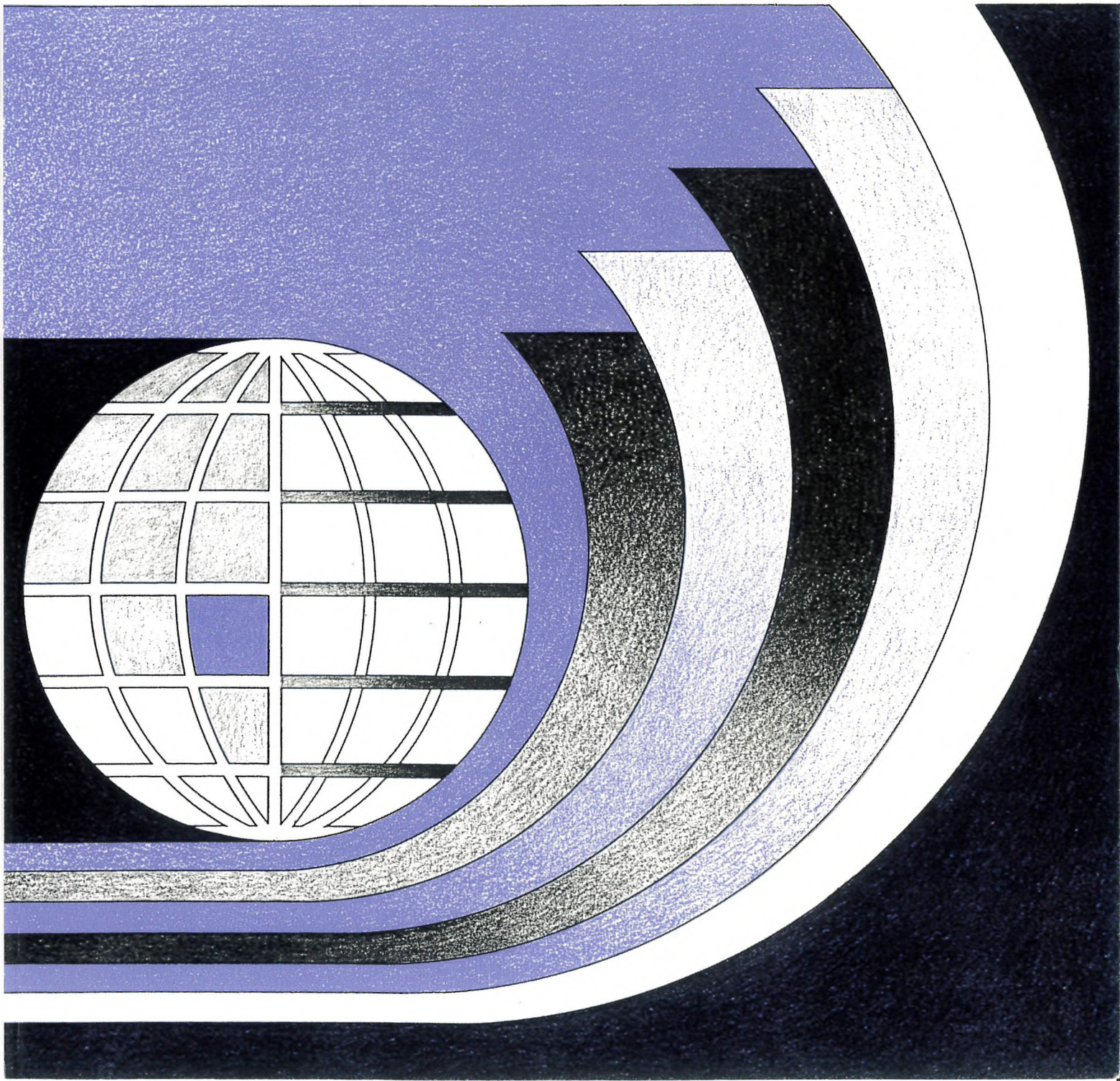
UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

INTERNATIONAL MONETARY AND FINANCIAL ISSUES FOR THE 1990s

Volume VI

UNITED NATIONS



UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT
Geneva

INTERNATIONAL MONETARY AND FINANCIAL ISSUES FOR THE 1990s

Research papers for the Group of Twenty-Four

VOLUME VI

UNITED NATIONS
New York and Geneva, 1995

Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

*

* *

The views expressed in this compendium are those of the authors and do not necessarily reflect the views of the UNCTAD secretariat. The designations employed and the presentation of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimination of its frontiers or boundaries.

*

* *

UNCTAD/GID/G24/6

UNITED NATIONS PUBLICATION

Sales No. E.95.II.D.7

ISBN 92-1-112375-5
ISSN 1020-329X

Contents

Page

Abbreviations ..... *v*
About the authors ..... *vi*
Introduction ..... *vii*

DEVELOPING COUNTRIES AND THE URUGUAY ROUND: AN EVALUATION AND ISSUES FOR THE FUTURE

Manuel R. Agosin, Diana Tussie and Gustavo Crespi 1

Abstract 1
Introduction 2
I. Enhanced market access for developing countries 4
A. Tariff reductions 4
B. Agriculture 6
C. Textiles and clothing 8
II. Implications for trade policies of developing countries 9
A. New disciplines on subsidies 9
B. Other disciplines on trade policy 12
C. Trade-related investment measures 12
D. Concluding remarks 13
III. Stricter disciplines on importing partners 13
A. Safeguards 15
B. Anti-dumping measures 16
IV. Intellectual property protection 18
A. Characteristics of the Agreement on Trade-Related Aspects of Intellectual Property Rights 18
B. Developing countries and intellectual property protection 20
C. Options for developing countries 21
V. Services 22
A. The General Agreement on Trade in Services 23
B. Effects on developing countries 23
VI. The status of special and differential treatment after the Round 25
A. Erosion of the S&D principle 25
B. Options for the future 28
VII. Institutional reform and dispute settlement 29
A. The new trading system 29
B. The dispute settlement mechanism 30
VIII. Recommendations for future trade negotiations 31
References 33

Page

DEVELOPING COUNTRIES AFTER THE URUGUAY ROUND
Dani Rodrik 35

Abstract 35
I. Introduction 35
II. The Uruguay Round: a time of transition for developing countries 38
A. Overview 38
B. New responsibilities 40
C. New opportunities 46
D. How to make the best of the Uruguay Round 49
III. The Post-Uruguay Agenda 52
A. The new dangers: labour and environmental standards 52
B. How to deal with pressures for harmonization 53
IV. Concluding remarks 58
References 59

THE URUGUAY ROUND: UNRAVELLING THE IMPLICATIONS FOR THE LEAST DEVELOPED AND LOW-INCOME COUNTRIES
Ann Weston 61

Abstract 61
I. Introduction 61
II. The least developed and low-income countries: some introductory observations 63
III. Special and differential treatment: an overview 64
IV. Market access 66
A. Overall results 66
B. Textiles and clothing 68
C. Agriculture 71
D. Safeguard action 73
E. Technical standards 77
F. Other obligations 78
V. New issues 79
A. Services 79
B. Intellectual property rights 81
C. Investment measures 84
VI. The World Trade Organization and institutional changes 85
A. Voting structure 85
B. Links with international organizations 86
C. Links with non-governmental organizations 87
D. Single undertaking 87
E. Dispute settlement and cross-retaliation 88
F. Trade Policy Review Mechanism 89
VII. Other new issues 89
A. Environment 90
B. Labour 90
C. Competition policy 91
VIII. Areas for action and further research 92
A. Technical assistance 92
B. Financial assistance 92
C. Preferential tariffs 94
IX. Conclusions 94
References 95
Annex tables 97

