

## THE UNSETTLED GLOBAL TRADE ARCHITECTURE

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The World Trade Organization (WTO) was created in April 1994 by the Marrakesh Agreement, which concluded eight years of negotiations of the Uruguay Round. Since then, the WTO has been widely taken to be the embodiment of the multilateral trading system. In fact the WTO is only a part (though of course, a very significant part) of the global trade architecture. There are also other institutions (especially the United Nations Conference on Trade and Development, UNCTAD) and other agreements (in particular the regional and bilateral trade agreements) that are part of that architecture. Although the WTO covers many trade issues, it does not cover some crucial trade areas such as the issue of commodities and their related problems of instability of prices and demand, an issue that has been traditionally covered by UNCTAD and was subject in the past to a series of commodity agreements; those that continue to exist now have a narrow focus. Moreover, the mandate of the WTO also covers non-trade subjects such as intellectual property rights and the investment component of services. Thus, the WTO is less than the multilateral trade system, but also more than it.

The parts of the international trade architecture that come under the WTO are covered by the organization's principles and legally binding rules, as well as a strong enforcement mechanism through its dispute settlement system. The preamble to the Marrakesh Agreement establishing the WTO does contain the objective that "trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand (...) in accordance with the objective of sustainable development". It equally recognizes the need for positive efforts to "ensure that developing countries, and

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especially the least developed among them, secure a share in the growth of international trade commensurate with the needs of their economic development”. The preamble also states the desire of “contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the eliminations of discriminatory treatment in international trade relations”. The principle of “non-discrimination” –reflected, in turn, in those of the Most-Favored Nation (MFN) and “national treatment” (that imported goods must not be accorded treatment less favorable than that accorded to like domestic products)—together with Special and Differential Treatment for developing countries (SDT), constitute two pillars of the architecture of rules upon which the multilateral trading system is supposed to be built up.

It can be argued that the main stated objectives of the WTO are therefore those of raising living standards, full employment and growth of real income, as well as ensuring that developing countries secure a fair share in global trade growth, whilst reduction of tariffs and non-tariff barriers and elimination of discriminatory treatment are instruments to achieve them. However, in practice the means have many times prevailed over the ends and, in particular, insufficient attention has been given to the “development dimensions” of the global trading system, in particular on what trading rules and complementary policies are necessary to maximize the trade-development link.

The principle of SDT –that is, asymmetrical treatment or non-reciprocity in international trading rules when they involve transactions between developed and developing countries—was adopted in the 1960s to underscore the trade-development link. This principle led to the drafting of Part IV of GATT, on trade and development, and the more comprehensive “Enabling Clause” approved in 1979 during the Tokyo Round. Article XXXVI provided a clear formulation of the principle: “The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.” (...). The understanding of the meaning of this principle was clarified soon after and written into the fifth provision of the Enabling Clause: “Developed contracting parties shall therefore not seek, neither shall less-developed

contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.”<sup>1</sup>

This principle is, of course, a major exception to that of non-discrimination, to allow for unequal treatment of unequal partners. However, SDT has been at best highly insufficient and at worst openly violated. It can be argued, furthermore, that this is even more clearly valid of the free trade agreements that have proliferated in recent years, which have also ended up radically eroding the principle of non-discrimination.

This paper analyzes major issues facing the world trading system. It is divided in four parts. The first looks at the development dimensions, as seen through the lens of the imbalances of the trading system. The second looks at the proliferation of free trade agreements. The third looks at the essential features of governance: dispute settlement and decision making. The last draws some conclusions.

## **I. The Imbalances of the Trading System**

### **1. The Uruguay Round imbalances**

Growing protectionism prior to the Uruguay Round was one of the major reasons why developing countries came to increasingly distrust the commitment of industrial countries to a more liberal multilateral trading order, and were willing to negotiate in an integral way the way the multilateral trading system was organized. Major reasons were the exclusion of agriculture and textiles from multilateral trade disciplines, the high tariffs and extensive use of quantitative restrictions (QRs) that characterized those sectors, and tariff escalation according to the processing of raw materials, which generated constraints to industrialization based on forward linkages of traditional raw material exports. These issues have been at the center of the views of the international trading system since UNCTAD's first diagnosis in the 1960s which, with some variations, continue to be valid today.

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<sup>1</sup> The main development of this principle was the creation of the General System of Preferences (GSP) in 1968, but it never became what it was expected to be, a *generalized* (as its name indicates) system of preferences subject to multilateral notification. Several studies soon indicated that its effects were rather frustrating. See, for example, Karensky and Laird (1987) and Whalley (1990).

Redressing this trend faced, however, a major problem: since it was accepted that the Uruguay Round agreement would be adopted as “a single undertaking”, and developing countries had few prior disciplines in the context of GATT, the acceptance of a comprehensive agenda led to significant additional commitments. Most early evaluations of the Round (Agosin *et al.*, 1995; Ocampo, 1992; Rodrik, 1995) came indeed to the conclusion that the Round had led to a sharp increase in the range of obligations and responsibilities adopted by developing countries and a loss of what came to be later called the “policy space” they had enjoyed in the past, including to adopt the widely praised East Asian export-led strategies. Although not entirely eliminated, the SDT principle was significantly eroded, particularly for middle-income developing countries (those with a per-capita income above \$1000). In these cases, SDT was confined to longer transition periods, lower tariff cuts, and somewhat greater freedom to apply special provisions (e.g., in relation to subsidies).

	<u>Pre-UR</u>	<u>Post-UR</u>
<b>A. Percentage of tariff lines bound</b>		
Developed countries	78	99
Developing countries	22	72
<b>B. Percentage of imports under bound rates</b>		
Developed countries	94	99
Developing countries	14	59
<b>C. Import-weighted tariff rates</b>		
	<u>Applied</u>	<u>Bound</u>
Developed countries	4.0	4.7
Developing countries	13.1	20.8
Latin America and the Caribbean	10.1	18.6
East Asia and the Pacific	9.8	16.6
South Asia	27.7	56.1
Europe and Central Asia	9.6	14.9
Middle East and North Africa	14.4	26.8
Sub-Saharan Africa	16.5	19.8
<b>D. Bound rates of industrial countries</b>		
(all industrial products, excluding petroleum)		4.3
Raw material		0.8
Semi-manufactures		2.8
Finished products		6.2
Natural-resource based		5.9
Textiles and clothing		11.0

Sources: A and B: Rodrik (1995), Table 4.

