to recognise, and then negotiate measures that will realise, the enormous potential for intra-developing country trade.

A new round, extensive in coverage but not overloaded, will allow for substantive negotiations on a range of issues such that all members of the WTO will be able to identify areas in which they perceive benefits. It will allow attention to focus upon fully integrating the developing countries into the process and procedures of the WTO whilst offering both developed and developing countries opportunities for mutually beneficial liberalisation within a context framed by long-term development considerations. It will also provide for changes to facilitate a clearer relationship between the WTO and civil society groups that reflect the concerns of both developed and developing countries.

What is needed to launch a new round?

Of primary importance to the launching of a new round is political will together with greater tolerance, fairness and trust. What has been lacking is a sense of a shared vision on broad long-term objectives and how the world trading system should develop. This has made consensus much more difficult to achieve. In this context, organising the new negotiations around the theme of pushing forward economic development may be useful. There is clearly a need for a rapprochement between the developed and developing countries. In addition, a healthy relationship between the EU and the US is necessary, but not sufficient for the launch of a new round.

Framing solutions – Key issues that the round must address

The WTO in the context of economic development

Implementing Uruguay Round commitments

- Mechanisms need to be developed for evaluating the implementation of WTO commitments in the context of the overall development process and in particular with regard to institutional and resource constraints. It is important, however, to distinguish between problems of implementation and the re-negotiation of commitments.
- For the next round, it should again be recognised that some measures may be more difficult and costly to apply in developing countries and may have implications for resources that require longer periods for implementation. Attention must be given to the capacities and capabilities that are necessary for implementation of commitments and how these can be enhanced.

Internal transparency and developing countries' participation in the WTO

- Mechanisms are required that allow for the effective inclusion of all members in trade negotiations whilst making sure that the pressure of numbers does not undermine efficient decision-making.
- Some form of informal discussion and consensus-building is necessary for efficient negotiations to take place. This needs to be accompanied by effective communication and transparency within the organisation. Small-group discussions between the main players must spread and increasingly take into account the perspectives of the broad membership and the fact that more and more members have an increased stake in international trade.
- Developing countries need to be able to develop capacities for dealing with WTO and trade policy issues.
- Related to this, the WTO could coordinate the development of a trade policy research network. Such networks can play an important role in stimulating cooperation and coordination and in building consensus.

- There is a case for *a more active role for the Director General of the WTO* in terms of facilitating negotiations and exploring possibilities. However, it is imperative that the WTO Secretariat is, and is seen to be, neutral for it to be able to independently develop initiatives in response to conflicts that become arise in the course of negotiations.
- For the WTO to achieve inclusiveness of all members, the over-riding imperative of any institutional reform is that each member must be assured that it, alone or collectively, where resource constraints favour banding together with similar interested members, will be able to effectively participate in negotiations on issues that are of particular importance to that country.

Textiles and clothing

- The developed countries must honour, and make clear now that they will honour, their commitments on textiles and clothing both in terms of removing quantitative restrictions and of ensuring that they will not be replaced by a surge in the use of anti-dumping or safeguard measures.
- Ways of monitoring the overall degree of trade policy restrictiveness in textiles and clothing should be developed. The developed countries could then commit themselves to not increase the level of restrictiveness in textiles and clothing. Alternatively, the developed countries could agree to limit the use of safeguards to a specific number, say five, tariff headings.

Anti-dumping policies

- The next round of trade negotiations should consider how to formalise commitments towards developing countries in the Agreement on Anti-Dumping. This could involve discussion of a higher *de minimis* dumping margin and import share threshold in cases involving developing countries, a commitment to provide information to the relevant developing country government and to consult at all stages of the procedure, and an exploration of ways in which assistance can be provided to allow developing country firms to effectively participate in investigations against them.
- The increase in the number of countries using anti-dumping policies, including developing countries, has resulted in substantial diversity in the conduct of anti-dumping investigations across member countries and requires further attention to be given to enhancing procedural safeguards and transparency. This should include a review of the ‘sunset clause’ and attention to the issue of circumvention. The latter will probably require progress to be made on the harmonisation of non-preferential rules of origin. Progress on rules of origin would be beneficial to all trading countries by increasing certainty and the transparency of international trading rules.

The nature of the WTO and global governance

The ‘trade and’ issues

- There is a real concern on the part of developing countries that if provisions were added to the WTO to enable sanctions to be imposed for lax labour or environmental laws that these would be abused for protectionist purposes in developed countries. It is abundantly clear that the developing countries will not accept any linkage between trade sanctions and labour and environmental laws and it is fruitless for developed countries to seek to exert pressure on the developing countries to acquiesce. Nevertheless, the concerns of many civil society groups cannot simply be ignored if there is to be broad support for the WTO and further trade liberalisation.

- The way forward is to adopt an approach of parallelism. There should be a commitment at the launch of the round to address these issues as the new round proceeds but without any linkage with the negotiations themselves. Thus, trade can be related to these issues in the political arena. The WTO should be involved to help ensure that the trading system itself does not undermine internationally agreed rules regarding labour rights or the environment. However, any attempt to link implementation of labour rights and environmental rules to trade sanctions must be rejected.
- The political link could be developed in the form of the launch of multi-institutional fora on social development (labour standards) on the one hand, and on the environment on the other, at the same time as the new round of trade negotiations is initiated.

Trade and social development

- Ensuring that trade and social development expand together and that the social benefits of trade liberalisation are maximised mainly requires attention to non-trade policies, such as labour market regulations, education and training and involves careful consideration of technical assistance programmes and other forms of aid. The key issue for trade policy is the timing and phasing of trade liberalisation. The challenge for the international community is to devise ways of facilitating the adoption of necessary flanking policies to accompany trade reform to ensure that the benefits that flow from trade are harnessed to improve social development.
- Initiatives on corporate responsibility and the role of voluntary codes of business conduct can be complementary to increasing governmental responsibility for basic social standards and the development of suitable global values.
- A multi-institutional forum on labour standards should have a broad membership, including the WTO and the ILO, and should provide for the joint analysis of problems, the sharing of experiences and the search for appropriate solutions. The work of the forum should allow for input from, and discussions with, appropriate civil society groups.

Trade and the environment

- At present, the key issue for the WTO is how to ensure consistency and avoid conflict with the implementation of the various multilateral environmental agreements that have been signed, such as CITES, the Basle Convention on Hazardous Waste and the Montreal Protocol.
- The WTO could accept trade actions that are consistent with multilateral environmental agreements subject to provisions that ensure that the environmental agreement concerned has the support of the vast majority of WTO members. This would protect countries, in particular developing countries, from pressure from other countries to adopt inappropriate environmental policies or suffer trade sanctions as a consequence.
- The WTO could contribute to global environmental objectives by negotiating the liberalisation of trade in environmental products, goods and services that are deemed to be ecologically friendly. It is likely that agreement to reduce subsidies in agriculture and fisheries would have environmental benefits.
- It would be useful to clarify Article XX, which provides for exceptions from GATT/WTO obligations for specific policy objectives. This would help to make apparent when and how the implementation of environmental policies is WTO-consistent.
- At present, WTO rules are focused almost entirely on product rules and leave little scope for policies that are related to production processes that are not part of the characteristics of the

final product, which often lie at the heart of environmental issues. This is an area where discussions could help to clarify the existing situation and identify if additional disciplines are feasible.

Trade and competition policy

- Again, the most appropriate response appears to be one of initiating parallel discussions, which can help to clarify the relevant issues and allow countries to identify their own interests and positions. If it were to become apparent that there are certain issues, or core practices, where consensus could be achieved, then it might be that these could be infiltrated into the agenda of trade negotiations in an appropriate way.
- Parallel to the work of the WTO Working Group, the Global Forum on Competition Policy could enhance efforts being made to promulgate mutual understanding between different authorities and to contribute to the convergence of thinking and working practices around the world. The WTO Working Group should continue to discuss the nexus between trade and competition policy and so contribute to greater understanding and the identification of key issues.

Trade and investment

- This is an issue where some members perceive that there is substantial scope for negotiations on further disciplines, whilst at the same time there is unwavering resistance to any negotiations from other members. Again, a policy of parallel discussions offers the most appropriate response at present. This would allow a dialogue between all the interested parties without formal negotiations. If these discussions were to identify for all concerned members the scope for beneficial negotiations, then these could perhaps be introduced at some stage during the round.

The Dispute Settlement Procedure (DSP)

- Although most observers seem to feel that the DSP is working reasonably well, and there are no strong calls for a major overhaul of the system, there is scope for some changes to improve the functioning of the system.
- Mechanisms are required that encourage the offering and acceptance of compensation, in terms of lower trade barriers elsewhere, rather than retaliation, when panel rulings are not implemented promptly.
- Means of facilitating the more effective participation of developing countries are required. This requires a review of the amount and nature of technical assistance. Developing countries need greater capacities to identify violations as well as assistance in responding to complaints. Institutional constraints should be considered when deciding on the schedule of implementation by developing countries of panel rulings.
- Consideration must be given to issues relating to transparency and the involvement of external parties such as NGOs. Openness, in terms of de-restriction of documents should be continued and the viability of (limited) public access to hearings should be considered. In certain instances NGOs could play a valuable role at the WTO in providing specific expertise to improve the quality of decision-making. There are a number of practical hurdles, however, such as, identifying the relevant organisations for particular issues, and defining when, how and in what form and quantity submissions can be made by NGOs. Guarantees would have to be put in place to ensure balance and fairness for all WTO members.

- The case for professional panels should be considered. The professionalisation of panels would probably lead to the more rapid conclusion of cases and greater consistency of outcomes. But there would be significant implications for the level of WTO resources.
- The broader issue of the balance between the political and legal bodies within the WTO needs to be considered. At present, it is difficult for the members to question or overturn a decision by the Appellate body whilst at the same time the Appellate body is seen to be law-making and involved in what are sensitive political debates. Greater scope needs to be provided for diplomatic involvement in politically sensitive disputes, whilst ensuring that there is no weakening of WTO disciplines and enforcement mechanisms.

Chinese accession to the WTO and the Dispute Settlement Procedure

- The accession of China will provide a significant step towards making the WTO a truly global institution. However, Chinese accession will raise important issues for the functioning of the WTO.
- The key issue regarding China's participation is implementation and how the other contracting parties will respond to the expected many cases of non-compliance that will initially arise.
- A number of approaches could help to alleviate this problem: careful discussion of transition periods for China to implement obligations; efforts to settle cases in the consultation phase of the DSP, the use of lobbying and overseas missions in China to effect change; and the acceptance of concessions elsewhere when China is unable to quickly effect the changes required by the finding of the DSP. Again, if more flexible procedures were developed that looked at implementation in the context of the development process, then these problems would become more manageable and less divisive.