Abbreviations

ACP	African, Caribbean and Pacific States signatories of the Lomé Convention
ADD	anti-dumping duties
AMS	Aggregate Measure of Support
CCFF	Compensatory and Contingency Financing Facility
CVD	countervailing duties
DSB	dispute settlement body
FAO	Food and Agriculture Organization of the United Nations
FDI	foreign direct investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GNP	gross national product
GSP	Generalized System of Preferences
ICFTU	International Confederation of Free Trade Unions
IFAD	International Fund for Agricultural Development
IISD	International Institute for Sustainable Development
ILO	International Labour Organization
IP	intellectual property
ITC	United States International Trade Commission
ITU	International Telecommunications Union
MFA	Multi-Fibre Arrangement
MFN	most favoured nation
NAFTA	North-American Free Trade Area
NGO	non-governmental organization
NIC	newly industrialized country
NTBs	non-tariff barriers (NTBs)
OECD	Organization for Economic Co-operation and Development
OMAs	orderly marketing arrangements
OPEC	Organization of Petroleum Exporting Countries
QRs	quantitative restrictions
R&D	research and development
RBPs	restrictive business practices
S&D	special and differential
SPS	sanitary and phyto-sanitary standards
TPRM	Trade Policy Review Mechanism
TRIMs	Trade-Related Investment Measures
TRIPs	Trade-Related Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UPOV	Union for the Protection of New Varieties of Plants
UR	Uruguay Round
US	United States
VER	voluntary export restraints
WIDER	World Institute for Development Economics Research
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

About the authors

- **Manuel R. Agosin** is Professor in the Department of Economics at the University of Chile, Santiago, Chile.

- **Gustavo Crespi** is of the Department of Economics at the University of Chile, Santiago, Chile.

- **Dani Rodrik** is Professor at Columbia University, New York, U.S.A.

- **Diana Tussie** is of the Latin American School for Social Sciences (FLACSO) and the National Council of Scientific and Technological Research (CONICET), Buenos Aires, Argentina.

- **Ann Weston** is Programme Director for Trade and Adjustment at the North-South Institute, Ottawa, Canada.

Introduction

The Intergovernmental Group of Twenty-Four on International Monetary Affairs (G-24) was established in November 1971 to increase the negotiating strength of the developing countries in discussions that were going on at that time in the International Monetary Fund on reform of the international monetary system. Developing countries felt that they should play a meaningful role in decisions about the system, and that the effectiveness of that role would be enhanced if they were to meet regularly as a group, as the developed countries had been doing for some time in the Group of Ten (G-10).

It soon became apparent that the G-24 was in need of technical support and analysis relating to the issues arising for discussion in the Fund and Bank, including the Interim and Development Committees. In response to representations by the Chairman of the G-24 to the Secretary-General of the United Nations Conference on Trade and Development (UNCTAD), and following discussions between UNCTAD and the United Nations Development Programme (UNDP), the latter agreed in 1975 to establish a project to provide the technical support that the G-24 had requested. This was to take the form, principally, of analytical papers prepared by competent experts on issues currently under consideration in the fields of international money and finance.

Mr. Sidney Dell, a former Director in UNCTAD's Money, Finance and Development Division and subsequently Assistant Administrator of UNDP headed the project from its establishment until 1990. During this period, some 60 research papers were prepared by the Group of Twenty-Four. The high quality of this work was recognized by the Deputies and Ministers of the Group and the reports were given wide currency, some being published in five volumes by North-Holland Press and others by the United Nations.

The project work was resumed in 1990 under the direction of Professor G.K. Helleiner, Professor of Economics, University of Toronto, Toronto, Canada. The UNCTAD secretariat continues to provide both substantive and administrative backstopping to the project. Funding is currently being provided by the G-24 countries themselves, the International Development Research Centre of Canada and the Governments of Denmark and the Netherlands. As a result, it has been possible to continue to provide the Group of Twenty-Four timely and challenging analyses. These studies are being reissued periodically in compendia. This is the sixth volume to be published.

DEVELOPING COUNTRIES AND THE URUGUAY ROUND: AN EVALUATION AND ISSUES FOR THE FUTURE

Manuel R. Agosin, Diana Tussie and Gustavo Crespi*

Abstract

The results of the Uruguay Round do not represent a good deal for developing countries. Improvements in market access in the crucial areas of agriculture and textiles will be marginal and depend on the abolition of "grey area" measures. While the new safeguards mechanism is due to replace such measures, the agreement legitimizes quantitative restrictions directed at individual exporters. The major loophole of the Final Act is the anti-dumping agreement which may well lead to a recrudescence of protectionism in both developed and developing countries. The single most important achievement of the Round was the setting up, under the aegis of the WTO, of an integrated and strengthened dispute settlement mechanism, but it is unclear whether the new mechanism will reduce the use of unilateral measures.

Developing countries will probably face considerably more stringent restrictions on their ability to conduct development-oriented trade and industrialization policies, with access to foreign technology becoming more uncertain and costly. Moreover, special and differential treatment for developing countries has been eroded significantly.

The policy issues which are likely to be of particular relevance to developing countries in the future are:

- *additional multilateral balance-of-payments financing to assure the implementation of several of the agreements;*
- *avoiding that the cooperation between the WTO, the World Bank and the IMF become an additional source of pressure on developing countries, restricting their degrees of freedom in policy formulation;*
- *removal of tariffs on those goods that are of export interest to developing countries;*
- *strengthening the principle of special and differential treatment of developing countries;*
- *notification of the agreement on safeguards, if it is not to be used to legitimize non-tariff barriers;*
- *improvement of the anti-dumping mechanism by introducing a clear distinction between price discrimination and predatory pricing;*
- *harmonization of international competition policies, including intellectual property issues and efforts to counter restrictive business practices of transnational corporations;*
- *greater liberalization of the temporary movement of labour to the service sector; with regard to the liberalization of financial services, great caution and selectivity is required.*

* We thank Gerry Helleiner for useful comments and Ricardo López for efficient research assistance.

Introduction

The Uruguay Round was a turning point for developing countries. During the 1980s, there was a sea-change in their trade policies. A large number of them embraced trade liberalization as a central element in a new development strategy with a strong outward orientation. At the same time, defensive protectionism in the North grew steadily and took ever more sophisticated forms, including stepped-up resort to non-tariff barriers (NTBs) of various kinds, selective measures aimed at individual exporters, unilateral action outside GATT, and a much enhanced use of contingent protection (see Agosin and Tussie, 1993).