C and D: Laird (2002), Tables 11.1, 11.2 and 11.3

Gains for developing countries included the prohibition of gray area measures (Voluntary Export Restraints and Orderly Market Agreements) as well as the dismantling of the Multi-Fiber Agreement, though with a long transition (ten years, the longest transition agreed). There were also increased disciplines in the use of the instruments of contingency protection (antidumping and countervailing duties). Industrial country tariffs were further reduced, though from already low levels and maintaining the tariff peaks and escalation that had been criticized by developing countries since the 1960s (Table 1).

In the case of agriculture, negotiations had, in contrast, a deeply frustrating outcome. The only breakthrough was the formal inclusion of the issue in WTO, as the agreement allowed a large number of subsidies to be maintained, even on a permanent basis (what came to be known as the “Green” and “Blue Boxes” –see below), whereas commitments on the reduction of restricted subsidies (those classified under the “Amber Box”) did not represent an improvement over what countries, particularly European countries, had already done on an unilateral basis. Indeed, as the estimates by the World Bank (2008, Figure 4.3) for the post-war period now make clear, the reference period adopted was that with *highest* rate of agricultural subsidies in the industrial world. Also, it was agreed that non-tariff restrictions would be “tariffied”, but the method chosen, the so called “tariff rate quota”, was really a quota with the semblance of a tariff, as tariffs above minimums level of market access were in many cases prohibitive. The minimum level of imports as a proportion of domestic consumption that was agreed represented, therefore, the only real measure of increased market access. Indeed, deep frustration by many actors with this outcome, particularly by the Cairns Group, which had pushed for deep liberalization of agriculture, led to the only other meaningful decision that was adopted together with the inclusion of agriculture in WTO: that the agricultural agreement would have to be renegotiated after five years (in 2000).

The counterpart of these advances was a significant set of new commitments by developing countries. Most stringent according to all evaluations was, of course, the new disciplines in intellectual property rights, which generated a constraint that had not been present in prior development experiences, including those of industrial countries. QRs were forbidden, except as emergency measures during balance of payments crisis (under

stricter disciplines, in any case) and tariff bindings increased substantially, indeed to cover the whole tariff schedule for many middle-income countries. In general, however, developing countries were able to keep bound tariffs at levels that were substantially higher than those effectively applied after their own unilateral liberalization processes. Another instrument that had been actively used by developing countries in the past, both as a protection device and as an export promotion instrument, the so-called TRIMS, was also prohibited.

Some of the greatest contrasts between the degrees of additional commitments made by industrial vs. developing countries lay in the area of subsidies. In practice, the major subsidy instrument used by developing countries, export subsidies, was prohibited for countries with a per capita GDP above \$1000, except in the case of agriculture, where industrial countries staunchly defended their traditional forms of state intervention. This exception was part of a broader acceptance at Marrakesh of all major instruments of intervention used by industrial countries, with some restrictions. This included export and production subsidies in agriculture, but also for research and development, regional development and environmental adaptation in the general agreement on subsidies. This asymmetry was also present in the case of QRs, which were generally prohibited and made more stringent in the case of balance of payments crises, the typical clause used by developing countries, but were given greater room in textiles (during the transition period), in the general safeguards agreement and, as we have seen, de facto in the case of agriculture. Both in relation to subsidies and QRs, as well as in the transitional provisions for textiles, the principle of special and differential treatment was not only ignored: it was actually turned upside down.

The new General Agreement on Trade in Services (GATS) represented basically a framework for future negotiations. It included the basic principles of GATT –gradual trade liberalization, reciprocity, MFN, fair trade and use of QRs only as an emergency tool— and added new ones, essential for this sector –the transparency of domestic regulations and the need to negotiate commercial presence. However, in practice, countries maintained significant discretion as to what to liberalize (or even totally exclude certain sectors or activities from liberalization) and what form (or “mode”,

according to GATS terminology) it would take. They also maintained a significant degree of freedom to regulate and even to violate the principle of “national treatment” –such as establishing restrictions on maximum foreign ownership of firms in specific activities. It was agreed that either the “positive list” or the “negative list” approaches could be followed, but it was presumed that developing countries would follow the former, which provides greater discretion.

The sense that the outcome of the Uruguay Round negotiations had been imbalanced weighted heavily in the succeeding history of WTO. The call in recent years for a development oriented trade round could not be understood otherwise than as a recognition that the Uruguay Round had failed in that regard, and therefore that a new set of negotiations was essential to correct the imbalances that had been left by the Round. Whether a new “Round” was the best way to correct these imbalances is, of course, quite controversial. In this regard, it is useful to recall that the possibility of conducting regular negotiations in WTO rather than through the sequence of special rounds used by GATT was regarded as one of the major institutional innovations of the Marrakesh Agreement. For the purpose of correcting imbalances, it may have been better to negotiate first the pending issues (the so-called “built-in agenda”), particularly agriculture. Furthermore, the new round brought with it the emphasis on reciprocity, which indeed ended up dominating the Doha Round negotiations, to which we must add the additional reciprocity that was required under the free trade agreements that proliferated in the post-Marrakesh years.

The succeeding history of WTO was also plagued by attempts to further broaden the scope of the new organization. This was particularly true during the first Ministerial meeting held in Singapore in 1996, where a set of issues (investment, competition policy, transparency in government procurement and trade facilitation) were introduced into the WTO agenda. After a long controversy, in August 2004 the WTO's General Council decided to drop three of these Singapore issues (with the exception of trade facilitation) from the Doha Work Programme.

## 2. The Pending Development Agenda

Developing countries had expected to benefit significantly from the Uruguay Round through increased access to the markets of developed countries for products. This was especially in agriculture and textiles, sectors in which developing countries have a comparative advantage. However, as Tables 1 and 2 indicate, these two sectors remained those subject to the highest levels of protection in industrial countries. Tariff peaks continued to be an embedded feature of the system, also in particular in these two sectors. Natural-resource intensive manufactures continued to be constrained by tariff escalation. Non-tariff barriers, particularly antidumping rules and technical standards have also continued to constrain exports from developing countries. In textiles, developed countries progressively phased out their quotas over ten years to January 2005, but they in fact retained protection in most sensitive areas up to very near the end of the transition period. After liberalization, some additional protections were put in place, which in some cases implied a temporary come back of the “gray areas” prohibited by the Marrakesh Agreement.