Legitimacy and external transparency

- The WTO has done much to increase openness but more could be done to improve the provision of information. There could be consideration of limited public access to meetings and panel hearings, although this is a contentious issue and faces the practical problem of how and to whom access would be granted. On the other hand, greater openness would improve the reputation of the WTO in the wider community. However, it has to be recognised that there are constraints on this process of openness, because some documents, specifically those that are subject to negotiation, must remain confidential until after agreement has been reached.
- The lobbying activities of NGOs should focus on national governments and parliaments; they must not become involved in the lobbying of negotiators or secretariat officials. The latter would be a step backwards in terms of the democratic accountability of the WTO. Attention in the WTO should be given to how the specific expertise of particular NGOs, including business organisations, can be effectively utilised to improve the quality of decision-making. National governments also have a responsibility to engage in a more effective dialogue with civil society groups and explain to the public more carefully the rationale behind positions taken on trade policy issues.

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1. Introduction

The WTO performs two key roles: it oversees the effective implementation of a rules-based international trading system and it facilitates the multilateral removal of barriers to trade. The WTO is an inter-governmental organisation that takes decisions on the basis of consensus. The predecessor of the WTO, the GATT, concentrated upon instilling discipline and liberalising measures at the border, tariffs and quantitative restrictions, overtly applied as part of the members' trade policies. More and more the GATT and now the WTO have become involved in defining how domestic rules and regulations, introduced to achieve genuine national objectives, can be applied without distorting trade and discriminating against products and services from other countries.

The apparent alternatives to this global rules-based system are a situation where might (political and economic) is right or the fragmentation of the world economy into a small number of confrontational regional trading blocs. Neither of these alternatives is at all appealing and would without doubt offer up a lower standard of living for the majority of people in most trading countries. Thus, the maintenance of a fair and credible rules-based system is in the interest of all countries, developed and developing, large and small. No feasible alternative has yet been advanced. Nevertheless, ensuring the fairness and credibility of the system are crucial to its survival. These are issues that need to be constantly reviewed in a dynamic organisation such as the WTO.

The WTO and the world trade system are currently at an important juncture. The WTO now has a very large membership and needs to redefine itself and its procedures in the light of the fact that a majority of its members are developing countries. On the one hand, the importance of trade and investment for economic development has been dramatically reinforced, particularly in the form of conduits for technology and ideas. As a consequence, developing countries now have a much larger interest in international trade and the system of rules that define the world trading system. On the other hand, the Uruguay Round Agreement, which launched the WTO, placed a large number of obligations on countries, some of which have been difficult to meet given their severe resource constraints and weak institutions. For the developed countries too there is still much to be done in anchoring the rules-based system and in providing for a more efficient and less confrontational settlement of trade disputes. There is still enormous scope for further liberalisation in a range of sectors, and new issues related to technological advancement, such as electronic commerce and biotechnology, require attention.

In addition, unlike at any other time before, the WTO is subject to intense public scrutiny and criticism. Globalisation has generated genuine fears over the impact of trade liberalisation on the environment, on labour rights in developing countries, on wages and job security and on cultural identities. In many cases the concerns for non-trade issues such as basic labour rights are best dealt with in other institutions that focus primarily on these issues. The WTO cannot survive in a vacuum, however, and increasing contact and dialogue with civil society must be developed whilst preserving the independence and impartiality of the secretariat. Nevertheless, the primary responsibility for responding to the needs of domestic constituencies must lie with national politicians. The WTO must develop ways, in conjunction with other international organisations, to ensure that trade liberalisation does not conflict with internationally agreed environmental or social objectives.

In short, the WTO is facing a number of difficult issues. The extent to which it deals effectively with these issues will largely determine the evolution of the world trading system. If it fails to

maintain the confidence of the developing countries in the rules-based system and achieve conciliation with civil society groups whilst at the same time maintaining the motor behind the cooperative rather than adversarial approach to international trade policy, then there is a real possibility that protectionist sentiments could rise and the system will move backwards to the detriment of global economic welfare.

In this report we argue that these issues would be best addressed in the context of a new round of multilateral trade negotiations. In the first section we outline more specifically why a new round is needed and then what is necessary for the round to be launched. In the second part of the report we concentrate more on the substance of what the round should contain and identify two key elements: addressing the needs of developing countries and the nature of the WTO in the context of global governance.

2. Why a new round?

The Uruguay Round of multilateral trade negotiations, which gave birth to the WTO, lasted almost nine years and was the most comprehensive and complicated of the trade rounds completed since the Second World War. There are many facets of the WTO and the Uruguay Round agreement that have been a considerable success and have certainly led to a more stable, rules-based environment in which international commerce can be efficiently undertaken. At the same time, the Uruguay Round has generated immense controversy and the WTO is perceived by many groups in society as being undemocratic and presiding over a system that is unfair and that compromises genuine objectives regarding the environment, social values and economic development.

Implementation of the WTO and the Uruguay Round agreements has exposed a number of problems and deficiencies. This is not entirely surprising. Some of these can be classified as teething problems and should be relatively straightforward to overcome. Other are more fundamental and require very careful handling. Developing countries have experienced considerable problems in implementing some of the commitments they assumed; the lack of effective liberalisation of textiles and clothing and agriculture in developed countries has created the impression of an unbalanced outcome of the round; the WTO is seen as secretive and remote from wider society, as well as insensitive to genuine concerns regarding the impact of trade on the environment and social development; and there are distinct problems regarding the effective participation of members in a large and expanding organisation that is quite different from its predecessor. These problems have been compounded by very public conflicts between the US and the EU over the implementation of some of the obligations they have adopted.

Why then is there a need for a new round of multilateral trade negotiations at this particular time? Before detailing exactly what a new round could achieve, we briefly examine the alternatives to a new round: a pause in trade liberalisation or a very minimalist approach that concentrates on a limited range of issues where further negotiations were mandated under the Uruguay Round agreement (agriculture and services) and where reassessments of specific parts of the agreement were envisaged, such as, the TRIPS agreement.

The idea behind a pause in trade negotiations is that the Uruguay Round was a far-reaching and momentous agreement and that careful consideration should be given to its achievements before proceeding to further liberalisation. This would also avoid further confrontation with those groups in society that are opposed to further negotiations. Whilst not denying the need for a careful review of the Uruguay Round Agreement, and in particular the economic implications, we argue that delaying further liberalisation would be very dangerous for the world trading system.

The basic view underlying both of these alternatives is that the pace of globalisation is too fast and that governments should seek to put a brake on international economic integration to allow individuals greater time to adjust to economic change. Clearly, globalisation poses important adjustment costs for some individuals, and there is a case for greater discussion of suitable policies that individual countries could implement to limit these costs. Nevertheless, it is not at all clear that refraining from further trade negotiations will necessarily constrain the pace of globalisation. Technological change and private decisions on investment and trade will continue apace. On the other hand, there is a real possibility that refraining from further negotiations will lead to significant steps backwards, in terms of the openness and stability of the international trading system. This would have a significantly negative impact on welfare throughout the world.

It is often argued that a continual programme of multilateral trade liberalisation talks is necessary to sustain the momentum towards internationally open markets. This reflects the view that failure to maintain such pressure does not preserve the status quo, but leads to a retrenchment from liberal trade. The usual analogy is that of a bicycle being peddled uphill. Once the pedals stop turning, then the bicycle rolls backwards. Thus, in a dynamically changing environment, the choice for the international community is not the status quo but rather whether to participate in framing the corridors along which globalisation travels or to allow uncoordinated economic integration together with the risk of a breakdown in trade relations between countries.

The minimalist view generates a small amount of momentum for the bicycle but fails to address the fundamental issues that became apparent in Seattle and that prevented many member countries from wishing to launch a new round at that particular point. Specifically, the suitability of the institutional framework of the WTO and existing negotiating procedures were called into question. We discuss these issues in more detail below but note here that a minimalist agenda would not properly address the needs of developing countries, which are best considered in the context of a round. The developing countries need an extensive approach to further negotiations.¹ At the same time, however, the scope of the negotiations must not become overloaded and too burdensome for effective participation by developing country members. This is the delicate balance that those who lead in defining the agenda for the next round must respect.

Furthermore, progress under the sector-by-sector approach that underlies the cautious approach to further trade liberalisation is likely to be much slower, and the political will to find agreement in the talks on agriculture and services appears to be weak in the absence of a broader approach with more scope for compromise and trade-offs. A new trade round would enhance the prospect of a successful conclusion of the negotiations on agriculture and services. Putting them in the context of a larger trade round would make it easier to identify trade-offs outside agriculture, thus enhancing the possibility of achieving substantial results.

In addition, the successful conclusion of negotiations for particular sectors would hinder the prospects for a new, more extensive round in the future. Those who achieve their objectives with limited sectoral negotiations will exert less pressure for general liberalisation in the future. Comprehensive negotiations offer a wide range of economic gains across sectors and issues and therefore a multitude of potential winners across all member countries. This in turn will increase the political support for further liberalisation.

¹ Stiglitz (1999).

2.1 The case for a new round

As each round of trade talks has brought discipline to certain aspects of commercial policy, it has become apparent that there are other substantial barriers to trade, previously hidden or obscured, which require subsequent attention. The lowering of tariffs, at which the GATT and WTO have been extremely successful, has been likened to the draining of a swamp: as the water level falls, all the other snags that constrain trade are revealed. Many of these snags are related to the way in which national regulatory policies are defined and implemented. These are the issues of deep integration.

In this way trade liberalisation becomes deeper over time, and the agenda for trade talks becomes more and more expansive. Related to this is that those who seek protection from trade will redirect their efforts away from policies that are effectively constrained by multilateral rules towards different forms of intervention. Thus, for example, as the ability of governments to raise tariffs to placate domestic groups lobbying for protection has been restrained, there has been increasing pressure for intervention to stem imports through the use of non-tariff barriers, including anti-dumping and safeguard measures.

In addition, technological progress is throwing up a range of new issues that have important implications for regulatory policies and international trade. Paramount amongst these are electronic commerce and biotechnology. A new round would enable the WTO to discuss and develop forward-looking policies on these issues rather than react retrospectively if a new round were to be delayed. Similarly, the continually changing structure of national production, and in particular the rising importance of services, requires attention and also entails that the new round must have a broad focus.

These are the standard arguments that have been put forward in favour of successive rounds of multilateral trade liberalisation talks. They are equally pertinent to the launching of a new round now. The economic gains from further liberalisation are likely to be significant particularly if progress is made in sectors where liberalisation has been largely postponed in the past, i.e. agriculture and textiles and clothing, and in services sectors where trade barriers often remain substantial. Benefits from increasing certainty in undertaking international commerce are difficult to quantify but are probably large. Such gains tend to be proportionately much larger for relatively small, open economies that are particularly vulnerable to adverse changes in external market conditions.