Perhaps the most important factors explaining the new interest of developing countries in trade liberalization and export-oriented growth has been the globalization of the world economy and the increase in the rate of technical change in the North, which have raised the perceived advantages of integration into the international economy. At the same time, globalization has entrained increasing pressures on these countries which may make export-oriented growth harder to achieve (or to sustain). Developing countries are being pressed to abandon the use of discretionary trade and industrial policy tools and to accept new disciplines in areas previously beyond international scrutiny. The trade door is being used to go to the heart of a range of laws, institutions and other governmental practices sometimes labelled as measures which tilt the "level playing field" or as "distortions to trade".

This is the environment in which the Uruguay Round negotiations took place and which will affect the implementation of its results in the newly created World Trade Organization (WTO), expected to come into existence in 1995 once the process of ratification of the Final Act of the Uruguay Round (contained in GATT, 1993b) is finalized. Developing countries, which had been little involved in previous GATT negotiating rounds, were active participants in the Uruguay Round, making significant concessions in the hope of obtaining improved access to international markets and greater disciplines on unilateral measures against their exports. Their conversion to outward-oriented growth ensures that they will also participate actively in the WTO.

The periodic rounds of multilateral trade negotiations under the GATT have resulted in a substantial shedding of tariffs on industrial goods. In the last two decades, the negotiating agenda has been steadily expanding. The Tokyo Round (1973 to 1979) and more so the Uruguay Round (1989 to 1993) turned to the negotiation of a variety of non-tariff measures and disciplines on an increasing number of domestic policies. Among other issues, the Tokyo Round contributed to develop rules applicable to technical product standards, government procurement, customs valuation, subsidies and anti-dumping measures.

The Uruguay Round went considerably further. With varying degrees of success, it sought to incorporate agriculture and textiles into GATT; it also attempted to strengthen multilateral disciplines, particularly the dispute settlement mechanism and safeguard procedures, so as to eliminate recourse to "grey area" measures not conform with GATT rules. Perhaps more importantly in the long run, it significantly expanded the negotiating agenda by including within the purview of international disciplines measures relating to investment, intellectual property rights and services. Towards the end of the Round, developed countries made efforts to expand the agenda of the new WTO to include measures affecting the environment and labour market policies.

The Uruguay Round was the first negotiation which sought to strengthen the institutional foundation of the international trading system. This is its most striking achievement. The Final Act, in addition to replacing the original General Agreement (GATT of 1947) by a new one (GATT of 1994) incorporating agreements with regard to the interpretation of a wide range of trade practices regulated by the GATT, establishes new disciplines for intellectual property protection and services, and creates a new permanent international institution (WTO) responsible for governing trade relations among its members with the support of a dispute settlement body (DSB).

This has two central implications for developing countries. On the one hand, the Final Act

is "a single undertaking", which means that no signatory is free to choose which parts to join. Developing countries are now required to assume substantial obligations from which they had been freed in previous GATT rounds. On the other hand, they can benefit from the more exacting dispute settlement mechanism, which has the prospect of strengthening the foundations of a rules-based system.

This paper will present an overview of the entire Round, with a focus on the following key issues: (a) market access for developing country exports; (b) new restrictions on trade and industrial policy formulation in developing countries; (c) the effectiveness of the new safeguards and anti-dumping mechanisms in deterring protectionism; (d) the protection of intellectual property rights; (e) services; (f) the status of the principle of special and differential (S&D) treatment; and (g) institutional reforms and the creation of the WTO. An evaluation of the Round from the point of view of developing countries must necessarily attempt to weigh all of these elements.

The results of the Uruguay Round do not represent a good deal for developing countries.[1] As regards the key issue of improved market access for developing country exports, while tariffs on products of interest to developing countries have been cut, they will remain at higher levels than those applied to products traded mainly among developed countries; tariff escalation will be reduced but not significantly. The Round will bring about only marginal improvements in market access in the crucial areas of agriculture and textiles.

Market access will also depend on the abolition of grey area measures, their replacement by transparent and clearly temporary safeguard provisions, and the disciplining of anti-dumping practices. The new safeguards mechanism agreed to in the Round is designed to replace grey area measures. However, the agreement legitimizes quantitative restrictions (QRs) directed at individual exporters, albeit with fairly stringent limitations as to duration and proof-of-injury procedures. Moreover, it remains to be seen in practice whether importers will resort to safeguards or will prefer the route of anti-dumping measures, which will remain easier to apply. Indeed, the anti-dumping agreement can be considered the major loophole in the Final Act and may well lead to a recrudescence of protectionism in both developed and - by imitation - developing countries.

The single most important achievement of the Uruguay Round was the setting up under the aegis of the WTO of an integrated and strengthened dispute settlement mechanism. While cross-retaliation has been legitimized as a last resort, defendants will no longer be able to veto panel decisions that go against them. However, it is not yet clear to what extent the new dispute settlement mechanism will succeed in deterring major importers from having recourse to unilateral measures (such as those taken by the United States under the cover of Section 301 of its 1984 Trade Act).

As a result of the Round, there has been a significant upward harmonization of trade and industrialization policy disciplines toward the standards prevailing in developed countries. Henceforth, developing countries will face considerably more stringent restrictions in these areas, and their access to foreign technology will become more uncertain and costly. The Round has also resulted in a significant erosion in the international consensus in favour of special and differential (S&D) treatment for developing countries in the international trading system.

With the creation of the WTO, international trade negotiations have entered into a new and more intense stage. Developing countries must be prepared for this. In the light of the many issues left pending in the Round, and the unsatisfactory solutions given to others, the last chapter of this study addresses the policy issues which are likely to be of particular relevance to developing countries in the new trading system brought into being by the Round.

---

1 For a preliminary balance see Ocampo (1992).

I. Enhanced market access for developing countries

The gains with regard to market access are concentrated in the agreements on tariff reductions, agriculture, and textiles.[2] Issues relating to NTBs are also important to market access but have broader dimensions; therefore, they will be treated when discussing safeguards.

As regards market access, the balance of these agreements is only modestly favourable to developing countries. Tariffs on industrial products will be reduced significantly, but goods of particular export interest to them will experience considerably lower reductions than other products; tariff escalation will continue to affect the ability of developing countries to industrialize their exports. Market access for non-tropical agricultural products will remain restricted by the application of high tariffs, which are due to replace existing NTBs. Conversely, the modest reductions in agricultural subsidies actually agreed upon are insufficient to reduce unfair competition for country exports to third markets. Special safeguard provisions which make it relatively easy to backtrack even on the modest degree of liberalization achieved render the agricultural agreement even less beneficial to developing country exporters. As regards textiles and clothing, the enormous backloading of the benefits significantly reduces their value and opens the door to considerable backsliding. Moreover, the textiles and clothing agreement also contains special safeguards above and beyond those that apply to other goods.

A. Tariff reductions

As in other GATT Rounds, agreed reductions in bound tariffs were an important aspect of the Uruguay Round, in spite of the fact that tariffs on industrial goods in developed countries had already reached very low levels as a consequence of reductions agreed upon in previous Rounds. The tariff offers are to be implemented in five annual reductions from the time the agreement enters into force, all of which are to be of equal magnitude, unless a different procedure is specified in an individual country offer.