	Total trade	Agriculture	Manufacturing
<b>A. Tariffs</b>			
High-Income Countries	2.1	12.1	1.4
East Asia and Pacific	5.0	8.7	4.8
Europe and Central Asia	4.5	10.3	4.0
Latin America and the Caribbean	5.4	6.6	5.3
Middle East and North Africa	11.9	12.1	11.8
South Asia	14.0	31.4	13.2
Sub-Saharan Africa	8.4	13.8	7.6
<b>B. Overall trade restrictiveness</b>			
High-Income Countries	7.0	43.1	4.3
East Asia and Pacific	11.3	28.6	10.4
Europe and Central Asia	10.1	25.9	9.0
Latin America and the Caribbean	15.0	28.1	13.8
Middle East and North Africa	21.6	32.3	19.4
South Asia	19.5	46.4	18.2
Sub-Saharan Africa	14.4	24.9	12.9

Source: World Bank (2008), Tables 4.1 and 4.2



Agriculture remained the sector subject to both the highest level of tariff protection and, in particular, non-tariff protection in industrial countries –and this was also true of the developing world (Table 2). In the case of agriculture, and despite the 36% reduction in tariffs agreed to in the Uruguay Round, many tariffs remained high – even prohibitively so— in areas of interest of developing countries, beyond certain moderate level of access. Indeed, conscious that the so-called “tariffication” of non-tariff restrictions would lead to high levels of tariffs for several products, the Uruguay Round agreement on agriculture set minimum market access commitments. But, as already pointed out, this made the trade restriction effectively a quota.

The agreement divided subsidies in three categories. The first, which are classified under the so-called Amber Box, includes subsidies that are clearly trade distorting, as they generate incentives to produce specific commodities or subsidize the use of certain inputs. The second, classified under the Blue Box, includes direct payments under production-limiting programs, which include the “compensation payments” of the EU and the “deficiency payments” of the US. The third are the very long list of Green Box subsidies, which have to meet the criteria that “have no, or at most minimal, trade-distorting effects or effects on production”.<sup>2</sup> Only Amber Box subsidies are subject to reduction commitments.

The Agreement left therefore huge loopholes in the form of subsidies that are not subject to reduction commitments: the Green and Blue boxes as well as *de minimis* support for otherwise Amber Box subsidies.<sup>3</sup> This has allowed industrial countries to redistribute their support to agriculture, while actually increasing the amount of support in dollar terms in relation to the reference period in dollar terms (less so when valued in euros). This is reflected in Table 3, which summarizes the evolution of agricultural subsidies according to the OECD (2008) data. Whereas support based on commodity

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<sup>2</sup> They include general services (research, extension, pest/disease control, infrastructure and marketing services); public stockholding for food security and food aid; direct payment to producers and incomes support that are decoupled from production; government financial participation in income insurance and income safety net programs, crop insurance and relief from natural disasters; and structural adjustment programs.

<sup>3</sup> The *de minimis* provision applies for subsidies that represent less than 5% of the value of production of the specific commodity involved (10% in the case of developing countries)

output (Amber Box) has declined, Blue Box (included as part of OECD estimates of product support) as well as Green Box subsidies have increased. Interestingly, whereas transfers from consumers have declined, as domestic prices paid to producers have gradually approached international prices, fiscal transfers have sharply increased. Furthermore, although as a proportion of farm gate income support has declined relative to the peak levels of the reference years, they have declined only minimally with respect to the levels of the late 1980s.

**Table 3**  
**OECD: Support to agriculture (US\$million)**

	OECD						
	1986-88	1989-91	1991-94	1995-97	1998-00	2001-03	2004-06
Producer Support Estimate (PSE)	241,932	249,390	268,866	254,510	257,435	238,555	280,247
General Services Support Estimate (GSSE)	39,484	53,658	62,650	64,032	55,580	56,761	66,624
Total transfers to producers	281,416	303,049	331,515	318,542	313,014	295,316	346,871
Net transfers to consumers	17,258	19,617	25,343	28,169	25,938	27,555	33,903
Total Support Estimate (TSE)	298,674	322,666	356,858	346,712	338,952	322,871	380,774
Transfers from consumers	194,882	193,724	214,244	196,588	192,240	162,106	171,477
Transfers from taxpayers	129,856	156,365	178,977	180,439	172,540	182,959	230,651
Budget revenues	-22,272	-23,293	-33,352	-30,315	-25,829	-22,194	-21,354
Percentage PSE 2/	37.5%	32.8%	34.2%	29.9%	33.6%	30.6%	28.9%
TSE as % of value of production at farm gate	41.0%	35.6%	37.5%	33.2%	38.1%	34.9%	33.2%
TSE+GSEE as % of value of production at farm gate	47.7%	43.2%	46.2%	41.5%	46.3%	43.2%	41.1%

PSE: Producer Support Estimate. NPC: Nominal Protection Coefficient.  
1/ A (Area planted), An (animal numbers), R (receipts), I (Income)  
2/ Producer support as proportion of total income (market income plus producer support)

Source: OECD, PSE/CSE database

These conclusions are confirmed by alternative World Bank data, which indicates that subsidies have not only increased but have actually remained higher in relation to the value of production to the levels that were characteristic up to the mid-1980s (World Bank, 2008, Figure 4.3 and Table 4.4). In some cases, the redistribution has actually violated even the generous WTO rules. Thus, in a dispute settlement case on cotton, it was found that the US had been wrongly shielding some trade-distorting subsidies within the Green Box, and was asked to change its policies accordingly.

The debate that has taken place since the Uruguay Round indicates that the division between trade and non-trade distorting subsidies is artificial. Blue Box subsidies are now clearly recognized as trade distorting. As a result, they have been included in possible reduction commitments, together with Amber Box subsidies in proposals that are on the table as part of Doha Round discussions. But Green Box subsidies can also generate trade distortions. So, as the World Bank (2007, pp. 97-98) has argued, even decoupled payments can influence production by making farmers less averse to risk or

reducing the variability of farm income and thus making banks more willing to lend to farmers. This is true if farmers are potentially credit constrained: in this case, reducing the risk they face through income and crop insurance will allow them to access finance and expand production (Stiglitz and Charlton, 2005, p. 124). By allowing farmers to obtain parts of their income from different sources, even decoupled income support allow them to remain in business, which otherwise they might not. Furthermore, to the extent that farmers are located in areas with specific natural resources, the incentives to produce in these areas will necessarily have some commodity biases, and thus trade-distorting effects.