These arguments are perhaps even more compelling at a time when economic growth in the US and other industrialised countries is slowing. The pressure for protection from trade tends to rise during downturns in the economic cycle. Many fear that without a new round, there is a real danger of 'backsliding' with an increase in the prevalence and severity of non-tariff barriers to trade.² However, an important new ingredient has been added to the pot which has radically altered the international trade policy environment and which substantially enhances the case behind and the need for a new round of trade talks.

One of the defining features of the Uruguay Round that distinguishes it from earlier agreements is the comprehensive inclusion of developing countries³ into the WTO. The developing countries form the majority of the membership of the WTO. Other factors that distinguish the

² See Stiglitz (1999) for example.

³ Throughout we rather crudely talk about the developing countries as a bloc. However, the make-up of the group varies across issues and it is often useful to distinguish the problems of the least developed nations. In addition, some developing countries have been active participants in the WTO and GATT for many years and do not fall easily into the categorisation here. Nevertheless, what we describe are the main trends that have dominated the evolution of the GATT and the WTO and that are now important in determining its future direction.

WTO are the increased use of the legally binding Dispute Settlement Procedure and the incorporation of agriculture, services and issues such as intellectual property rights under global trading rules.

The Single Undertaking of the WTO entails that all of the Contracting Parties have equal obligations and therefore, equal rights. Previously, industrial countries dominated the GATT, which concentrated at first upon the removal of high tariff barriers. As more trade rounds were initiated, the industrialised countries added more issues to the agenda, but the developing countries were allowed to sign up to those provisions (codes) that they wished to. With the Single Undertaking the developing countries have had to adopt and implement the whole package of WTO rules.

The decision to participate fully in the WTO was not a policy adopted in isolation by individual developing countries but was in most cases part of a conscious policy towards general economic reform and liberalisation. Trade liberalisation is an integral, but not the only part of a broad package of policy reforms designed to push forward economic development. A new round of trade liberalisation is necessary to allow developing countries to anchor and enhance the reform programmes that they have adopted. A new round offers these countries the prospect of more effective participation in the negotiations so as to tailor further liberalisation to be more consistent with their development needs.

In this context the developed countries should seek to instigate an approach to a new round that facilitates a more constructive, strategic and long-term approach. This requires strong political leadership and interest. The actual negotiations will of course be based upon hard bargaining between government officials in the WTO. Thus, what is required is a careful consideration of the agenda to allow key issues from a long-term development perspective to be given sufficient priority and a more flexible approach in considering the inevitable trade-offs that are generated by the negotiations.

Trade liberalisation remains a vital part of the process of reform launched by the developing countries. More open trade not only allows countries to specialise and reap the benefits of their comparative advantages and exploit the larger markets that liberal trade provides for but also to benefit from the flow of knowledge and ideas that characterise the modern industrial environment, and which offer the prospects of raising productivity throughout the economy. The removal of restrictions on foreign commerce acts to increase competition and undermine inefficient domestic monopolies, encouraging the more productive use of resources and bringing the benefits of lower prices to consumers. The adoption of international customs practices helps to constrain the opportunities for corruption whilst, more generally, the effective implementation of global trading rules allows countries to lock in domestic reforms and provides a valuable signal to companies operating in a country that open access to overseas markets for parts and other inputs will be maintained.

Whilst the opening of the domestic market is itself beneficial, another key aspect of the development process is access to overseas markets. Participation in the WTO provides a measure of certainty for domestic firms selling in overseas markets that arbitrary measures that cut off access to those markets will not be imposed by overseas governments. In addition, industrial output in developing countries tends to be concentrated upon relatively few sectors with agriculture and textiles and clothing usually dominating. Hence, agreements that improve the extent and certainty of access in these products will have a relatively large positive economic impact upon developing countries. Here it is worth noting the large potential that exists for the expansion of mutually beneficial trade between developing countries. Furthermore, a new round could play an instrumental role in attaining that potential.

At the same time, it must be recognised that whilst trade liberalisation brings real benefits it does not come without problems and costs for certain groups in society. Policy-makers have a

serious responsibility address these problems. This is true for both developed and developing countries. For both groups of countries, however, the costs of not liberalising are likely to be much larger. The challenge for international policy-makers is to maximise the number of people who have a stake in trade liberalisation and to see that necessary flanking policies are put in place to ensure that social development and environmental sustainability proceed apace with commercial development.

For the developed countries there are clear benefits to be had from addressing the needs of the developing countries and enhancing the reform processes that have been put in motion. Not only would this stabilise the rules-based trading system and contribute to a positive vision of the future of the WTO, it would also help to ensure that developing countries maintain and enhance market access in sectors of interest to developed countries. There is also a range of issues where the developed countries would benefit from further negotiations, from effective liberalisation of trade in agricultural products, the broadening and deepening of liberalisation of services, reform of the Dispute Settlement Procedure to discussions of biotechnology and other new issues.

The WTO also needs to redefine its relationship with civil society. On the one hand this involves opening up documents and data to external inspection and analysis. In the modern information age, highly secretive organisations have difficulty in establishing their legitimacy in the broader society. Lack of external transparency in the past has contributed to some misconceptions regarding the WTO and its role. Lack of effective dialogue with the wider public has led to the view that the WTO is undemocratic and that the process of trade liberalisation has been dictated by large multinational companies. Substantial steps have been taken to correct these views, but more needs to be done.

The more difficult challenge is to address the demands from NGOs for more active participation in the functions of the WTO, such as the Dispute Settlement Procedure. This is particularly sensitive given the asymmetric endowment of NGOs between developed and developing countries. Nevertheless, there is a need to consider how mechanisms for improved openness at the WTO can be developed which contribute to the broader discussion and assessment of multilateral trade policies. In addition, there needs to be some contemplation of how NGOs could contribute to improving the quality and efficiency of decision-making, although it has to be recognised that there are some important practical hurdles that make some observers extremely reluctant to countenance such a development. This relates primarily to the dispute settlement mechanism. Attention to these issues of external transparency are necessary for cementing the legitimacy of the organisation in the wider society given the strong apprehensions that many individuals harbour about the process of trade liberalisation and globalisation. In general, however, the most appropriate route for NGOs to participate in trade policy issues is via national politicians and governments and this is where the primary responsibility for dialogue with wider society on trade policy issues rests.

Some of the main concerns of civil society groups relate to the so-called 'trade and' issues, and in particular, the relationship between trade and the environment and trade and basic labour rights. Again, the way in which the WTO responds to these issues will be important in fostering a more positive relationship with the wider society. On the issue of links with civil society there are quite different perspectives in different members of the WTO such that moving forward may be best facilitated through a comprehensive discussion in the context of a new round of negotiations. These are very sensitive issues and have to be considered carefully. As we shall argue below, however, it is clear that the developing countries will in no way accept any link between a lack of compliance with environmental or labour rules and the use of trade sanctions in the WTO.

In sum, there are several reasons why a new round of negotiations is needed:

- The alternatives to a new comprehensive round of doing nothing or negotiating on a very limited set of issues are clearly less attractive.
- A comprehensive new round will allow for substantive negotiations on a range of issues identified by all members of the WTO in which they perceive benefits.
- Such a round will allow attention to focus upon fully integrating the developing countries into the process and procedures of the WTO whilst offering both developed and developing countries opportunities for mutually beneficial liberalisation within a context framed by long-term development considerations.
- A round will also provide for changes to facilitate an improved relationship and dialogue between the WTO and civil society groups that reflect the concerns of both developed and developing countries.

Having said this there are a number of prerequisites that are required before a round can be successfully launched. Without these in place there is little point in launching a round as the damage that a failed round could cause the WTO might be much greater than that from not launching a round at all. It is to this issue that we now turn.

2.2 What is needed to launch the round?

Of primary importance to the launch of a new round is political will and a desire to push forward with trade liberalisation and the enhancement of the WTO together with greater tolerance, fairness and trust. A consensus to launch a new round will only be achieved if all members recognise the aspirations of each of their trading partners and that, as in the past, members (or groups of members) with a significant interest in a particular issue must be effectively involved in the relevant negotiations.

As in previous rounds, politicians must be prepared to face up to tough and difficult decisions and be willing to compromise on their basic objectives to achieve an overall agreement. The launch of a round will be much easier if countries adopt a much more positive approach. What was lacking in Seattle was any sense of a shared vision on broad long-term objectives and how the world trading system should develop. In this context organising the new negotiations around the theme of pushing forward economic development may be useful. Given the failure in Seattle, it is clear that the concerns of developing countries must be assuaged. We discuss below what the agenda of the round should contain for the developing countries, but note here that progress has recently been made in addressing some of the complaints regarding the mechanisms governing the participation of the developing countries in the WTO.

It is apparent that ongoing work in a range of committees of the WTO is preparing the foundation for future negotiations. Similarly, in agriculture and services, where negotiations are mandated, essential groundwork is being undertaken, but formal negotiations have yet to commence and no deadline for the completion of any deal has been set. However, the time has now arrived whereby *an injection of political direction and support is required* if actual negotiations are to commence.

So there is a need for a rapprochement between the developed and developing countries. In addition, the attitudes of the EU and the US to a new round and to each other are also crucial. Success in launching a new round will not be achieved without the active participation of *both* the EU and the US. The relationship between the EU and the US on trade remains fundamental to the overall health of the rules-based trading system and to the prospects for the successful launch of a new round. A healthy relationship between the EU and the US is a 'necessary, although not sufficient, condition for the vibrancy of the multilateral trading system'.⁴

⁴ Sauve and Subramanian (2000).

The EU and the US also bear a heavy responsibility in demonstrating the effective implementation of the obligations they have accepted and in complying with the findings of panel reports when disputes arise. Unfortunately, the EU and the US through their actions on issues such as bananas, beef hormones and tax policy on exports have given a strong impression of being adversaries rather than demonstrating a clear joint vision and a shared purpose. By allowing the WTO Dispute Settlement Procedure to become embroiled in areas where WTO disciplines are less precise and poorly developed, both parties have used the WTO to ‘impose judicial solutions for political failures’.⁵ Good faith, upon which the continued success of the rules-based international trading system relies, must be clearly shown by the leading trading nations.

Thus,

- A new round can only be launched on the basis of consensus.
- *Of primary importance to the launching of a new round is political will* together greater tolerance, fairness and trust.
- Such a consensus will have to be organised around leadership by the EU and US.