In developed countries, tariff reductions for industrial goods average 38 per cent for imports from all origins, but only 34 per cent for imports from developing countries (GATT, 1993a). This is due to the fact that the tariff cuts on products of export interest to developing countries are considerably more modest (averaging around 20 per cent *ad valorem*) than those applying to products traded among industrial countries (which range from 43 to 62 per cent). Industrial product groups with relatively low tariff cuts are among those of particular importance for developing countries that are becoming exporters of manufactures. Such groups include: textiles and clothing; leather, rubber and footwear; fish and fish products; and transport equipment. This follows the pattern of previous Rounds, in which products that are traded heavily on an intra-industry and intra-firm basis, and mainly among industrial countries, benefited from tariff cuts to a considerably greater degree than products traded on an inter-industry basis, of which developing countries are important suppliers (Tussie, 1989, chapter 3).

Table 1 shows that in the four major developed countries, tariff rates after implementation of the reductions agreed upon in the Uruguay Round will still be considerably above the average for all products in product groups such as tropical and non-tropical goods, textiles and clothing, and leather and footwear. The average tariff rates are deceptive in the case of agricultural products, owing to the fact that NTBs will be "tariffied"; this will imply a sharp rise in rates over and above the agreed cuts in existing rates (see next section). In the case of textiles and clothing, as discussed below, quotas under the MFA, and not tariffs, are the binding constraint to imports. However, tariff rates are high and, as MFA quotas are gradually removed, they will become more effective impediments to imports. The table also shows average *ad valorem* tariffs including GSP rates, wherever GSP treatment is available. These averages are somewhat ficti-

2 Issues relating to NTBs are also important to market access but have broader dimensions; therefore, they will be treated when discussing safeguards.

Table 1

AVERAGE TARIFFS ON IMPORTS FROM DEVELOPING COUNTRIES, BEFORE AND AFTER THE URUGUAY ROUND
(Selected product groups, per cent)

	Average MFN rate		Average MFN/GSP rate[a]	
	Before UR	*After UR*	*Before UR*	*After UR*
		Non-tropical agricultural products		
Canada	7.6	4.9	5.5	3.8
European Union	23.5	16.8	22.8	16.6
Japan	19.5	14.9	18.2	14.5
United States	9.1	7.0	6.0	4.9
		Tropical agricultural products		
Canada	1.2	0.6	0.6	0.3
European Union	17.4	10.0	15.2	9.4
Japan	17.4	10.9	9.9	8.4
United States	2.1	1.2	1.5	0.8
		Textiles and clothing		
Canada	22.1	15.6	21.4	15.4
European Union	11.9	10.1	-	-
Japan	11.7	7.9	5.2	5.0
United States	18.7	16.9	18.5	16.7
		Leather and footwear		
Canada	19.8	15.0	18.3	14.5
European Union	9.1	7.8	0.2	0.1
Japan	13.3	11.5	8.4	7.5
United States	9.6	9.1	9.2	8.6
		All sectors (excluding hydrocarbons)		
Canada	12.4	7.4	7.5	5.3
European Union	9.8	6.9	5.1	3.5
Japan	7.4	4.7	4.3	3.4
United States	7.6	5.5	4.7	3.8

Source: UNCTAD (1994), pp. 36-37.

a Where available, GSP rates were used in calculating the product category averages.

tious, since in many cases preferential treatment is accompanied by tariff quotas, and, at any rate, GSP treatment can be withdrawn at the discretion of the donor country. Nonetheless, even after GSP treatment is taken into account, tariffs on some product categories of interest to developing countries will remain significantly above the average tariff rates which will prevail once the agreed cuts are implemented in full.

On the positive side, the Uruguay Round will leave tariffs on industrial goods in developed countries at very low levels. For imports from developing countries, such tariffs amount to 4.5

per cent, as compared to 4.0 per cent for imports from all sources. Once the concessions are implemented, duty-free access by developing countries will increase from 12 per cent to 37 per cent of the value of imports into the United States, from 24 to 36 per cent of imports into the European Union, and from 25 to 48 per cent of Japanese imports (UNCTAD, 1994, p. 34). There was also some progress in reducing tariff escalation by degree of processing; however, it remains important in product groups such as leather, tobacco, coffee, tea, cocoa, and tropical fruits (UNCTAD, 1994, p. 39).

B. Agriculture

For the first time in the history of GATT, agriculture is included within the framework of international trade disciplines. This is, in itself, a major breakthrough. However, the substantive improvements in market access for developing country exporters of temperate foodstuffs are meagre[3], for two reasons. In the first place, in practice, the liberalizations and reductions of subsidies actually agreed upon do not amount to much. Secondly, the safeguards which the agreement allows for make the prospects for real market access improvements even more uncertain.

The agreement covers three major areas: market access, domestic support, and export subsidies (see table 2 for a synoptic view of agreements in each area). The agricultural issue was perhaps the one that gave rise to most controversy during the Round, essentially between the European Union, which resisted liberalization until the very end, and the United States and a coalition of developed and developing countries (the Cairns Group) which favoured broad liberalization. Therefore, the agreements that were finally reached on all three areas were considerably more modest than proposals made by the countries interested in trade liberalization during the Round or the ones advanced in the draft Final Act submitted by the then-Director General Arthur Dunkel in December 1991 (Ocampo, 1992; Rayner et al., 1993).

With regard to market access, the agreement establishes that all border NTBs will be "tariffied" (i.e. replaced by tariffs yielding the same level of protection). All tariffs on agricultural products will be reduced on average by 36 per cent in the case of developed countries and 24 per cent in the case of developing countries, with minimum reductions in each tariff line. Developed countries are to achieve the tariff reductions in a period of six years, while developing countries have a period of ten years to carry them out.[4] The least developed countries (according to classification by the United Nations) are exempted from the obligation to reduce their tariffs on agricultural imports.

In view of the fact that many of the duties resulting from the process of tariffication will be at levels which will effectively ban imports[5], it was decided to provide quantitative guarantees of minimum market access. Current levels of market access by product must be maintained, and tariff quotas (i.e. quotas at reduced tariffs) are to be established when imports constitute less than 3 per cent of domestic consumption. Minimum

---

3 We are aware that the interests of different groups of developing countries in the agricultural negotiations diverge, according to whether they are net exporters or net importers of agricultural products. The reduction in export and production subsidies will lead to higher international food prices and, therefore, will have adverse balance-of-payments effects on food importers. These effects are addressed in the paper by Ann Weston in this volume. For a thorough discussion of the effects of agricultural trade liberalization on different groups of developing countries, see also UNCTAD/UNDP/WIDER (1990).

4 Japan and the Republic of Korea were able to exempt their rice sector from the tariffication commitments, and were allowed to provide for increasing rice import quotas.

5 The notion of "tariffication" is in itself ambiguous and subject to abuse. In the absence of detailed econometric models of the markets for commodities included in the exercise, the tariff levels are bound to be chosen to provide unlimited protection, even after the phasing-in of agreed tariff reductions. This is evidenced by the fact that, in some sectors and for some of the major trading partners, tariffication has resulted in tariff rates in the range of 200-500 per cent.