In the area of services, the General Agreement on Trade in Services (GATS) has a number of development flexibilities built into its provisions. In the present GATS architecture, a developing country can decide whether to enter any service sector in its schedules of commitments. Thus, sectors can be excluded. And if a sector is included in the schedule, the country can decide the extent of liberalization to commit in that sector, in each of the four modes of service delivery, including restrictions and limits on foreign equity ownership in Mode 3 on “commercial presence.”

Experience indicates that developing countries and, particularly, least developed countries have used the flexibility that GATS offers, and have made fewer commitments than industrial countries, but this is not true of acceding developing countries, which have had to accept substantial commitments in this area. Most liberalization has taken place in modes 1 (cross-border supply) and 2 (consumption abroad); in contrast, liberalization has been more limited under mode 3 (commercial presence) and, particularly, 4 (movement of natural persons) (Marchetti, 2004; World Bank, 2005, pp. 136-8).

A look at the WTO data base on service commitments indicates that out of 55 sectors, a majority of member countries participate only in eight: hotels and restaurants, travel agencies and tour operators, professional services, computer and related services, other business services, telecommunications, insurance and banking. Developing countries have gained as exporters from those associated with tourism and business services that have facilitated offshore supply of certain tasks, whereas liberalization in

telecommunications and finance, as well as other forms of business services are mainly in the interest of industrial countries.

The major discussion in this area relates to Mode 4, where commitments have been minimal, and have been made largely to facilitate intra-corporate transfers and mobility of executives, managers and specialists (Marchetti, 2004, Chart 5). The opportunities for developing countries under Mode 4 are potentially very broad, and are closely interconnected with the benefits from partial liberalization of temporary migration, or migration in general. Indeed, according to general equilibrium estimates, the benefits in this area largely exceed those associated with the liberalization of trade in goods. Thus, for example, additional temporary access to foreign service providers equal to just 3% of the OECD labor force, would generate gains that exceed \$150 billion (Brown *et al.*, 2002; World Bank, 2004, ch. 10; Stiglitz and Charlton, 2005, Appendix 1).

Another set of imbalances faced by developing countries are associated with implementing their own obligations under WTO. One of the most important issues is the constraints imposed on their policy space to implement development-oriented measures such as promotion of local industries or adoption of new technologies. There is a major concern in this regard that the Non-Agricultural Market Access (NAMA) negotiations is likely to exacerbate the de-industrialization that has already taken place because of rapid liberalization.<sup>4</sup> It must be recalled in this regard that today's developed countries made use of high tariffs to protect their industries during their industrialization phase, and successful East Asian economies of Taiwan, South Korea and Japan resorted to tariff measures to pursue their industrial development (Akyüz, 2005).

As already pointed out, the subsidies that were more commonly used by developing countries (for export diversification) came under actionable disciplines, and thus potentially subject to countervailing duties. In turn, the TRIMS Agreement prohibited developing countries from making use of local-content policy (which developing countries had used to increase the use of local materials and improve

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<sup>4</sup> See in this regard Buffie (2001) and Khor and Yen (2006).

linkages to the local economy) and some aspects of foreign exchange balancing (export targets aimed at correcting balance-of-payments problems).

The Agreement on Trade Related Intellectual Property Rights (TRIPS) for the first time set minimal standards for the whole range of intellectual property. Developing countries, which had previously enjoyed the ability to set their own IPR policies, are now constrained by having to adhere to IPR standards that are high compared not only to what they previously had, but also what the developed countries had when they were at their initial stages of industrialization. Prior to the TRIPS agreement, several developing countries had exempted pharmaceutical drugs and food from patentability, and had an active policy of promoting generic medicines. However, this policy of exemption can no longer be maintained, as the agreement prohibits exemptions on the basis of sectors. The implementation of the TRIPS agreement has therefore increased the costs for local firms in developing countries to access technology.

Furthermore, in contrast to the strict protection of the rights of the innovator, there is no comparable protection of the rights of countries over their natural resources or traditional communities over their ancestral knowledge. The first of these issues have been posed as the relationship between TRIPS and the Convention on Biological Diversity

Finally, it must be added that many developing countries have found several problems of implementation of the WTO agreements (both by developed countries and their own obligations), including the fact that the SDT provisions in various agreements were non-operational and non-binding in nature, and were thus of little practical use. Although these issues have been in the WTO agenda in recent years, the associated negotiations have been characterized by missed deadlines and very limited progress in terms of concrete, substantive outcomes.<sup>5</sup>

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<sup>5</sup> A good account of the progress (or lack of it) in the negotiations on special and differential treatment and other "development issues" in the Doha Work Programme is Onguglo (2005).

## **II. The Proliferation of Free Trade Agreements**

The greatest challenge to the multilateral trading system has come over the past two decades not through the complex negotiations taking place in WTO but through the proliferation of free trade agreements. This process has ended up eroding more than anything the two fundamental principles of the WTO: the general principle of non-discrimination and its major exception, special and differential treatment.

GATT and now the WTO allow two exceptions to the MFN principle (there was actually a third, preexisting colonial preferences, which is now in the process of being dismantled). The first exception is in Article XXIV, which was created to allow for the formation of customs unions and the subscription of free trade agreements. The exception had two major conditions: that the agreement should involve “substantially all trade” (or, in the case of the parallel provision of Article V of GATS, that it should have “substantial sector coverage”), and that it should not increase trade barriers for other WTO contracting parties.

The second exception was non-reciprocity associated to special and preferential treatment (SDT) for developing countries, when it was accepted as an essential principle of GATT in the 1960s and the 1979 “Enabling Clause”. As in Article XXIV, the exception was made on the basis that these preferences should not increase protection vis-à-vis third parties. The Enabling Clause also allowed for mutual trade liberalization among developing countries without the proviso of Article XXIV that it should involve “substantially all trade”, and could thus involve partial scope agreements.