The EU and the US must ultimately make the decision that if there is no consensus then a new round should not be contemplated at present. The WTO cannot afford another disaster as occurred in Seattle at the next ministerial meeting in Qatar. The EU and the US must take the responsibility to ensure that this does not happen. We proceed below to look in more detail at the problems that the WTO faces and suggest some solutions which could improve the functioning of the WTO, repair the distrust of the developing countries and forge working links with civil society. Before doing this we briefly describe important features of the WTO which distinguish it from its predecessor the GATT and help provide some context with which to assess how the WTO can proceed from here.

3. The nature of the WTO

It is worth noting here that the WTO is a radically different organisation than the GATT, although it must not be forgotten that the essential inter-governmental nature of the organisation and its predecessor has not changed. Firstly, as mentioned earlier, the WTO has a much broader membership than the GATT. With the Single Undertaking, the developing countries are equal partners in the WTO. In the GATT the number of active partners driving the direction of the organisation was much smaller. The clubs which generated consensus under the GATT did not function in the run up to Seattle. Thus, the broadening of the membership requires changes in the way that the WTO functions.

Future negotiations will have to be more effectively organised to ensure the effective inclusion of all Contracting Parties in the negotiating processes (this clearly did not happen at Seattle). These institutional problems will increase in magnitude with the accession of China. Note also that the coming years will also see the accession of a range of other countries including the large CIS countries: Russia and Ukraine. Thus, the WTO faces a major challenge in embracing new members whilst improving the effectiveness of the organisation. The increase in scale of the organisation also raises the issue of how to involve all members in the running of the WTO under the guise of internal transparency whilst at the same time preserving the efficiency of operation of the organisation.

Secondly, the WTO oversees a more complex system of rules and a broader range of policies than the GATT. Amongst the new issues covered by the WTO are the so-called ‘trade and’

⁵ Sauve and Subramanian (2000).

issues relating to, amongst others, trade and investment, the environment, and intellectual property.

Third, the WTO is subject to a much greater level of external interest and pressure than was the GATT. The WTO cannot proceed in isolation from the scrutiny of wider society. Efforts are needed towards greater openness, more effort is required to place the WTO into the broader international policy context and to participate in discussions relating to issues of concern to NGOs and the wider society, in particular, the environment and social policy. Specifically, the WTO should demonstrate that trade liberalisation is not its objective per se, but rather economic advancement and the raising of social welfare and that these are best promulgated in a system where there are clear and effectively enforced rules which prevent discrimination and arbitrary changes in policy which undermine market access. As such the links between trade and investment and social and environmental progress need to be more explicitly evaluated, as will be discussed below.

Finally, the WTO has a much more effective Dispute Settlement Procedure, which has led to an increase in the importance of judicial settlements to trade policy conflicts. The role of politics and diplomacy in solving disputes is less prevalent than under the GATT.

4. Framing solutions

4.1 Addressing the needs of developing countries

The different nature of the WTO compared to the GATT, and the increasing importance of trade and investment to the development processes being implemented in many countries, means that the interests of developing countries are now much more prominent. This was not properly reflected at Seattle but it is generally accepted that attention needs to be given to the specific needs of developing countries. Here we discuss what actions can be taken to help the developing countries maximise the benefits of their participation in the WTO. We consider first the particular problems that the developing countries have encountered since the conclusion of the Uruguay Round and the creation of the WTO.

4.1.1 Applying Uruguay Round commitments

The Uruguay Round, unlike any previous multilateral trade agreement, compelled developing country members to not only reduce border trade barriers, such as tariffs and quantitative restrictions, but also to implement reforms to trade procedures, such as customs valuation, and to adopt commitments with regard to domestic regulations concerning for example, technical, sanitary and phytosanitary standards and laws regarding the protection of intellectual property. From an administrative point of view, changes to tariffs are relatively easy to implement in all countries. Domestic rules and regulations, however, are based on and supported by institutions that are characteristically weak in developing countries and whose strengthening and reform can require substantial investment of resources.

A particular criticism that the developing countries have had with regard to the Uruguay Round is that implementation periods given to meet their commitments were arbitrary and did not directly take into account their development problems or their capacity to implement them. Thus, for example, the decision to commit resources in many developing countries to establish an enquiry point on technical regulations, as is required by the Agreement on Technical Barriers to Trade, has important implications for resources that can be directed to other institutions that play a crucial role in the development process. New institutions require accommodation, equipment and manpower, which must be appropriately trained, and the development of systems of procedures. It has been calculated that areas covered by the Uruguay Round

Agreement can swallow up the whole of the annual development assistance for a country.⁶ Clearly the costs of implementation can be very high.

The dissatisfaction of the developing countries also reflects their perceived lack of effective inclusion in the Uruguay Round negotiations on many of these issues and that much of the agreement reflects rules that work well in developed countries given their advanced institutional capacity. These rules may not work as well in countries with severe institutional constraints. Given resource limitations, choices must be made as to where institutional capacities should be increased. The view of the developing countries is that these choices should be made in the context of economic development rather than just in blind obedience to Uruguay Round commitments. This is not to say that the changes that the Uruguay Round obliges developing countries to make are harmful per se; most, in fact, are very important in the context of creating a modern open flourishing economy. Rather, the issue is that some of the changes required should not take precedence over other development objectives but the timescale for implementation should be assessed in the context of the overall development process. The challenge is to agree upon mechanisms that allow for such assessments. Clearly, developing a closer relationship with the World Bank and other development agencies is important in this respect.

The Uruguay Round agreements typically provide provisions for technical assistance, but these commitments are not always binding on developed countries, nor do they allow for delayed implementation or extensions beyond agreed deadlines. These provisions have been exploited in certain cases, but overall, the amount of technical assistance has been small relative to the problems developing countries face.

Thus, in terms of applying the Uruguay Round commitments, implementation should be judged against a development yardstick. An important distinction, however, must be made between *implementation* and *re-negotiation*. Whilst recognising the immense problems of implementation that some countries encounter, it is also apparent that other countries are making less effort towards implementation and there is a genuine concern that the value of commitments made in earnest negotiations should not subsequently be undermined. Hence, greater flexibility must not mean that the changes necessary to meet WTO commitments are simply put off. There needs to be some form of monitoring to ensure that adjustments are taking place and that where technical assistance is provided its contribution is carefully assessed. The current approach under the Integrated Framework is weak in this respect and lacks resources.⁷

In the next round, demands for further commitments on rules and regulations should be considered in the context of the development process. It should be recognised that the introduction of some measures may be more difficult and costly in developing countries and may have implications for resources that require longer periods for implementation. *In the next round, developing-country support for new obligations should be reciprocated with binding technical assistance* designed to build capacities for implementation.

4.1.2 Internal transparency and developing countries' participation in the WTO

The WTO, as did the GATT, works on the basis of consensus, but the process of consensus-building broke down in the preparations for the Seattle ministerial.⁸ In the GATT, the negotiating agenda and the negotiations themselves tended to be driven by a small group of

⁶ Finger and Schuler (1999) provide examples of where customs reform projects can easily cost \$20 million with much larger sums required for upgrading intellectual property laws and improving sanitation levels.

⁷ Wang and Winters (2000).

⁸ Schott (2000).

developed countries, particularly the US and the EU. Thus, the agenda for the various rounds under the GATT primarily reflected the interests of the OECD countries. However, the other countries could choose whether or not to adopt the commitments that were agreed upon as a result of these negotiations and were often offered what was known as special and differential treatment. Thus, the developing countries did not block an overall agreement because specific demands were not made upon them whilst under the most-favoured nation provision of the GATT, they were able to benefit from the liberalisation by the developed countries and from the increasing strength of the rules-based system. In short, under the GATT a few countries set the agenda, but there was no compulsion on any country to implement the results. On the other hand, the agenda for negotiations did not reflect the interests of most of the developing countries, such that trade in textiles and clothing products and in agriculture sectors of particular interest to developing countries were excluded from the general tendency towards more liberal trade.

The membership of the WTO is much larger than that of the GATT; the developing countries are equal partners and are in the majority. The continued legitimacy of the organisation requires that all members are involved in the WTO and in the negotiation of commitments. This did not fully happen in the Uruguay Round negotiations, in part because the 'single undertaking' did not materialise until towards the end of the round, so that many countries accepted obligations in whose negotiation they had played no part.

This problem came to a head in the preparations for Seattle when mechanisms derived from the GATT could not cope with the new reality of the structure and nature of the WTO. The traditional informal 'green room' process in which a select group of countries meet to decide on key issues excluded too many interested parties and led to the perception of a division between rich and poor countries. With the increased membership of the WTO and the need to provide for greater participation for developing countries, the 'green room' process has become too inflexible and inefficient.

New mechanisms are required that allow for the effective inclusion of all members in trade negotiations whilst making sure that the pressure of numbers does not undermine efficient decision-making. It is clear, however, that some form of informal discussion and consensus-building are necessary for efficient negotiations to take place. This needs to be accompanied by effective communication and transparency within the organisation so that all members who so wish are aware of the issues being discussed and of the outcomes of the informal discussions. The objective must be to ensure that small group discussions between the main players spread and increasingly take account of the perspectives of the broad membership.

There also needs to be an appropriate balance between the interests of large and small countries at the WTO. Large countries need to have a significant role, but there have to be checks on their power although not to the degree that these countries deem it more effective to exercise their influence outside of the WTO. The precise way in which membership of informal small discussion groups is constituted can probably only be resolved as part of a new round since it will necessarily entail compromises by some of the members. It is worth remembering that whatever the composition of these negotiating groups within the WTO framework, the approval of small countries is necessary for the confirmation of any trade deal.

Another important element in this issue is that developing countries are able to develop capacities for dealing with WTO and trade policy issues. Some developing countries are unable to maintain a permanent diplomatic presence in Geneva. This must be taken into account in the dissemination of information by the WTO. There is also a need for greater expertise on the relevant issues to be available to national administrations to enable careful analysis of issues under negotiation and the derivation of country positions. This would allow for more detailed and technical exchanges of views prior to actual negotiations that would demonstrate which solutions are feasible and where the boundaries and limits for a possible agreement may lie. An

important contribution to this process would be for the WTO to oversee the development of a research network comprising the international institutions, universities and research centres in both developed and developing countries and relevant NGOs. Knowledge networks can play an important role in stimulating cooperation and coordination and in building consensus.⁹

Finally, there is a case for *a more active role for the Director General of the WTO* in terms of facilitating negotiations and exploring possibilities. However, it is imperative that the WTO Secretariat is, and is seen to be, neutral for it to be able to independently develop initiatives in response to conflicts that arise in the negotiations.