Table 2

LIBERALIZATION COMMITMENTS IN AGRICULTURE

	Market access		*Domestic subsidies*	*Export subsidies*	
	Prices	*Quantities*		*Outlays*	*Quantities*
Developed countries	Tariffication and tariff reductions of 36 per cent over six years	Tariff quotas for 3 per cent of domestic consumption, rising to 8 per cent after five years	20 per cent reduction in aggregate in six years	34 per cent reduction in six years	21 per cent reduction in six years
Developing countries	Tariffication and tariff reductions of 24 per cent over ten years	none	13.3 per cent reduction in aggregate in ten years	24 per cent reduction in ten years	14 per cent reduction in ten years
Least developed countries	none		none	none	

Source: GATT (1993b).

market access opportunities are due to rise to 5 per cent during the sixth year.[6]

In the case of tariffied products, special safeguard provisions allow for the application of additional duties in cases when shipments are made at prices below certain reference levels or when there is a sudden import "surge". These safeguard provisions, depending on the way they are administered in practice, could be a backdoor for the reintroduction into agricultural trade of some of the most illiberal practices of the past, such as the use of variable levies.

With regard to measures of domestic assistance, it was agreed that those which have a minimal impact on trade (the so-called "green box" measures) would be excluded from the reduction commitments. These measures, which are carefully specified, include government assistance for research and development, fighting pests or disease, infrastructure or food security. Other permitted measures are those which promote structural adjustment and direct payments in the framework of environmental or regional assistance programmes. All other measures of support to agricultural production are to be included in a so-called "Aggregate Measure of Support" (AMS), which must be reduced by 20 per cent during six years (13.3 per cent during 10 years in the case of developing countries, with no obligations for least developed countries). Govern-

6 For certain particularly sensitive products "special treatment" is allowed. Under certain conditions, these "designated products" are exempted from the tariffication process, but minimum tariff quotas must be granted for imports representing 4 per cent of domestic consumption during the first year of application, rising to 8 per cent during the sixth year.

ments were left free to choose the measures to be included in their reduction exercises. Since the reductions must be accomplished in the aggregate, support can be shifted from one product to another, thus achieving the "rebalancing" between goods that the countries favouring liberalization fought so strenuously to prevent.

With regard to agricultural export subsidies, it was agreed that countries would reduce budgetary outlays for such subsidies by 36 per cent over a six-year period from their average levels prevailing in 1986-90 (when they were substantially higher than they are now), and that subsidized quantities would be reduced by 21 per cent over the same period. For developing countries, the subsidy reductions are equivalent to two-thirds those required of developed countries, and the period over which these targets must be met is of 10 years. Under certain conditions, developing countries are exempted from commitments to reduce subsidies related to domestic transport costs. No obligations are imposed on least developed countries.

The absolute impact of the agreement on world markets is likely to be small. The main achievement in the agricultural area was to bring agricultural trade within the aegis of international disciplines. Market access for producers of agricultural products which are heavily protected in developed countries (e.g., sugar or wheat) is likely to remain limited, owing mainly to the application of very high tariffs which will, in effect, continue to grant unlimited protection to domestic producers. In addition, the commitments with regard to production and export subsidies are very modest, indicating that developing country producers will continue to have serious difficulties in competing with less efficient developed country producers in third markets. Sugar is a particularly flagrant example. Finally, and as already noted, even this modest liberalization package has loopholes in the form of special safeguards.

C. *Textiles and clothing*

The objective of the negotiations on textiles and clothing was to define modalities to allow for the integration of this sector to GATT disciplines and to contribute to the liberalization of this trade, which, since the early 1960s, had been ruled by the increasingly stringent QRs embodied in the Multi-Fibre Arrangement (MFA). The principal mechanism for winding down the MFA will be the gradual dismantling of MFA quotas and the application of all GATT disciplines to this sector. This means that, once the agreement has been fully implemented, the only border measures allowed will be tariffs. Since tariffs for textiles and clothing in developed countries are bound, the dismantling of the MFA is potentially of great importance to developing countries. However, the integration of textile trade into GATT, called for by the agreement, is extremely slow (almost 50 per cent of all trade is to be governed by the MFA even seven years after its entry into force), and safeguards during the transition period could make actual liberalization even slower. If, moreover, imports of these products into major developed countries become prime targets for anti-dumping measures, which (as discussed below) could surge in the years to come, the meagre import liberalization achieved in this sector could evaporate altogether.

During the first year of application, each Member is committed to integrate into GATT imports representing not less than 16 per cent of 1990 imports of textiles and clothing. The products not initially integrated into GATT will be integrated during a period of 10 years, in three stages: during a period of three years, products representing imports of no less than 17 per cent of 1990 imports; in seven years, products representing an additional 18 per cent of 1990 imports; and at the end of the ten-year transition period, all remaining products. Those products for which QRs remain in force will benefit from an increase in the rates of growth allowed for in the bilateral agreements entered into in the framework of the MFA.

Each phase-in must include products in each of four categories of products (tops and yarns, fabrics, made-up textile products, and clothing). However, the selection of actual products to be integrated in each stage is left up to the importing countries. It can be expected that the products that have the less stringent restrictions will be integrated first, leaving for the last stage the most "sensitive" (and therefore restricted) products.

In order to evaluate the benefit of the agreement to developing-country exporters, a simple

calculation of the agreement's present value was made, under a set of very optimistic assumptions. Using a discount rate of 10 per cent and assuming that all products liberalized face roughly the same degree of protection, the present value of the scheduled liberalization is equivalent to only around 57 per cent of the value of a full and immediate dismantling of the MFA.[7] If it is assumed, as is certainly more realistic, that the products liberalized later in the ten-year transition period face considerably more stringent restrictions than those liberalized earlier, the present value of the agreement could be worth only about 40 per cent of full and immediate liberalization.

Furthermore, there is the possibility that the heavy backloading of the liberalization commitments could lead to backsliding. In effect, the special safeguards incorporated into the agreement make this result very likely. In the textiles and clothing area, it will be permissible to apply special safeguards when it can be demonstrated that imports of a certain product are causing or threaten to cause "serious damage" to domestic producers of similar or directly competing products. Such safeguards cannot be applied to products already integrated into GATT. They may, however, be resorted to by countries that have not participated in the MFA. Safeguards must give more favourable treatment to least developed countries, to those countries whose total volume of textile exports is small, to those representing a small percentage of the imports of the product in question, and to wool producers. Safeguards can remain in force up to a period of three years or until the product is integrated into GATT, if this were to take place before.

II. Implications for trade policies of developing countries

While the gains in terms of market access of the Final Act are meagre indeed, the costs in terms of more stringent disciplines on trade and industrial policies are significant. There are three areas in which developing countries will lose degrees of freedom in policy making: export subsidies, and other subsidies having an impact on export prices, will practically have to be eliminated; the ability to impose QRs for balance-of-payments purposes will be curtailed; and developing countries will come under much greater pressures to bind and reduce tariffs. Domestic content and trade balancing requirements, in the past imposed mostly (but not exclusively) on foreign investors, have also been banned by the Agreement on Trade-Related Investment Measures (TRIMs); this will also reduce the scope for active industrialization policies.