Interestingly, aside from this specific provision for customs unions or free trade agreements among developing countries included in the Enabling Clause, there was never any attempt to design specific rules for non-reciprocal trade agreements between industrial and developing countries. The major ones were the former colonial preferences, which were also originally accepted as an exception to the MFN principle in Article I of GATT –and thus as a third exception to the general rule. These preferences were harmonized and consolidated by the European Economic Community in the 1972 Lomé Convention. The major reason why there was no attempt to design general rules for

preferential trade agreements between industrial and developing countries was that preferences agreed to in the context of SDT were supposed to be, in principle, *general* preferences for developing countries, as the name of GSP (Generalized System of Preferences) implied, which now are understood to include general preferences vis-à-vis least developed countries. A 2003 Appellate Panel ruling determined, however, that there could be discrimination among different beneficiaries of GSP program, so long as a program for a specific group of beneficiaries was available to *all* developing countries in similar conditions (Hoekman and Mavroidis, 2007, ch. 6).<sup>6</sup>

**Table 4**  
**Active Customs Unions and Free Trade Agreements Announced to GATT/WTO**

	pre-1990	1990s	2000s	Early announc.	Total	Enabling Clause
Europe	5	5	9		19	
Europe-extraregional	2	7	21	8	38	
Ex-USSR		7	21		28	
North America-centered	1	3	10	9	23	
Intra-LAC	4	1	10		15	3
LA-Asia			8	1	9	1
East Asia and Pacific-centered	5	2	24	12	43	10
South Asia			3		3	3
Western Asia	1				1	1
Turkey-centered			11		11	1
Africa	5	2			7	5
Interegional developing	3	1			4	3
Total	26	28	117	30	201	
Using Enabling Clause	12	7	8			27

Source: Authors' estimates based on WTO database. Excludes accessions, enlargements and extension of agreements into new areas (generally services). In the case of Europe, includes agreements with Faroe Islands.

The history of customs unions and free trade agreements notified to GATT/WTO is summarized in Table 4. Most of the exceptions prior to 1990 were integration processes involving several member countries, both in Europe (the European Economic Community and the European Free Trade Association, and agreements between members of these two arrangements) and among developing countries; a slightly later vintage of this type of agreements was the 1983 Australia-New Zealand Closer Economic

<sup>6</sup> The ruling related to special benefits given to Pakistan as part of special program for developing countries involved in combating drug production and trafficking. The decision of the Appellate Body implied that it was consistent with WTO rules if similar trade preferences were given to other developing countries that were combating drug trafficking. It overruled the panel decision that GSP had to be made available to *all* developing countries without differentiation.

Agreement. In the developing world, the most active regions were Latin America and the Caribbean, and Africa, but there were also some agreements in the Middle East (the Gulf Cooperation Council), East Asia (ASEAN) and the Pacific. They also include the 1971 Protocol on Trade Negotiations among Developing Countries and the 1988 Global System of Trade Preferences among Developing Countries (GSTP). Most agreements among developing countries were covered by the Enabling Clause and were partial in scope. Also, with the exception of the broader frameworks of negotiations among developing countries, the agreements were essentially regional in character.

These initial exceptions made sense from the point of view of the emerging trade order and thus as exceptions to the general MFN principle, as they involved “deep integration” processes, in which a region became the unit of trade that negotiated with the rest of the world (with the EU being the most remarkable example), and the promotion of South-South trade through the “Enabling Clause”. However, the agreements that came later ended up significantly eroding –or even destroying— the two fundamental principles of such a multilateral order. The new trend had some precedents in the 1980s (such as the 1985 United States Israel Free Trade Area and the 1988 Canada-United States Free Trade Agreement, which was superseded by the 1993 NAFTA) but took off in the 1990s and led to a veritable proliferation of free trade agreements over the past decade. As Table 4 indicates, of the 2001 agreements notified or announced by April 2009 (eliminating double counting<sup>7</sup>), three-fourths were signed in the 2000s. They generally include goods and services, and are thus covered by Articles XXIV of GATT and V of GATS, but also intellectual property provisions and the “Singapore issues” as well as labor and environmental standards. The enabling clause continues to be also a framework for some deals among developing countries, particularly those of partial scope.

These agreements came in waves and increasingly went beyond their regional character to cover interregional agreements. This is a reason why the concept of “regional trade agreements” (RTAs) and “regionalism” commonly used to refer to them is

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<sup>7</sup> The number of agreements is actually larger, 228 excluding accessions, but there is some double counting associated with the expansion of existing agreements which were already notified.



increasingly inappropriate. The term “preferential trade agreements” (PTAs) is also inappropriate, as it does not differentiate those preferences that are associated with Article XXIV and those that derive from SDT.

The major clusters that are identified in Table 4 indicate that the largest number of these agreements center in Europe and increasingly involve deals between the EU or EFTA and extra-regional partners. The Americas are also very active early on, both the United States and Canada as well as some Latin American countries –Chile and Mexico, in particular—and in all cases involve an increasing number of interregional agreements. To this we must add the agreements among Latin American countries that are done in the context of the Latin American Integration Association (LAIA), which is in fact a flexible framework for partial or full scope agreements among its members. The former members of the USSR also became active in the late 1990s, essentially replacing the old trade arrangements of the Soviet era with free trade agreements among themselves, with Ukraine being the most active country and involved in FTAs with other regions (such as countries that made up former Yugoslavia).

In the 2000s, the East Asian region became the most dynamic region in the subscription of FTAs, again led by a few countries, particularly Singapore and, increasingly, Japan. Turkey also became an active member of the FTA club over the past decade. Outside Latin America and East Asia, other developing country regions were much less active, particularly South and Western Asia (with the exception of Turkey). In Africa, the old integration agreements of the 1960s, 1970s and early 1980s remained the essential frameworks for intraregional trade. Some of these countries have also been involved in negotiating Economic Partnership Agreements (EPAs) with the EU, with great reluctance in several cases.

Viewed as a whole, the process has been uneven across the world. The EU, EFTA, three industrial countries (Canada, Japan and the US), four developing countries (Chile, Mexico, Turkey and Singapore) and a transition economy (Ukraine) have been most active in these negotiations. The unevenness of the process is also true within some

regions. In Latin America, for example, the activism of Chile and Mexico is in sharp contrast with the reluctance of Argentina and Brazil to enter into this race.

The consequence of this trend for the MFN principle was ably summarized in the report on the “Future of WTO” led by Peter Sutherland: “MFN is no longer the rule; it is almost the exception (...) Certainly the term might now be better defined as LFN, Least-Favoured-Nation Treatment” (WTO, 2004, p. 19). The “spaghetti” or “noodle” bowl of rules that this implies is extremely problematic, not only in relation to tariffs but also non-tariff rules and, particularly, rules of origin. Indeed, managing the complexity of rules has become an additional trade restriction. Even if, on balance, trade creation rather than trade diversion has prevailed, the basic idea that was embedded in the reconstruction of a multilateral trading system in the post-war years is now essentially moribund. We are essentially back to the complexity of bilateral rules that characterized the 1930s, curiously for the opposite reason: competitive liberalization rather than competitive protectionism. The attempt to be ahead of others to access markets –which can be properly called “beggar-thy-neighbor” liberalization— may in the end be largely futile if others follow in the competitive race and sign FTAs to avoid being displaced from those markets. Curiously enough, the major way to block this process, by not accepting their compatibility with multilateralism through a rejection of these agreements in WTO, has been totally dysfunctional, as there is an implicit agreement not to step on each other’s toes.