The effective participation of all members is an issue that has received careful attention in the WTO and a number of initiatives regarding internal transparency and confidence-building measures have been instigated. As noted above, a resolution of the problems concerning participation in negotiations can only be solved as part of a new round of negotiations. For the WTO to achieve inclusiveness of all members, the over-riding imperative of any institutional reform is that each member, or group of members where that is more appropriate due to shared interests and lacks of individual resources, must be able to participate in negotiations on issues that are of particular importance.

4.1.3 Textiles and clothing

Of major relevance to the developing countries is the agreed phase-out of the multi-fibre agreement (MFA). Under the Uruguay Round the developed countries consented to remove the raft of quantitative restrictions on their imports of textiles and clothing products from developing countries which have distorted trade in these sectors for over 40 years since the (now comically titled) Short-Term Agreement. The agreement under the Uruguay Round has allowed the developed countries to delay effective liberalisation until the end of the phase-out on 31 December 2004. In practice, the agreement allowed unimportant non-binding quotas to be removed first with the most important binding quotas preserved until the last. This in itself was a disappointment for many developing countries and has been compounded by the fear that quota liberalisation may not actually be implemented at the end of 2004 and even if it is there may be a spate of anti-dumping and safeguard measures in the developed countries which will prevent any real improvement in market access.

The developed countries must honour, and make clear now that they will honour, their commitments on textiles and clothing both in terms of the removal of quantitative restrictions and that they will not be replaced by a surge in the use of anti-dumping or safeguard measures. If this does not occur, it is most unlikely that there will be a successful conclusion to the next round and the confidence of the developing countries in the system will be severely undermined.

In practical terms, it would be useful to have an overall index of trade policy restrictiveness in textiles and clothing in each importing country for each partner which incorporates the impact of any anti-dumping and safeguard measures. The developed countries should then commit that trade restrictiveness in textiles and clothing will not increase for any supplier in any market after 2004. If there are subsequent increases in anti-dumping or safeguard measures that raise this index, then compensating reductions in tariffs would have to be provided. Alternative suggestions are that the developed countries agree to limit the use of safeguards to a specific number, say five, tariff headings.¹⁰

⁹ Ostry (1999).

¹⁰ Wang and Winters (2000).

4.1.4 Anti-dumping policies

Attitudes and approaches towards anti-dumping policies vary enormously. On the one hand, many developing countries, whilst increasingly becoming users of such policies themselves, are demanding greater restraints on the use of such measures so that for these countries, such policies must be on the agenda of a new round. On the other hand, some developed countries adamantly insist, in the face of enormous pressure from domestic groups, that anti-dumping and safeguard measures are absolutely crucial policies to ensure fair competition given the strong discipline inhibiting the use of other trade measures, and so there is little desire to enter into any substantive negotiations on anti-dumping measures. In light of these conflicting views, what could be done in the context of a new round.

Within the context of a rules-based system, it is important that anti-dumping laws are seen to be fair and predictable. For the law to be applied fairly, it is important that all those facing complaints are able to effectively defend themselves. At present the complexities and costs of complying with anti-dumping investigations in many countries make it difficult for firms in developing and transition countries to fully represent themselves. The costs of replying to questionnaires,¹¹ of possible attendance at meetings in the country where the investigation is initiated and other related demands are often substantial for developing country firms. Many developing country governments are unable to provide resources to support and assist firms subject to anti-dumping investigations in overseas markets. Thus, there appear to be asymmetries in the system in the extent to which firms in developed and developing countries are able to respond to anti-dumping petitions.

There are provisions in the Uruguay Round Agreement on anti-dumping policies that 'special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures...Possibilities of constructive remedies...shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members'. However, in practice it would appear that in applying their anti-dumping legislation the developed countries 'do not distinguish between developed and developing countries'.¹²

Thus, the next round of trade negotiations could usefully consider how to formalise this commitment and make its effect more concrete. This could involve discussion of a higher *de minimis* dumping margin and import share threshold in cases involving developing countries, a commitment to provide information to the relevant developing country government and to consult at all stages of the procedure, and consideration of ways in which assistance can be provided to allow developing country firms to effectively participate in investigations against them.

Agreement on these issues concerning the treatment of developing countries would not require any substantive procedural changes to anti-dumping laws. However, there will also be demands for changes to clarify further the procedures to be followed in identifying dumping and in calculating dumping margins and injury. A feature of the 1990s has been the increasing number of countries, including developing countries, to implement anti-dumping procedures. This has instilled substantial diversity in the conduct of anti-dumping investigations across member countries. Thus, further attention to enhancing procedural safeguards and transparency seems warranted.

¹¹ Lack of computerisation and management information tools often make the collection and organisation of requested data difficult and costly. In addition, particular problems are encountered when the normal accounting period used by the developing country firm does not correspond to the investigation period in the anti-dumping proceedings.

¹² Vermulst (1999).

There is also concern that the ‘sunset clause’, which provides a time limit to anti-dumping duties, may be used to legitimise the continuation of duties for five years even if the domestic industry has recovered and the injury has been diminished or removed. Finally, the issue of circumvention, when firms subject to anti-dumping measures divert components and undertake final assembly in other countries, including the importing country, was not adequately addressed in the Uruguay Round and needs to be reassessed. This will probably require progress to be made on the harmonisation of non-preferential rules of origin, where discussions have been deadlocked at the World Customs Organisation, partly because of the absence of any multilateral agreement on anti-circumvention measures. Progress on rules of origin would be beneficial to all trading countries by increasing certainty and transparency of international trade rules.

Thus, as part of refocusing the WTO in the light of the participation of the developing countries, the next round of trade talks should:

- Develop mechanisms to assess implementation of WTO commitments in the context of the overall development process and in particular with regard to institutional and resource constraints, whilst technical assistance that raises the capacity for implementation should be provided.
- Identify means of allowing for the effective inclusion of all developing countries in trade negotiations whilst maintaining efficient decision-making. The WTO must ensure that each member is able to participate in negotiations, and that their positions are taken into account on issues that are of particular importance to that country.
- Identify ways to assist developing countries to develop capacities for dealing with WTO and trade policy issues.
- Consider the case for *a more active role for the Director General of the WTO* in terms of facilitating negotiations and exploring possibilities.
- Ensure that the developed countries must honour, and make clear now that they will honour, their commitments on textiles and clothing both in terms of the removal of quantitative restrictions and provide assurance that they will not be replaced by a surge in the use of anti-dumping or safeguard measures.
- Consider how to make concrete commitments towards developing countries in the Agreement on Anti-Dumping.
- Give further attention to enhancing procedural safeguards and transparency in provisions regarding anti-dumping and safeguard actions. This should include a review of the ‘sunset clause’ and attention to the issue of circumvention. In conjunction with the latter, there must be progress on the harmonisation of non-preferential rules of origin.

4.2 The nature of the WTO and global governance

4.2.1 The ‘trade and’ issues

The traditional focus of the GATT and the WTO has been on tariffs and other trade policies applied at the border. As noted above, as tariffs have been reduced attention has shifted to other non-border policies that restrict market access for foreign companies. Often these policies, such as technical regulations, play no overt role in the trade policy of the country concerned but can have the indirect effect of discriminating against imports. Recently there have been demands for the WTO to consider policies that are not directly related to market access but that may distort competitive conditions. At the forefront of these demands have been labour rights and the environment. The pressure for the WTO to consider these originates almost entirely from

groups and governments in the developed world. One reason the WTO is singled out for these issues is that it is perceived to have been a successful organisation with an effective enforcement mechanism, whilst existing agencies that address these issues more directly are deemed to be weak in this respect. The GATT and the WTO have been successful, however, because they have had a narrow focus with limited responsibilities. Burdening the WTO with an increasing range of issues that do not fall directly within its remit would certainly undermine the organisation and reduce its effectiveness.

In addition, targeting the WTO as the forum for these issues is not useful since it implies that they will be addressed only in their relation to trade, which is at best only a partial response. In fact, the academic literature clearly demonstrates that using trade sanctions to penalise countries for lack of implementation of basic labour rights or certain environmental rules can be counterproductive in terms of further harming those whose rights are being denied or leading to further environmental degradation. There can be no guarantee that welfare in the countries concerned will rise after the imposition of trade sanctions, and it may well fall.¹³

There is also a real concern on the part of developing countries, which cannot be lightly dismissed, that if provisions were added to the WTO to enable sanctions to be imposed for lax labour or environmental laws, these would be abused for protectionist purposes in developed countries. It is abundantly clear that the developing countries will not accept any linkage between trade sanctions and labour and environmental laws and it is fruitless for developed countries to seek to exert pressure on the developing countries to acquiesce.

Nevertheless, the concerns of many civil society groups for the welfare of fellow citizens and for the environment are genuine enough and cannot simply be ignored if broad support for the WTO and further trade liberalisation are to be achieved. It is clear that globalisation has generated losers as well as winners in most countries of the world and policy-makers have an obligation to address the problems that more open trade brings.

The way forward on these issues at the international level seems to be to adopt an approach of parallelism. There should be a commitment at the launch of the round to move forward on these issues as the round proceeds but without any linkage with the negotiations themselves. Thus, trade can be related to these issues in the political arena and the WTO should be involved to help ensure that the trading system itself does not undermine internationally agreed rules regarding labour rights or the environment. Nevertheless, any attempt to formally link trade sanctions to implementation of labour rights and environmental rules must be rejected. The political link could be developed in the form of the launch of a multi-institutional forum on labour standards and the environment at the same time as the new round of trade negotiations is initiated.

One challenge for these fora will be to identify means of ensuring more effective implementation of internationally agreed rules without recourse to trade sanctions. Here the objective could be to develop appropriate standards and codes of practice together with means of monitoring compliance and then to design positive responses in recognition of successful implementation in developing countries. Here trade preferences could play a useful role. There are provisions in this regard in the GSP schemes of the EU and the US as well as in the various bilateral trade agreements that these countries have signed. However, it would be useful to construct a consistent global approach rather than the piecemeal bilateral policies that exist at present.

Primary responsibility for addressing labour rights and environmental issues should lie with institutions that have them as their direct focus. In the case of labour standards such an institution exists, the International Labour Organisation (ILO). An international environmental

¹³ See Brenton (2000) for a more detailed discussion.

agency has yet to be created. The WTO would be involved to discuss cases where violations of core labour standards are directly related to trade and investment. In the main, however, lack of implementation of core labour rights, and in many cases environmental rules, is a development issue rather than a trade issue. Thus, discussion should involve the multilateral development agencies and NGOs with relevant expertise and experience. We now consider separately, but briefly, issues relating to social development and then the environment. We finish the section with a short discussion of further 'trade and' issues, those relating to competition policy and the investment.