A. New disciplines on subsidies

The issue of subsidies on exports or on production or investment having an impact on exports or import-competing production has been one of the main causes of trade tensions and disputes in the history of GATT. Until the Tokyo Round, the subsidies issue was regulated by Articles VI (on anti-dumping and countervailing duties) and XVI (subsidies) of the General Agreement. The notion that subsidies can be countervailed with special duties only when they cause or threaten to cause "material injury" to a domestic industry is the core of Article VI. However, these articles are open to various interpretations, since they neither define subsidies nor provide criteria for the determination of "material injury". The Tokyo Round Code on Subsidies and Countervailing Duties attempted to tackle these problems. The Code remained unsatisfactory on a number of counts, not least that, like other Codes emanating from the Tokyo Round, it was applicable only to signatories. In practice, what this meant was that the test of material injury which is called for before an importing country could apply countervailing duties was available only to the Code's signatories. While developing countries were not obligated to sign the Code, signing it did provide them with some protection against the most arbitrary and protectionist use of countervailing duties.

The Agreement on Subsidies and Countervailing Measures emanating from the

7 This figure is obtained by discounting by 10 per cent the percentages of the trade in textiles for which MFA restrictions are due to be lifted at each period in time, i.e.: $16+17\div(1.10)^3+18\div(1.10)^7+49\div(1.10)^{10}=56.9$.

Uruguay Round is the longest single text of the Final Act, a reflection of the importance placed on this issue by all participants. It goes well beyond the Tokyo Round Code in a number of respects. In the first place, it shares with other agreements the characteristic of being considerably more detailed than previous international regulations. It defines subsidies, categorizes them into three groups, and lays down detailed rules for the application of countervailing duties. This, in itself, by making disputes "lawyer intensive", is likely to constitute a burden for small and poor countries. Secondly, the agreement allows practically no exemptions from subsidy disciplines to developing countries, except to so-called "Annex VII countries"[8] (as long as their per capita GNP remains below $1,000).

The agreement categorizes subsidies into three groups: prohibited, "actionable", and "non-actionable". Subsidies which explicitly depend on exports or on the use of domestic inputs are prohibited.[9] Actionable subsidies are all "specific" non-trade subsidies (i.e., those which are available only to certain industries or enterprises) which have an effect on export prices. Actionable subsidies can be countervailed only when they cause or threaten to cause serious prejudice to the national production of another signatory. It is presumed that serious prejudice exists when the total *ad valorem* subsidy applied to a product is higher than 5 per cent of the value of production. In such cases, the subsidy grantor must prove that the subsidy does not cause material injury to the complaining member. Members affected by an actionable subsidy may submit the matter to the Dispute Settlement Body set up under the aegis of the WTO (see chapter VII).

Non-actionable subsidies are defined as those which are general in nature (i.e. not "specific" in the sense applied to actionable subsidies) and, therefore, do not have an impact on prices. Examples of non-actionable subsidies are those for activities such as basic research and development (R&D), precompetitive development, assistance to backward regions, or assistance to comply with new environmental regulations or norms.

Certain subsidies related to privatization programmes are also non-actionable when they are applied by developing countries.

Annex VII countries are exempted from the obligation to eliminate prohibited export subsidies.[10] This exemption is no longer applicable to a product in which a beneficiary developing country achieves a "situation of export competitiveness", which is reached when the country captures a 3.25 per cent share of world trade of the product in question for two consecutive years. These countries must eliminate their subsidies over an eight-year period.

Developing countries other than Annex VII countries have eight years to eliminate prohibited export subsidies, a period which can be extended to ten years by the Committee on Subsidies and Countervailing Duties set up to monitor the agreement. However, if a developing country reaches export competitiveness in a given product, in the manner defined above, it must eliminate its export subsidies on that product in two years. With regard to actionable subsidies, the presumption of serious injury needed to initiate countervailing proceedings (set at 5 per cent of the value of exports) does not apply to developing countries, in whose case it will be necessary for the importing country to demonstrate the existence of serious injury with positive evidence.

In certain respects, the subsidies agreement does represent an improvement over the current situation. Developing countries gain from the establishment of more stringent norms on the application of countervailing duties. These cover the initiation of countervailing duty proceedings, the investigations that are to be conducted in

8 These are the least developed countries plus Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe.

9 Drawbacks of import duties on inputs used in exported products are allowed.

10 Prohibited subsidies on the use of domestic inputs must be eliminated over a period of eight years by least developed countries and of five years by other developing countries.

establishing the existence of subsidies, proofs of injury to domestic interests, and the calculation of the amount of the subsidy. In addition, the proceedings must allow all parties (exporters, importers, consumers and industrial users) to bring forward evidence. A causal relationship between subsidized imports and harm to domestic production must also be established. Finally, all investigations must be concluded one year after initiation (18 months in specified cases).

Two innovations, first applied in the Canada-United States Free Trade Agreement and then introduced in the course of the Round, that can provide some protection to small exporters are *de minimis* provisions and a "sunset" clause. The *de minimis* clause for Annex VII countries, and for those which eliminate export subsidies before the eight-year limit, calls for the termination of countervailing duty investigations when the subsidy involved represents less than 3 per cent of the value of the affected import (2 per cent for other developing countries and 1 per cent for developed countries). Small developing country exporters also benefit from the provision for termination of all investigations when imports from a given country are "insignificant", which, for developing countries, are defined as 4 per cent of the value of imports, and in a situation in which all such imports from developing countries are less than 9 per cent of the total imports of the product. The sunset clause means that all countervailing duties must be eliminated within a period of five years, except in cases where investigating authorities determine, on the basis of a new investigation, that the elimination of the duty will give rise to the continuation or reappearance of the subsidy and the harm to domestic producers.

There can be little doubt that the subsidies agreement, in spite of its less restrictive conditions for the poorest developing countries, will impose important restraints on the ability of developing countries to use subsidies. In the framework established by the subsidies agreement, developing countries adopting outward-oriented industrialization strategies will not be able to resort to subsidies of the size and variety of those applied so successfully by economies such as the Republic of Korea or Taiwan Province of China in the context of promotion of outward-oriented industrialization (Amsden, 1989, chapter 6; Westphal, 1990; Wade, 1990, chapter 5), driving them to blunter instruments, notably the exchange rate.

It should be noted, however, that the subsidies agreement does have certain advantages for developing countries over the situation prevailing presently. The international environment faced by the newcomers to outward-oriented industrialization in the 1960s and 1970s was considerably more favourable to that strategy than what it is at the present time. Market penetration by developing country exports of manufactures was low, and international markets were able to absorb large increases in imports without major repercussions. As a consequence of slower overall economic growth and of the great successes of the Asian exporters of manufactures in penetrating international markets, the situation has changed markedly in recent years. In the importing countries, the incidence of unilaterally imposed countervailing duties on real or alleged subsidies (as well as that of other measures of contingent protection, such as anti-dumping duties) has been increasing *pari passu* with the market penetration of imports from developing countries. If developed countries comply with its provisions, the subsidies agreement will bring some discipline to their freedom to impose countervailing duties.