Equally problematic is the fact that the very uneven negotiating power between developed and developing countries in these deals has brought into the agreements the non-trade issues that developing countries have refused to negotiate in WTO.<sup>8</sup> As Bhagwati (2008, pp. 70-71) has concluded: “Because of the spaghetti bowl, and because hegemonic powers use PTAs to impose a host of expensive trade-unrelated demands on the poor country partners in PTS, that reflect lobbying demands in the hegemon, PTAs

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<sup>8</sup> See Khor (2008) for a critique of North-South FTAs, especially the implications of the non-trade issues in these FTAs.

are a particularly unattractive trade option for the poor countries relative to multilateralism”.<sup>9</sup>

Equally problematic is the fact that these agreements have also dealt a hard, even a death blow to SDT. The reason is that, although the agreements may include some provisions that allow a more gradual liberalization of trade or broader exceptions for rules for developing countries, the double condition of liberalization of “substantially all trade” (“substantial sector coverage” in services) and reciprocity imply that only very weak forms of SDT can be incorporated into the agreements. Given the greater fiscal capacity that industrial countries have to use the subsidy schemes that are allowed by these arrangements, SDT may actually be turned upside down, with the special treatment enjoyed by the developed and not developing countries. Particularly, in the area of agriculture, developing countries may end up competing with subsidized goods from industrial countries, without having the possibility of protecting their own local goods. Similarly, under the FTAs, the developing countries’ higher technology infant industries are given no protection and must compete with the science and technology subsidies of industrial countries.

Furthermore, the excessive expansion of these agreements into non-trade areas constrains the policy space that developing countries have to a much larger extent than WTO rules do. The ongoing debates on the EPAs of developing countries with the EU reflect this fact, as the debate on FTAs of the US with Latin American has done for several years. In fact, the experiences of the FTA that has been applied for a longer time period, NAFTA, indicates that it helps to generate foreign investment and export growth, but it does not necessarily help accelerate economic growth (see, for example, the analysis on Mexico by UNCTAD, 2007).

The new rules represent also a challenge for the promotion of South-South trade, as envisioned in the Enabling Clause which permits developing countries to promote such trade by given each other preferences that are not extended to industrial countries. Indeed, to the extent that FTAs include a MFN clause among contracting parties, South-

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<sup>9</sup> See a broader analysis of this issue in Bhagwati (1991 and 2008). See also WTO (2004, p. 23, paragraph 87).

South agreements signed by any of its developing country parties of the FTA would have to be extended to the industrial country partners of the FTA. So, for example, given the rules of the EPA signed between the EU and the Caribbean countries, preferences extended by Brazil to the Caribbean countries would be automatically extended to the EU. This fact by itself reduces the room for South-South trade negotiations.

Crucial in this regard is, of course, the fact that the negotiating capacity that developing countries have in WTO, and which has been more actively used in recent years, is entirely lost in the wave of FTAs. Indeed, industrial countries have forced into these agreements issues and provisions that developing countries have refused to negotiate in WTO.

### **III. WTO Governance Structures**

#### **1. Surveillance and Dispute Settlement**

Among the novelties of WTO was the establishment of a surveillance instrument and an improved dispute settlement mechanism. The first of these, the Trade Policy Review, was adopted during the Uruguay Round negotiations and began to function before the negotiations ended. It involves both a document prepared by the WTO Secretariat, reviewing developments and the state of trade policy of a country, and a document prepared by the country itself. They are presented to the Trade Policy Review Body for peer review deliberations. The four largest trading members –the EU, the US, Japan and China—are reviewed every two years, the next 16 every four years, and the rest of the members every six years or more.

The WTO's dispute settlement mechanism is a strengthened version of the one previously used in GATT. Although this mechanism had a well established record of acceptance of its decisions by member countries, it had three troublesome features: the lack of a clear timetable, the possibility that the country against which complaints had been levied could block the naming of the panel, and the consensus rule to adopt its decisions, which make them contingent on acceptance by the said country. The new mechanism established a more rigorous process, which involves, sequentially and with a

strict timetable: (i) a phase of consultations; (ii) if it failed to lead to agreement, the convening of a panel; (iii) an eventual appeal to an Appellate Body; and (iv) adoption of corrective measures by the party that incurred in violations of commitments. As the decisions of the panel and the Appellate Body can only be rejected by consensus, they are in practice binding. If corrective measures are not adopted, the affected party (or parties) can adopt retaliatory measures.

This is the most elaborate and rigorous enforcement mechanism of its kind in global economic governance. Its record has generated a broad consensus regarding its efficiency and effectiveness, though also the need to make improvements in certain areas.<sup>10</sup>

More than half of the disputes are settled during consultations and few decisions of panels of the Appellate Body have not been complied with and thus led to countermeasures. The positive view of early evaluations of the Uruguay Round that the dispute settlement mechanism is an advance over the GATT instrument in terms of effectiveness has therefore been confirmed in practice.

Table 5 summarizes the history of the utilization of this mechanism. It was more actively used in the second half of the 1990s and early 2000s, and less so during the recent years of booming world trade. About two-fifths of the cases have been complaints among developed countries. However, the WTO mechanism has been more actively used by developing countries than the previous GATT one, although much more by middle-income rather than low-income countries. Also, given the additional commitments undertaken by developing countries, they also became subject to complaints by other WTO members. About one-fifth of the cases have been complaints of developing countries against developed countries, and a fairly similar amount has been complaints by developed against developing countries. A slightly smaller number have been disputes among developing countries.

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<sup>10</sup> See, for example, Hoekman and Kostecki (2001), ch. 3; Das (2003), pp. 61-64, 96-104 and 226-8; Srinivasan (2007) and the Sutherland Report, published as WTO (2004), ch. VI.