Trade and social development

The concerns of civil society groups relating to trade and labour rights are perhaps better addressed within the broader context of trade and social development. Here there is a need for a better understanding of the links between trade, economic development and social development. The policy objective must be to ensure that trade and social development expand together and that the social benefits of trade liberalisation are maximised. In the main, this requires attention to non-trade policies such as labour market regulations, education and training and involves careful consideration of technical assistance programmes and other forms of aid. The key issue for trade policy is the time-scale and phasing of trade liberalisation. The challenge for the international community is how to facilitate the adoption of necessary flanking policies to accompany trade reform to ensure that the benefits that flow from trade are harnessed to improve social development. It is in this context that one should consider the issue of corporate responsibility and the role of voluntary codes of business conduct, which can be complementary to increasing governmental responsibility for basic social standards and the development of suitable global values.

It is implementation that lies at the heart of the problem of core labour standards. Here, however, here there is no simple answer. What is needed is the instigation of a process that looks for solutions within a multi-institutional setting – a global forum on trade and labour standards – which is long-lasting and with dialogue taking place outside a new round of trade negotiations. Such a forum should have a broad membership, including the WTO and the ILO, and should provide for the joint analysis of problems, the sharing of experiences and the search for appropriate solutions. During its work the forum would benefit from contacts and exchanges with civil society groups. The forum should be used to demonstrate that social development and economic development are compatible in the long-term and that adoption of core labour standards is domestically beneficial and does not undermine international competitiveness.

Trade and the environment

There are real public concerns that a more extensive and effective system of global governance is required to address the issue of the sustainability and economic development. This reflects the fact that whilst the international community has been quite successful in developing and implementing global rules for trade and economic relations, it has been much less successful in addressing environmental problems, many of which require joint or global solutions. Thus, there are demands for a new model of global governance that has sustainability as its centrepiece.

Here again the establishment of policies and mechanisms to tackle the transboundary environmental challenges that the world faces should come from environmental authorities. The role of the WTO must be to ensure that international trade and investment policies do not conflict with, or undermine, internationally agreed environmental policies. It is worth noting that the agreement establishing the WTO explicitly mentions the objective of sustainable development and the protection and preservation of the environment.

Of the 'trade and' issues, discussion related to the environment is the most advanced at the WTO, where there has been a Committee on Trade and Environment since 1994. This debate

takes place in the context that implementation of appropriate environment rules is linked to economic development and that typically trade liberalisation plays a crucial role in advancing development. In principle then trade and environmental policy objectives *can* be entirely consistent. The main issues that the WTO must address are how legitimate environmental concerns can be advanced without compromising trade liberalisation and how further trade liberalisation can be achieved without undermining environmental objectives. In short the nature of the challenge is to make trade and environmental policies work together to raise social welfare. The mechanisms by which this can be achieved have yet to be worked out.

Clearly, the creation of a global environmental agency would relieve some of the pressure that the WTO is facing with regard to the issue of sustainability and would allow for a more general approach to environmental issues rather than simply concentrating on matters relating to international trade and investment. For example, a flight from the east to the west coast of the US may generate as much air pollution as a flight across the Atlantic. The former does not qualify as international trade whereas the latter does. Similar concerns relate to other forms of transport. Nevertheless, the creation of such an agency, at least in the short-term, appears a remote possibility and so a large responsibility will rest on the WTO in addressing the environmental implications of trade liberalisation whilst ensuring that the environment is not used simply as a pretext for protectionism.

What can the WTO reasonably be expected to do? At present the key issue for the WTO should be how to ensure consistency and avoid conflict with the implementation of the various multilateral environmental agreements that have been signed, such as CITES, the Basle Convention on Hazardous Waste and the Montreal Protocol. There is concern that countries facing trade penalties for violating or refusing to sign a multilateral environmental agreement could challenge such sanctions in the WTO. Under the NAFTA, trade actions consistent with multilateral environmental agreements are not inconsistent with NAFTA commitments. A similar approach could be adopted by the WTO subject to some provisions that ensure that the environmental agreement concerned has the support of the vast majority of WTO members and so protects developing countries from pressure from other countries to adopt inappropriate environmental policies or suffer trade sanctions.

In the context of a new round it has been suggested that the WTO could contribute to global environment objectives by ensuring the liberalisation of trade in environmental products, goods and services that are deemed to be ecologically friendly. This could concentrate initially on the removal of tariffs on environmental goods but then also consider access restrictions on the provision of environmental services. It is also argued that agreement to reduce subsidies in agriculture and fisheries could have important environmental benefits.

A more difficult issue, but one which that strengthen the WTO would be a clarification of Article XX which provides for exceptions from GATT/WTO obligations for specific policy objectives if similar restrictions are applied domestically, if the measures are necessary to meet the policy objective and if they are not a 'disguised restriction on trade'. This would help to make apparent when and how the implementation of environmental policies is WTO-consistent. Of particular importance here is that at present the WTO rules are focused almost entirely on product rules and leave little scope for policies that are related to production processes, which often lie at the heart of environmental issues.

Trade and competition policy

Strong competition laws can be necessary to ensure that the benefits of trade liberalisation are actually realised and maximised. In this regard it has been argued that all WTO members should implement policies that constrain cartels and other anti-competitive practices. This in itself is

not a controversial proposal. What is contentious is whether there should be binding multilateral disciplines on competition policy within the aegis of the WTO together with formal mechanisms for cooperation on multi-jurisdictional mergers.

At present many WTO members do not have active competition policies. As such binding rules on competition policy would have immense institutional and resource implications for developing countries. On the other hand, there are cases where an agreement on competition policies could be of particular benefit to developing countries. For example, in helping to instil greater discipline on the use of anti-dumping measures and in ensuring that the benefits of the TRIPS agreement are maximised (or costs are minimised).

The Singapore Ministerial meeting established a working group on competition policy issues, although this body has no mandate for negotiations. This issue is one where, given the wide variety of views on the subject amongst members, formal negotiations at this time are likely to overburden the agenda. Again, the most appropriate response appears to be one of initiating parallel discussions which can help to clarify the relevant issues and allow countries to identify their own interests and positions. If it were to become apparent that there are certain issues, or core practices, where consensus could be achieved then it might be that these could be infiltrated into the agenda of trade negotiations subject to the approval of the members.

A global forum on competition policy building upon and extending the work of the WTO Working Group could enhance the efforts being made by anti-trust authorities and the International Bar Association to promulgate mutual understanding between different authorities and so contribute to the convergence of thinking and working practices around the world without pushing ahead towards the harmonisation of rules. The work of the WTO Working Group should continue to concentrate on the interface between trade and competition policy and generate greater understanding of the issues and identify areas of particular interest for WTO members.

Trade and investment

The value of sales by the overseas affiliates of multinational firms now exceeds the value of traditional arms-length exports of goods and services. Yet, there are no multilateral rules governing foreign direct investment analogous to those that cover traditional trade in goods and services. It has been increasingly recognised that foreign direct investment by multinational firms can be an important source of not only investment but also of technology and techniques. Further, it is often argued (although the empirical evidence is not yet compelling) that the technologies and techniques spill over from the affiliate to other local firms so that FDI can contribute to more general increases in productivity and income. As a result most countries are now keen to attract investment by multinational firms as reflected in the fact that over 1600 bilateral investment treaties were signed in 1999 (Hoekman and Saggi; 1999). On the hand, many countries also implement policies that place particular requirements on multinationals and constrain foreign investments in certain ways.

Separate agreement was reached in the Uruguay Round on applying disciplines to investment measures that can distort trade in goods and services. For trade in goods, the agreement is effectively limited to interpretation and clarification of the application of existing provisions regarding national treatment and quantitative restrictions to trade-related investment measures. The Agreement on Trade-Related Investment Measures does not address issues such as export performance and transfer of technology requirements and, more generally, does not cover domestic policy regimes that limit the rights of establishment by foreign firms or increase the costs of market access. Provisions related to investment in services are contained in the General Agreement on Trade in Services (GATS) where foreign direct investment is treated as one mode

of supply so that there is considerable scope for far-reaching commitments within the structure of the existing GATS agreement.

The WTO established a working group on trade and investment in 1996 to undertake analytical work on the links between trade and investment but not as a forum for negotiations on new disciplines. The issue for the new round is whether it is appropriate at this point to include substantive negotiations on consistent global rules on investment policies. Currently, the position of members is mixed. Investment is an issue where some members perceive the potential for considerable gains from further disciplines and that there is substantial scope for negotiations in a new round, whilst at the same time there is unwavering resistance to any negotiations from other members. Again, a policy of parallel discussions building on the continuing work of the WTO working party offers the most appropriate response at present. This would allow a dialogue between all the interested parties without formal negotiations. If these discussions were to identify for all concerned members the scope for beneficial negotiations, then these could perhaps be introduced at some stage during the round.

On the other hand, there is the possibility that progress on investment issues related to services could be made within the context of the mandated negotiations under the GATS without the need for any formal negotiations on investment. Given the large and increasing importance of the service sector in most economies and the fundamental role that foreign direct investment can play in accessing overseas markets in service products, progress in increasing the transparency and stability of conditions governing overseas investment in services could have substantial economic benefits.

To conclude, including the 'trade and' issues on the agenda for the next round would not only be divisive, it would also overburden the negotiations. Thus, whilst the issues must be dealt with, the most suitable approach is to consider each of them in a separate multi-institutional forum in parallel, but not directly linked to, the trade negotiations. The WTO should be involved to help ensure that the trading system itself does not undermine internationally agreed rules regarding labour rights or the environment, but any attempt to formally link trade sanctions to implementation of labour rights and environmental rules must be rejected. With regard to competition policy and investment there is considerable interest in negotiations from some members but implacable resistance from others. Hence, at present it is not practical to include these issues on the negotiating agenda at the launch of the round. However, discussions and analysis of these issues should continue and if, as a part of this process, a consensus towards substantive negotiations materialises then they could be filtered into the negotiating agenda at a later stage.

4.2.2 The Dispute Settlement Procedure

The prompt and effective settlement of disputes lies at the heart of the credibility of rules-based systems by providing for predictability and stability of obligations and rights. Institutional enforcement mechanisms are particularly important to developing countries, which are unable to exert pressure or credible threats when large countries violate their rights. During the Uruguay Round negotiations, it became clear to many of the parties that there was a need to enhance the dispute settlement system. There was dissatisfaction with the way that under the GATT the creation of panels to resolve disputes and the adoption of reports could be blocked. The response was to create a binding dispute settlement system with a more automatic process. The Dispute Settlement Procedure (DSP) was one of the main features of the Uruguay Round and to many, one of its greatest achievements, without which a large number of the Contracting Parties would have been reluctant to implement many of the extensive commitments that were being discussed. Under the DSP, the rights of members are clearer and more stable and predictable.