An ideal system from the point of view of developing countries ought to have the following ingredients: (a) clearly specified and internationally agreed criteria for classifying countries as developing and for graduating them from that category; (b) whatever the criteria chosen, they must encompass a much larger number of countries than the cut-off point of $1,000 in per capita income used in the Uruguay Round agreement; (c) the system should steer clear of the requirement that developing countries facing a countervailing action engage in lengthy legal procedures to "prove" that they are not subsidizing their exports; (d) it should permit subsidies for "infant exports" (e.g., exports of products which are below a certain threshold in terms of value or percentage of total export revenues) which disappear automatically once the threshold is passed. On all of these counts, the subsidies agreement falls far short of the ideal.

B. *Other disciplines on trade policy*

The other tightened trade policy disciplines which developing countries will have to abide by refer to the imposition of restrictions for balance-of-payments purposes (Understanding Relating to the Interpretation of Articles XII and XVIII.B) and, more informally, to pressures on developing countries to bind tariffs and make offers to lower their levels.

With regard to restrictions for balance-of-payments purposes, the Understanding states that temporary price-based measures, such as tariff surcharges, are to be preferred to QRs. In addition, the text establishes procedures for the notification of measures to, and for consultations with, GATT's Committee on Import Restrictions (Balance of Payments). It is interesting, however, that QRs are not banned outright, leaving open the possibility that developing countries suffering serious balance-of-payments problems may resort to such measures, particularly if they are clearly of a temporary nature. It is, therefore, a pity that a growing number of developing countries have officially notified GATT that they are pledged not to use their right to resort to QRs under Article XVIII.B. Thus, the Final Act gives countries greater degrees of freedom than they are sometimes wont to use.

The Uruguay Round resulted in a very large number of new tariff bindings by developing countries. On the basis of data available by mid-November 1993 for 28 developing countries, GATT (1993a, p. 23) estimates that these countries had offered to bind 65 per cent of their tariff lines on industrial products (up from 21 per cent prior to the Round), representing 56 of the value of their industrial imports (up from 12 per cent before the Round). There are two reasons why it is not possible to estimate whether these bindings represent tariff reductions. First, the percentage of bound tariffs was extremely low before the beginning of the Round. Secondly, most developing countries' bound tariffs exceed the tariff levels applied in practice, in some cases by substantial margins, leaving some leeway for active trade policy. Nonetheless, there has been very significant trade liberalization in developing countries, particularly in Latin America, and this has involved sharp tariff reductions, more uniform rates, and dismantling of NTBs (see Agosin and Ffrench-Davis, 1993).[11]

C. *Trade-related investment measures*

The negotiations on TRIMs stemmed from a desire by the United States to see foreign direct investment (FDI) issues dealt with in the context of the GATT. While it is true that exports and FDI are alternative ways of delivering products to foreign markets, it is no less the case that introducing into GATT issues such as the "right of establishment", "national treatment" for foreign investors, and other FDI-related issues represents a considerable widening of the scope of international jurisdiction over domestic policies. The negotiation of these issues in GATT was originally resisted by developing countries and, partly for this reason, negotiations concentrated on the GATT-compatibility of measures imposed on investors with an effect on trade.

As a result, the TRIMs agreement prohibits those measures judged to be inconsistent with GATT obligations. These are domestic content and trade balancing requirements. Domestic content requirements are deemed to be inconsistent with the obligation to give national treatment to foreign goods; and trade balancing requirements, with the obligation to eliminate quantitative restrictions. Developing countries are granted a five-year phase-out period (seven years for least developed countries), and they are allowed to invoke the banned TRIMs only for balance-of-payments purposes.

The final text of the agreement provides for fairly weak restrictions, in comparison with those originally sought by some developed countries; those included have already been complied with by many developing countries that have liberalized their FDI and trade policies over the past few years. However, the fact that the subject is

11 GATT reports that, as of early 1992, 63 developing countries had liberalized their trade policies since the start of the Uruguay Round (GATT/1538, Geneva, 12 March 1992).

part of the Final Act and will be on the agenda of the WTO in future can be considered to be part and parcel of the expansion of the purview of international disciplines over domestic policy that has been the hallmark of the Round.

D. Concluding remarks

All in all, the scope for active and development-oriented trade policies has been curtailed significantly by the Round. However, several possibilities still exist which should be actively explored by developing countries. It is clear that those countries which already have a visible presence in world markets will be unable to resort to new subsidies and will have to eliminate remaining export subsidies within the ten-year period. For countries at an earlier stage of export development, the remaining possibilities are wider. The task will be to find subsidies which correct for clear market failures and which are temporary. Important market failures exist in the dissemination of information regarding foreign markets (tastes of foreign consumers, marketing channels, designs, quality requirements, etc.). R&D subsidies and government-financed acquisition of information on foreign markets (through export promotion agencies) ought to be a priority of new outward-oriented policies. In these matters, there are important grey areas which developing countries can, and should, exploit.

Modest subsidies which are self-liquidating in time (when exports of new products pass a certain threshold and cannot, therefore, be considered infant exports), although prohibited for countries with per capita GNPs exceeding $1,000, pass the test of dynamic economic efficiency. Therefore, developing countries for which these subsidies are not legal at present ought to fight for their reinstatement, in the context of a revamping and strengthening of the principle of special and differential treatment (see chapter VI, below).

With regard to QRs for balance-of-payments purposes, it is important that developing countries retain the degrees of freedom actually granted by the GATT of 1994. In the current international economic environment, it will be clearly much more difficult to abuse the resort to such measures for protectionist purposes, as was often the case in the past. As regards tariffs, it seems wise to retain the freedom to bind tariffs at levels that are higher than those actually applied. This gives countries the ability to raise tariffs for either temporary protection or for balance-of-payments purposes. Given the balance-of-payments fragility of most developing countries and the ever-present threat of external shocks, these degrees of freedom are essential to minimize the adverse effects of such shocks on growth. In a new regime where QRs will be harder to impose for balance-of-payments purposes, there will be an enhanced need for International Monetary Fund (IMF) financing. Moreover, notwithstanding the current preference in developing countries for neutral policies, there is certainly room for an active tariff policy in support of development, if such policies avoid the excesses of the past and are clearly time-bound (Rodrik, 1992).

III. Stricter disciplines on importing partners

As noted at the beginning of this study, over the past decade, a large number of developing countries have embraced export-oriented development strategies. At the same time, the international economic context has been decidedly less favourable to these strategies, as variegated forms of protectionism have sprung up in the developed countries. In fact, one of the principal interests of developing countries in the Uruguay Round was to restrain the resort by developed countries to grey area measures in lieu of safeguards and to arbitrary anti-dumping and countervailing measures. For this purpose, it was essential to revise GATT's provisions on safeguards (Article XIX of the GATT of 1947) and to strengthen international anti-dumping disciplines.