Complaints against: by:	Developed			Developing			Total
	Developed	Developing	Mixed	Developed	Developing	Mixed	
	1995	13	7	1	1	3	
1996	15	4	2	12	4	2	39
1997	25	7	0	17	1	0	50
1998	21	5	0	12	3	0	41
1999	18	0	1	6	5	0	30
2000	8	5	1	10	10	0	34
2001	4	5	1	0	13	0	23
2002	17	13	0	2	5	0	37
2003	8	8	0	3	7	0	26
2004	11	3	0	3	2	0	19
2005	2	3	0	3	4	0	12
2006	6	5	0	5	4	0	20
2007	3	4	0	4	2	0	13
2008	3	7	0	6	3	0	19
Total	154	76	6	84	66	2	388
	39.7%	19.6%	1.5%	21.6%	17.0%	0.5%	100.0%

Source: WTO, Dispute Settlement Database

A closer look at the nearly 400 cases dealt with in 1995-2008 indicates that slightly less than half relate to market access issues in the area of goods, with agricultural issues (including fishing) being by far the most common. Several of the disputes in this area involved domestic taxation rules that are seen by the demanding party as being inconsistent with national treatment of imported goods. The second set of complaints – slightly less than a third through the history of the mechanism—relate to antidumping provisions, countervailing duties and safeguards. More interestingly perhaps, the relative importance of disputes in the three areas of contingency protection has increased through time. Export and production subsidies come a distant third. The fear that TRIPS could lead to many disputes has not been confirmed. TRIMS generated a small number of disputes in the 1990s but not in the 2000s, whereas a few disputes in the area of services and government procurement (among countries who are signatories of the associated plurilateral agreement) complete the inventory of controversies.

One of the most common criticisms of the mechanism is the fact that the retaliatory measures of last resort generate a significant asymmetry between developed and developing countries –particularly the weakest among the latter— as the costs of measures that they can adopt are unlikely to affect much the developed countries that

violated WTO rules. In recent negotiations, there have therefore been proposals by developing countries to introduce monetary compensation of damages or to allow the possibility of tradable remedies or collective action against violators of the rules.

The costs of using the system are also high, potentially limiting the use of the mechanism by poor and small countries. To reduce the costs of using the mechanism, 29 countries agreed in Seattle to create an Advisory Centre on WTO Law, an independent legal aid intergovernmental organization separate from WTO, which started to operate in 2001. This organization provides subsidized legal assistance to developing countries during dispute settlement proceedings, as well as other legal services and training.

Equally important are the issue that relates to conflicts regarding the areas of competence of institutions of the WTO. In this regard, there have been complaints that some jurisprudence of the Appellate Body may have intruded into areas that belong to the mandate or competence of some of the political bodies of the WTO, and that in such cases the former should refrain from doing so, and instead allow the political bodies be in charge of the issues involved. Equally important, and again to avoid a collision of competences, there have been proposals to guarantee a total separation of the Appellate Body from the WTO Secretariat.<sup>11</sup>

## 2. WTO Decision-Making

The WTO was designed as an institution in which all members are formally equal in terms of decision-making rights. This contrasts favorably with the system in the International Monetary Fund and the World Bank, in which the voting rights of members are based on the allocation of quotas, which are skewed in favor of the developed countries.

This is also reflected in the naming of the Director-General. Whereas the process of election of the heads of both IMF and the World Bank lacks transparency and has always led to the election of an European and a US citizen, respectively, WTO has a

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<sup>11</sup> See, on both issues, Das (2003).

more open and competitive system in which a citizen from any of the member countries can participate and be elected.

In reality, some developing countries have been unable to realize their participation rights because they do not even have a Mission or a representative in Geneva and are thus unable to take part in the meetings. Moreover, many Missions of developing countries in Geneva are understaffed and thus have been unable to adequately follow the discussions and negotiations. Even if they are present, many officials from developing countries are unable to adequately keep up with the often complex negotiating issues involved and thus are unable to make the impact they may want to. Unequal capacity thus leads to unequal degrees of participation

This problem is made more acute by the relative lack of transparency in some key aspects of WTO operations. The main reason for this is its working methods and system of decision-making. In terms of formal arrangements, decisions are made on the basis of “one country, one vote” and by consensus, which implies that any member has, in principle, the right to block any decision.

In practice, however, GATT and the WTO have been dominated by a few major industrial countries. Often, these countries negotiate and decide among themselves, and embark on an exercise of winning over a selected number of more important or influential developing countries, in “informal meetings”. Most WTO members may not be invited to these informal meetings and may not even know that they take place, or what happens there. When agreement is reached among a relatively small group, the decisions are rather easier to pass through. The meeting of a limited number of countries to work out an agreement among themselves is referred to in WTO jargon as the “Green Room” process.

In the GATT and in the first decade of the WTO, the most powerful members by far were the so-called “Quad” (comprising the US, EU, Japan and Canada), which had the practice of formulating a common position among themselves, and then seeking to influence more and more countries around that position, until a “consensus” is said to have been formed. The informal “Quad-led system” operated until a few years ago, when it was realized that this old way of getting business done could not work anymore, because of the



emergence of developing countries, which could not be “rolled over” in the same way as before. In 2004, a new informal “Group of 6” emerged in the agriculture negotiations, comprising the US, EU, Japan, Australia, Brazil and India. Members of this group negotiated among themselves during a mini-Ministerial meeting in July 2004, and again at Ministerial level at various stages of the Doha negotiations in 2006 to 2008, while at the mini-Ministerial meeting in July 2008, China was included in this small-group negotiation.

The inclusion of Brazil, India and now China in this small-group configuration has widened the role of developing countries in the “core” of the informal circle of decision-making, with this “core” functioning at critical moments. However, the reality remains that for the majority of developing countries, participation in real decision-making remains out of reach. The developing countries in this innermost circle have also made it clear that they do not “represent” the developing countries (nor have they been mandated to do so) inside the Group of 6, and only carry their own views.

A positive trend in recent years is the formation of various groupings of developing countries which have been actively participating in the debates and negotiations. They include the G20, G33, Africa Group, LDC group and ACP group, the group of “small and vulnerable economies” and the group of four African cotton producers. The participation of these groups in WTO negotiations has built up gradually through the years. Nevertheless, as described above, the real fulcrum of decision-making power lies not in the democratic and equal exercise of the groupings, but in the small grouping of six or seven countries which have undertaken the “real negotiations” at critical moments in the past few years.

What this implies is that, although there is “formal democracy” at the WTO, with each country having an equal say, and with decisions taken by consensus, in fact it operates as an “informal oligarchy”, to borrow Evan’s appropriate characterization (Evans, 2003). In this system, representatives of many of developing country groupings have been invited to some of the Green Room meetings. However, it is still a smaller grouping, or groupings, that make the key decisions. The meetings of this small groupm) have recently been convened by the Director General of the WTO. However there are no

formal announcements that the meetings would be held, nor formal reports or minutes of the meetings. Neither are there reports or minutes of the meetings of the mini-Ministerial meetings, nor of the “Green Room meetings” held during the formal Ministerial conferences.