A number of indicators suggest that the DSP has been a success:

- The number of consultations sought by WTO members has been on average each year much higher than under the GATT system,¹⁴ which can be interpreted as reflecting increased confidence by WTO members in the new dispute settlement system.¹⁵
- Consultations have been sought by all types of WTO members. Most significantly, developing as well as developed countries have used the system.
- A relatively high proportion of cases have not required the establishment of a panel and have been resolved through the process of consultation. This suggests that, in general, the procedures that have been established are conducive to the resolution of disputes. In many cases, before the need for a panel arises the jurisprudence of the GATT and the WTO make clear the likely outcome of the case and so propel the parties concerned towards a settlement that is consistent with the interpretation of the rules given in previous cases.¹⁶ This does, however, entail that panels will tend to be convened for difficult cases where GATT and WTO jurisprudence does not provide a clear signal to the parties of the probable result. Necessarily, this means that panel rulings are likely to be contentious.
- Nevertheless, the extent of compliance with panel rulings has been high. This has been true for decisions that have favoured complaints brought by developing countries as well as those by developed countries.¹⁷ There are some high-profile problem cases, particularly involving the EU and the US on bananas, hormones in beef, and the FSC, all of which had been litigated prior to the creation of the WTO.

In the main, observers seem to feel that the DSP is working reasonably well, and there are no strong calls for a major overhaul of the system. However, this is qualified by a few glitches and faults that have, perhaps not surprisingly, become apparent with the implementation and operation of the new system. Thus, there is scope for change to improve the functioning of the system and discussion, and negotiation of these could be an important part of the next round of trade talks. Several key issues require attention:

- compensation or suspension of concessions in the case of non-compliance with panel rulings,
- the more effective participation of the developing countries,
- transparency and the involvement of external parties such as NGOs
- the need for professional panels, and
- the broader issue of the balance between the political and legal bodies within the WTO.

The issues of implementation of panel rulings and remedies for non-compliance

In response to an adverse panel ruling, a member of the WTO can either change the policy concerned to ensure compliance with the ruling and WTO obligations, agree compensation with the parties concerned, or face the suspension of concessions from the other parties involved in the dispute. In practice a number of problems have arisen with this process. Firstly, the way in which a losing party brings its policies into line with WTO rules is usually left to that party itself. Panels can make specific suggestions but have usually limited themselves to standard recommendations to remove violations. In some cases, such as the dispute between the EU and

¹⁴ There have been approximately four times as many consultations each year in the WTO than under the GATT (Panagariya, 1999).

¹⁵ Jackson (1998).

¹⁶ Jackson (1998).

¹⁷ Panagariya (1999).

the US over bananas, there has been subsequent disagreement as to whether changes in policies by the losing party have been sufficient to meet their obligations. Another panel is then required to assess the sufficiency of the losing party's actions. In this way the restoration of a member's rights can be denied over a long period. Thus, the current system is not very well equipped to deal with situations where the losing party makes only minor or cosmetic changes to policies found to be in violation of commitments by a panel.

Secondly, there is some uncertainty under the Dispute Settlement Procedure of what constitutes a reasonable time period in which to implement the findings of a panel. There seems to be a rather strong presumption of a 15-month period.¹⁸ Some observers feel that this time period should not be rigidly applied and that particular circumstances should be taken into account, such as whether enabling legislation is required or not. This would also allow special consideration to be given to the problems of developing countries where institutional change is much more difficult to implement in a short time period.

In addition there is also some contention over the time period following disagreement over non-implementation of a ruling. Article 21.5 lays down that such a disagreement should be referred to the original panel which must then report in 90 days. On the other hand, Article 22.2 allows the winning party to request authorisation for retaliation within 30 days of the end of the reasonable period permitted for implementation. Clarification of these issues could be a useful part of the next round.

Thus, under the present system the effective and speedy resolution of disputes relies in great measure on the good will of the losing parties and on the extent of the moral imperative that countries perceive to adhere to their obligations. In this regard the examples set by the US and the EU are crucial – and here both have failed miserably in the past five years. One way in which the procedure could be improved would be for complainants to request a specific remedy and for panels to rule on whether it would be acceptable or not.¹⁹ An issue that could help avoid these problems is that of compensation.

In some cases members have difficulty implementing decisions of the DSP, for political or broader societal reasons and this can lead to some of the problems mentioned above with regard to the sufficiency of policy changes following panel reports. Although in principle there is nothing to stop countries offering and seeking compensation, in practice this has not played a role in the resolution of disputes. At present it would appear that the mechanism for compensation is inadequate in the DSU and this leads to a tendency towards the use of sanctions when countries fail to implement panel decisions.

Retaliation entails raising barriers to trade that in general is detrimental to the retaliating country and to the principle of liberal trade. In addition, retaliation often affects companies not involved in the dispute and this reduces the certainty of the rules-based system for private individuals and companies that participate in the global trading system. Retaliation is an inefficient way of forcing recalcitrant partners to adhere to their obligations. A superior approach would be to provide mechanisms that encourage compensation in terms of the reduction of other trade barriers through the re-negotiation of concessions. Because of the MFN principle, the net impact of dispute resolution would be more liberal trade.

The problem would remain of how to remove the violation at the heart of the case. One answer would be that compensation would not remove the need of the losing party to comply with its obligations but would allow it to negotiate an agreed timetable towards implementation of a change in policy acceptable to the winning party or as laid down in recommendations by the panel. Nevertheless, good faith on the part of the losing party would be required in good

¹⁸ Jackson (1999).

¹⁹ Horn and Mavroidis (1999).

measure. However, the problem that would remain would be what happens to compensation when the violation is actually removed? When (and if) this does occur, compensation in the form of reduced tariffs can only be removed if they are in actual rates rather than bound rates.

Although compensation is very unusual in dispute resolution, it does play an important role in cases where a member country seeks to modify the concessions or obligations it has previously adopted. The most notable example is the formation or enlargement of customs unions when the application of the common external tariff leads some members to raise tariffs above the rates at which they were bound. This was the case in the previous enlargement of the EU to include Austria, Finland and Sweden and took the form of negotiated reductions in tariff rates. Thus, negotiated compensation in the form of tariff reductions is not unprecedented and, previous experience would suggest, difficult and sometimes contentious but in the end not overly problematic. Thus, the introduction of mechanisms which stimulate countries to negotiate compensation prior to the implementation of sanctions could help to remove some of the contention that arises when panel rulings are not implemented and would insure that the DSP had a liberal rather than a protectionist leaning.

Facilitating the participation of developing countries

Effective enforcement requires that violations of commitments are identified and challenged. Developing countries face particular problems in using the Dispute Settlement Procedure both in terms of identifying violations and preparing cases, whilst resource constraints hamper their ability to participate in the Dispute Settlement Procedure once a case is launched. Limited resources entail that developing countries are much less well represented in Geneva than developed countries and suffer from a general lack of expertise and resources in their domestic administrations to identify violations of importance to them and to formulate and organise cases.

The Dispute Settlement Understanding of the WTO provides for technical assistance to be provided by the WTO Secretariat to developing countries. However, this facility is very limited and is generally deemed to be inadequate by developing countries. Legal technical assistance is provided by two part-time academic experts and is provided only after a developing country member has decided to submit a dispute. No assistance is given in identifying practices that undermine the rights of developing countries or in assessing which cases are likely to be won. As a result most advice is given when developing countries are the respondents in cases.

Thus, careful consideration should be given to proposals, such as the Advisory Centre on WTO Law, which increase the ability of developing countries to bring cases to the Dispute Settlement Procedure. There is a need for greater resources and expertise that will allow developing countries to identify and evaluate cases of interest to them. In addition mechanisms could be developed that assist developing countries in analysing the economic implications of different ways of implementing their obligations in cases brought against them.

At present the timetable for the implementation of panel decisions are dictated in an entirely legalistic framework and reflect the rights of the successful plaintiff. This is appropriate for cases between countries at similar levels of economic development with both having strong institutional frameworks. It is less relevant for developing countries where the reallocation of scarce administrative resources can have important development implications. It is therefore argued that the difficulties that developing countries face in implementing decisions should be taken into account. This issue is not one where there is a reluctance to implement obligations but rather where economic and institutional limitations constrain a developing country from implementation over time periods that are feasible for developed countries only.

Hence, it has been proposed that the implementation period for developing countries should reflect economic problems that a particular country faces. Also, in some cases there may be

important adjustment costs from panel rulings for countries not directly involved in the dispute and that the problems that these countries encounter should be taken into account.²⁰ More careful analysis of the economic effects of panel rulings would also allow for more effective coordination with the World Bank and the IMF to provide adjustment assistance and short-term relief. Here, consideration could be given to the possible role of NGOs in providing information and analysis that would contribute to an accurate assessment of the economic and development implications of particular policies adopted, and the timeframe for implementation, in developing countries. As we mention below, however, there are considerable practical hurdles to this suggestion, for example, in deciding which organisations can contribute and how that contribution takes place.

The Dispute Settlement Understanding contains certain provisions that refer directly to developing countries. For example, Article 4.10 states that during consultations ‘Members should give special attention to developing country Members’ particular problems and interests’ whilst in Article 21.8 it says that ‘if the case in one *brought* by a developing country Member, in considering what appropriate action might be taken, the DSP shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.’ One task for a new round would be to develop mechanisms that provide more formal means of implementing these sentiments.

Chinese accession to the WTO and the Dispute Settlement Procedure

Chinese accession will be an important step to the fulfilment of a truly global organisation; the key remaining applicants being Russia and Ukraine. The precise impact of Chinese accession on future negotiations is difficult to predict although it is possible that by acting as a team leader for developing countries Chinese involvement could act as a catalyst to new momentum and to successful future negotiations. With regard to the terms of accession it is clear that there is a firm commitment in China by the central government to abide by WTO obligations.

The key issue regarding China’s participation is implementation and how the other contracting parties will respond to the expected many cases of non-compliance that will initially arise. Will existing members resort to the Dispute Settlement Procedure? If so, it is likely that there will be a very large number of cases against China. The dilemma facing members such as the EU member states and the US is that, despite best intentions, China may not be able to quickly respond to change the situation that is causing non-compliance in all cases where there DSP rules against China. But if cases are not brought against China this will undermine the use of the DSP against countries that are also violating obligations but are in a position to implement necessary changes and comply in the short-term. In addition, if Chinese obligations are not rigorously monitored and enforced by other Contracting Parties then the confidence of other recent applicants who have striven to ensure compliance will be undermined, and unhelpful precedents may be set for future members.

This problem could be reduced by a number of approaches: through careful discussion of transition periods for China to implement obligations; through effort to settle cases in the consultation phase of the DSP; and through the use of lobbying and overseas missions in China to effect change; through the acceptance of concessions elsewhere when China is unable to quickly effect the changes required by the finding of the DSP. Again, if more flexible procedures were developed that looked at implementation in the context of the development process, then these problems would become more manageable and less divisive.

External transparency and the involvement of NGOs

²⁰ Bhagwati (1999). The obvious example here is of the small island economies which will have to bear some of the adjustment costs from the EU-US case over bananas.

A further issue related to the DSP is that of transparency and the participation of civil society. There is some concern about the amount of public access to the Dispute Settlement Procedure in terms of provision of information and participation in panel hearings. With regard to information, the DSP is criticised for being overly secret. Some progress has been made in making documentation more readily available. But there are demands that panel hearings should be open to a limited number of non-governmental observers, including the press. Whether this is feasible requires careful consideration. It would improve the public's perception of the WTO and would add to the credibility of the procedures, but practical problems of how and to whom access would be granted would have to be resolved.

There are increasing demands from civil society for greater participation through the submission of communications, known as amicus briefs. This is a more difficult issue. The Appellate Body has already ruled that first-level panels can receive and examine communications from NGOs, although there is no obligation for them to do so. Civil society groups would like a more formalised role in providing communications to dispute cases. Again this would improve the public appearance of the WTO, but there is a genuine fear in developing countries that such a move would in practice allow only for the participation of developed country NGOs and that this would influence panel decisions against developing countries.

It is clear that in some cases NGOs can play a valuable role at the WTO in providing specific expertise to improve the quality of decision-making. However, again there needs to be some deliberation concerning the practical feasibility of such involvement. Participation would require practical means of identifying the relevant NGOs for particular issues. In addition it would be necessary to clearly define when, how and in what form and quantity submissions could be made by NGOs so as to ensure that the Dispute Settlement Procedure does not become overburdened. This could be done in the form of regulations that all panels would follow except where explicit reasons for not doing so are provided.²¹

If a means of allowing NGO involvement were to be found, then guarantees would have to be put in place to ensure balance and fairness for all WTO members. At a minimum, all parties to a dispute would have to be provided with easy access to such communications, through the Web for example, and given ample opportunity for response. There would also have to be clear guidelines on how panels would process the arguments from NGOs. Input from secretariat staff would be inevitable, and this has resource implications for the WTO. Limitations on the size of communications would have to be imposed. Finally, if the decision were to be taken to allow for broader participation then the panel and panelists would have to become more professional.

Professionalisation of panels

The current system employs part-time panelists on an ad hoc basis. Panelists are typically diplomats from country delegations perceived to be neutral in the dispute. Whilst they have good reputations for judgement and familiarity with WTO procedures, some feel that they often lack legal training or experience and may not necessarily be able to follow in detail the development of WTO jurisprudence over a long period.

One solution to this problem, as well as that arising from an increased role for NGOs, is the professionalisation of panels. Panelists would, for example, be appointed for 4 or 5-year terms. As such the panelists would be able to better follow the development of WTO jurisprudence and experience of legal issues relating to international trade could be included in the selection criterion. The professionalisation of panels would probably lead to the more rapid conclusion of cases and greater consistency of outcomes. It has been estimated that with three-member panels and the number of disputes that are currently initiated each year then 18 panelists would need to

²¹ Jackson (1999).

be appointed, which would have significant implications for the current level of WTO resources.²²

Constitutionalisation of the WTO

For some members the use of professional panels implies an enhancement of the judicial process and thereby, the further constitutionalisation of the WTO. Such a development would then have to be accompanied by a revision and a deepening of the control that the members are able to exert over the legal process. At present it is difficult for the members to question or overturn a decision by the Appellate body whilst at the same time the Appellate body is seen to be law-making and involved in what are sensitive political debates. On the one hand, this reflects political failures in the parties to disputes who use the Dispute Settlement Procedure to provide a judicial solution to an issue that requires a political answer. On the other hand, greater scope needs to be provided for diplomatic involvement in politically sensitive disputes. The border between international and national rules should be 'determined by governments and not by judges'.²³

A feature of agreements between a large number of diverse parties is that the final clauses are often vague, which reflects the difficulty of obtaining a compromise. This lack of precision is often a deliberate decision by negotiators to provide for a broad-based consensus amongst all the parties, which in the WTO is a precondition for a successful outcome. The problem then is by whom and how should these clauses subsequently be interpreted? Under the GATT it was generally expected that such problems of interpretation would be subject to diplomatic solution. Under the WTO it appears that the judicial arm is being increasingly used to preside over such issues. As a result, there are fears in many countries that the reach of the WTO is undermining domestic decision-making and is compromising national sovereignty. Often these fears are overstated. Nevertheless, it would appear that some form of clarification is required on the domain of WTO judicial decisions whilst ensuring that WTO disciplines and enforcement mechanisms are not weakened or undermined.

To conclude, in terms of facilitating an improvement in the functioning and efficiency of the Dispute Settlement Procedure, the new round should:

- Implement mechanisms that encourage compensation rather than retaliation.
- Identify means of allowing for the more effective participation of developing countries. Developing countries need greater capacities to identify violations as well as assistance in responding to complaints. Development considerations should be acknowledged when decisions regarding the timescale for implementation of panel rulings are taken.
- Specify ways of improving the transparency of the Dispute Settlement Process, through de-restriction of documents and perhaps public hearings, and of exploiting the expertise of external parties such as NGOs. If the latter takes place more formally, then guarantees would have to be put in place to ensure balance and fairness for all WTO members.
- Consider the case for professional panels together with an assessment of the balance between the political and legal bodies within the WTO. Ways of increasing diplomatic involvement in politically sensitive disputes should be investigated without any undermining of existing disciplines or enforcement mechanisms.

²² Hudec (1999).

²³ Ostry (1999).

4.2.3 Legitimacy and external transparency

The legitimacy of the WTO depends not only upon internal transparency and the way that individual members participate in the organisation but also on how it interacts with and reflects the views and demands of wider society. It must be remembered that the WTO is an organisation of national governments with decisions being made on the basis of consensus. Thus, in principle if domestic political systems were working perfectly then there would be no demands regarding the democratisation of the WTO and NGOs would perceive no need to request greater involvement. The fact that this is the case reflects poorly on politicians and the lack of effort to promote discussion of trade and trade policy issues and of the WTO and its role in the international economy.

At present the main elements in demands for greater external transparency include greater openness in terms of providing information and documents, the ability to make submissions to panels in dispute settlement cases, and more participation in WTO activities such as committee meetings. The first issue is relatively uncontroversial. The WTO has done much to make information more readily available to the public through the internet and by derestricting documents more quickly. But more could be done to improve the provision of information. Data sources, such as the integrated database which contains information on national commitments, should be made freely available to enable all those who wish to analyse the commitments to do so. This would improve the reputation of the WTO. However, there are limits to this process. Some documents, for example, those subject to negotiation, must remain confidential until after agreement has been reached.

With regard to the participation of NGOs, it is accepted that such organisations could play an important role at the WTO in terms of providing expertise and information improve the quality of the analysis of WTO related-issues and contributes to better decision-making. The precise role that NGOs can play in dispute settlement was briefly discussed earlier. However, the weight given to amicus briefs in judicial decisions is often slight so that it is most likely that with time these organisations will be looking for additional ways in which they can influence the WTO to a greater extent. More generally, whilst more formal channels of the participation of NGOs should be explored, it is crucial that they should not become involved in the lobbying of negotiators or secretariat officials. This would be a step backwards in terms of the democratic accountability of the WTO.

Negotiators are typically civil servants seeking to achieve mandates set down, for most members, by democratically elected governments. Negotiators themselves cannot change these mandates and hence there can be no role for lobbyists at the WTO itself. Any deal that negotiators conclude is subject to subsequent democratic review and confirmation. Thus, the lobbying activities of NGOs should be focused upon national governments and parliaments. The fact that NGOs are targeting the WTO is perhaps symptomatic of their lack of trust in the democratic process in many countries and the (perceived) lack of inclusiveness of that process. Hence, although there is a need for attention to be given to the issue of how the specific expertise of NGOs can be effectively utilised by the WTO it is national governments that have a responsibility to engage in a more effective dialogue with civil society groups and explain to the public more carefully the rationale behind positions they take on trade policy issues.

In conclusion, the primary responsibility for engaging in a more effective dialogue with civil society groups lies with national governments. Nevertheless, to improve its relationship with wider society, the WTO should:

- Consider ways of further improving the provision of information and data and assess the feasibility of giving limited public access to meetings and panel hearings. However, some documents must remain confidential until after decisions have been made and agreement has been reached.

- Identify mechanisms by which the specific expertise of particular NGOs can be effectively utilised to improve the quality of decision-making at the WTO.

5. Conclusions

In this report we have discussed the mainly systemic issues that have arisen in the aftermath of the Uruguay Round and the first six years of the WTO. In general these are ailments in need of treatment if the WTO is to fulfil its role of facilitating improvements in global income whilst, in conjunction with other global institutions, ensuring that complementary objectives regarding social justice and development and the environment are not compromised and are actually advanced.

There is a need for a refocusing of the WTO to better reflect the particular problems and constraints that developing countries face and to place trade liberalisation more firmly in the context of the process of economic development. Together with mechanisms that more fully integrate the developing countries into WTO decision-making procedures and improve the functioning of the Dispute Settlement Procedure, this will act to cement the legitimacy of the WTO in the eyes of all members and help to generate a common vision for the WTO and its place in the global institutional framework. If at the same time the WTO acts to improve external transparency and national governments activate a deeper dialogue with civil society on the role and impact of the WTO and trade liberalisation, then understanding and acceptance of the role of the WTO should improve which in turn should facilitate a more positive engagement with civil society groups.

In the main these are changes that will improve the way that the WTO functions to implement the rules-based international trading system and to organise negotiations to reduce trade barriers. It is the implementation of the latter in practice that underlie increases in economic welfare and help to intensify the development process. In general, trade barriers waste resources either because they raise costs but generate no revenues, such as customs inefficiencies, or because they encourage wasteful behaviour by groups determined to appropriate the rents that accompany trade policy interventions. Hence, if the next round is to contribute significantly to the advancement of economic welfare in all members, then progress will have to be made in reducing tariff barriers, in liberalising trade in agriculture and services, in advancing trade facilitation issues. We have argued in this report that progress on these barriers can best be made in the context of a round that allows for a broad range of issues regarding the WTO and trade negotiations to be dealt with. The challenge is to proceed with this agenda in an environment of mutual support, not suspicion, among members, together with a wide-ranging and fruitful discussion of relevant issues in the wider society.

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