There are divergent views on whether and how to reform the decision-making system in the WTO, which is widely perceived to be non-transparent and non-inclusive. Those who advocate the retention of the status quo may even agree that the system is exclusionary but claim that for the sake of “efficiency” in coming up with an outcome, the decision-making system has to be confined to a relatively few delegations, while the other members not in the inner circle can also make their views heard through their representatives in the “Green Room.” On the other hand, those who are critical of the non-transparent and non-participatory nature of decision-making argue that the exclusionary system and the manipulations that often characterize the operations of meetings and production of drafts do not guarantee that an outcome will be obtained, as seen by the conferences and mini-Ministerials ending more times in failure and collapses than in success. And even in the case of one of the few “successes”, the Doha Conference of 2001, the decisions concerning some of the most controversial elements could not be sustained and were overthrown by another decision subsequently.

A good critical account of the problems of this system is given in a Memorandum on the need to improve internal transparency and participation in the WTO that was issued by several NGOs that are involved in WTO related issues.<sup>12</sup> Among the practices at the Ministerial conferences that it documents are the misuse of the opening ceremony for obtaining approvals for important substantive decisions, the undemocratic adoption of the Draft Declaration as the basis for conference negotiations, the undemocratic selection of chairpersons or so-called “friends of the chair” to conduct negotiations on key issues, the holding of “informal”, undocumented and exclusive meetings that undermine transparency and participation, the sidelining of views of many members that are not

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<sup>12</sup> See TWN et al (2003) for the memorandum that documents the manifold problems and provides proposals for reforming the decision-making system.

reflected in the negotiating texts, and the fact that operation of the “green room” process excludes many members from meetings and decision-making.

This indicates that it is essential to make the system more open, democratic and inclusive. This implies, foremost, that the consensus system should be applied in a manner that fully respects the views of developing country members. WTO practice indicates that this implies that there should be agreed procedures for smaller, issue-based meetings, with authorization coming from all members and the meetings being governed by transparent rules. It also implies that there should be agreed terms of reference for the roles of chairs of formal and informal groups, as well as agreed procedures for drafting of texts, which should fairly reflect the divergence of views, if any, among members. During Ministerial conferences, the Opening Ceremony should not adopt decisions on business matters, and members (not the conference chairman) should appoint the chairs and facilitators to conduct discussions and determine their role and terms of reference. If “Green Room” or “Mini Ministerials” are to be held to speed up negotiations, they should be called by members, who should also determine the system of representation. All meetings should be inclusive and transparent, minutes should be kept and subject to members’ approval. Finally, the neutrality and impartiality of the Secretariat should be observed at all times, and particularly during Ministerials.

#### **IV. Concluding Remarks**

The multilateral trading system is in an inadequate condition and several critics describe it as being in a major crisis. To its credit, it has established a stable legal framework that accompanied a substantial growth of international trade and a significant though very uneven diversification of exports in the developing countries. Despite the formal democratic character of WTO, its decision making process is full of flaws. Although developing countries have been unable to use the negotiating power they have to block unfavorable deals, the call for a “Development Round” is perhaps the most clear recognition that the interests of developing countries have not been successfully advanced in the multilateral trading system. Despite their many attempts to correct the inadequacies of the system, there has been only very limited advance on the issues of

agriculture, tariff peaks and tariff escalation that developing countries have put on the table since the 1960s, or on more recent issues, such as the Mode 4 liberalization in services. The Uruguay Round added an additional series of imbalances, including the inclusion in the WTO of a non-trade issue, intellectual property rights, and there have been additional pressures since then to include further non-trade issues. The Doha Round was born as an uneasy North-South compromise to rebalance the world trading system, but as the negotiations developed it has become almost a pure market-access Round, with no clear end in sight.

It is thus time to undertake a fundamental review of the international trading order that has emerged in recent decades and to re-think what a better order would be like in the future. A major part of such a review would have to include a deep consideration of what has happened to the two basic principles that were formulated in the post-war period: non-discrimination (and, particularly, the Most-Favored Nation) and Special and Differential Treatment, two principles for which the bells are now tolling. The second principle is, of course, an exception to the first, but it recognizes that the world economy is still a highly unlevel playing field, and that equal rules for unequal players and circumstances will worsen inequalities.

Thus the present impasse in the Doha Round should provide the opportunity for initiating reforms to the international trade architecture. Such a reform should include the following:

1. Standstill on FTAs until clear rules can be agreed on how to reestablish the primacy of global over bilateral or plurilateral rules.
2. A standstill on the introduction of new non-trade issues and a review of whether it is appropriate for existing non-trade issues (especially intellectual property) to be included in the mandate and legal framework of WTO.
3. Review the rules in agriculture to ensure that there will be really substantial reduction or elimination of domestic support in developed countries, and not merely a shifting between types of subsidies, and ensure the promotion of

developing countries' food security and farmers' livelihoods through an effective special safeguard mechanism.

4. Align the trade rules to the production development needs of developing countries by ensuring sufficient policy space for the growth of existing and new industries. Consideration of what types of development policies are essential to build *production* (or supply) capacities in the development world, and what international transfers of resources and technology are essential to support, in particular, the development of such capacities in least developed countries.
5. A proper process to consider the “implementation issues” and the proposals to strengthen SDT provisions, as well as to establish a “SDT architecture” as envisaged in the Doha Declaration.
6. Measures and institutional mechanisms to address the commodity issues, including instability of commodity prices, fluctuations in demand, processing and diversification.
7. Advance in Mode 4 of service liberalization, where very limited advance has been made.
8. Design of rules that guarantee the transparency and representativeness of WTO decision making.

Another major aspect of reconsidering the international trade architecture is the allocation of roles and mandates to different organizations. As pointed out in the introduction, it is a mistake to identify the WTO as the multilateral trading system. There are aspects of trade that the WTO's rules do not cover and that the WTO is not equipped to deal with, such as boosting the production capacity of developing countries so that they can engage better in trade, or addressing the wide range of commodity issues. The roles of other organizations should be remembered and strengthened as part of the reform process. For example, the commodities issue is best dealt with by UNCTAD, and intellectual property issues by WIPO, CBD and FAO, while improving the production capacity of developing countries is an issue that is addressed by many departments and

agencies of the United Nations, and should again be brought at the center of the activities of multilateral development banks.

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