The issue of appropriate safeguard and anti-dumping norms (as well as those that apply to the imposition of countervailing duties) is also important to developing countries from another point of view. As developing countries have liberalized their trade policies in recent years, they have also tended to rely on anti-dumping and

Table 3

ANTI-DUMPING AND COUNTERVAILING ACTIONS AGAINST IMPORTS FROM DEVELOPING COUNTRIES

Action initiated by	Cases initiated from 1 July to 30 June				Outstanding cases at the end of June			
	1988/89	1989/90	1990/91	1991/92	1989	1990	1991	1992
Anti-dumping								
European Union	26	28	13	20	94	109	110	117
United States	14	12	25	22	70	75	84	96
Other developed countries	13	19	48	50	62	60	82	114
Developing countries	5	4	5	26	8	11	16	36
Total	*58*	*63*	*78*	*118*	*234*	*255*	*292*	*363*
Countervailing								
European Union	2	-	-	-	4	4	4	4
United States	6	4	8	13	80	71	63	67
Other developed countries	1	5	4	3	3	5	7	7
Developing countries	-	-	1	2	-	-	1	3
Total	*9*	*9*	*13*	*18*	*87*	*80*	*75*	*81*

Source: UNCTAD (1993), p. 47.

countervailing duties to an increasing degree.[12] This is worrisome, since in the recent past intra-developing country trade (in Asia and Latin America) has been an important source of outward-oriented growth; this new dynamic element in the international environment for developing countries could be endangered unless these practices are curbed. Thus a key question in this regard is the effectiveness with which the agreements on anti-dumping, countervailing duties and safeguards can restrain these practices in the future or whether they will provide legal cover for the spread of the "new protectionism" to the developing world.

As may be seen in table 3, anti-dumping and countervailing measures have proliferated in recent years, in spite of the on-going negotiations in the Uruguay Round. The steepest increase has been in recourse to anti-dumping measures; both developed and developing countries have followed this trend. The anti-dumping legislation of most countries is the most overtly protectionist weapon in their trade policy armamentarium, and this is true of both developed countries as well as developing countries which have otherwise liberalized their trade policies. This particularly objectionable form of protectionism was given legal cover in the Tokyo

12 By contrast, legislation relating to safeguards is practically non-existent in the developing world. In the developed countries safeguards have been invoked quite infrequently.

Round Anti-Dumping Code. Unfortunately, the results of the Uruguay Round did little to change this state of affairs. In the area of safeguards, one can be somewhat more optimistic that the new disciplines may help curb other forms of the "new protectionism"; however, as discussed below, it remains to be seen how the new regulations on safeguards will work in practice.

A. Safeguards

The issue of safeguards has had a long history in GATT negotiations. The safeguards clause of the GATT of 1947 was supposed to act as a kind of safety valve in cases of import surges which affect domestic producers adversely. Thus, under Article XIX, for reasons unrelated to "unfair" trading practices, importers were allowed to impose temporarily higher tariffs than those bound in GATT (or a global quota, although the drafting of Article XIX is ambiguous in this respect) on a most-favoured-nation (MFN) basis. However, Article XIX has rarely been invoked, owing mainly to the requirements that safeguard action should comply with the MFN principle and that affected parties had the right to compensation.

During the Tokyo Round, agreement on safeguards could not be reached, largely because of the insistence of developed countries in introducing the right to apply selective QRs as safeguards. Other issues on which there was no agreement included the right to compensation and retaliation, multilateral surveillance, degressivity (the principle that protection should decline over time), and the linkage of safeguards to effective structural adjustment in import-competing industries (Hamilton and Whalley, 1990).

Developed countries, instead of having recourse to Article XIX, have preferred the route of grey area measures - in particular, "voluntary" export restraints (VERs) - and remedies directed at "unfair" trading practices, which can be targeted at individual exporters and have less stringent provisions regarding injury tests. The consistent violation of Article XIX has perhaps been GATT's biggest loophole. It is here that the greatest discrepancy between principle and practice as applied to developing countries can be seen at work.

Two approaches have been proposed to deal with this discrepancy. One is to stick to the principle of non-discrimination as originally incorporated in the General Agreement. A second option is to allow legally selectivity under strictly predetermined circumstances and with clear time limits, so as to induce greater respect for accepted rules. Critics of this option argue that this would seriously undermine the GATT; that it would be equivalent to legalizing crime on the assumption that it cannot be combated. Defenders uphold the view that the system can be strengthened only by injecting into it some realism and allowing well-defined departures from a principle to which only lip-service is being paid (Nicolaides, 1990). Since the Tokyo Round, developing countries have consistently resisted this approach on the grounds that agreement to selectivity would be tantamount to giving legal sanction to the application of MFA-like restrictions on an ever-widening share of their exports and to the violation of their right to MFN treatment.

The Agreement on Safeguards embodies a pragmatic approach by legitimizing selective safeguards in exchange for more transparent and stringent rules on their application. In certain respects, the Agreement takes steps towards improving the disciplines to be applied in this area. It prohibits the imposition of new grey area measures and calls for the elimination of all existing measures over a period of four years, with the exception of one specific measure by importing country, which will have to be eliminated no later than 31 December 1999. Likewise, all safeguard measures adopted under Article XIX will be terminated over a period of eight years from the time of their adoption or of five years from the moment of the entry-into-force of the WTO, whichever is shorter.

Another element of progress toward greater transparency and objectivity is the listing of precise criteria and procedures for the determination of serious injury in which the interests of consumers and foreign exporters are to be taken into account. In addition, the agreement establishes periods of maximum duration for safeguard measures. Generally, they cannot be retained for periods longer than four years, although they can be renewed for a maximum of eight years if the authorities of the importing countries confirm that the measure continues to be necessary and if it can be demonstrated that adjustment in

domestic production is taking place. If a measure's duration exceeds one year, it must be liberalized progressively during its period of application. A measure cannot be reintroduced until a period has elapsed of equal duration to the one in which the measure was in force, with a minimum period of non-application of two years. However, a measure that has been applied for 180 days or less can be reintroduced after one year of non-application; one such reintroduction is allowed every five years.

The agreement also has special provisions for developing countries. It establishes that safeguard measures will not be applied against a product originating in a developing country when the share of the developing country in the total imports of the product is less than 3 per cent, whenever all imports from such developing countries do not exceed 9 per cent of the value of imports of the product. In addition, developing countries are entitled to extend the period of maximum application of a safeguard measure by two years. They will also have the right to reintroduce a measure on a product after a period of non-application equal to one half of the period of application, on condition that the period of non-application is at least two years.

The big drawback to the agreement is its legitimation of QRs. Whenever a quota is distributed among exporting countries, the country applying the quota is entitled to seek an agreement with exporters on how to distribute the quota among them. Normally, the quota will be assigned according to historical shares. However, the importing country is entitled to deviate from this norm if it can demonstrate, in consultations under the auspices of the Safeguards Committee of the WTO, that the imports originating in a specific country have increased to a much larger extent than the total imports of the product. This is what has been termed "quota modulation".

These two elements - i.e. the allocation of quotas according to historical shares and the possibility of discriminating against specific suppliers - are dangerous, on two counts. First, the use of historical shares discriminates against new entrants, which, by definition, are more competitive than existing suppliers. Secondly, the possibility of applying particularly stringent quotas against specific suppliers could reintroduce - through the back door but with legal sanction - some of the most abusive elements of the "new protectionism".

Nonetheless, the agreement is a compromise and, on the whole, it represents a step forward. Although it sanctions QRs and selectivity, it sets time limits to safeguard action and establishes fairly stringent and transparent procedures for the determination of serious injury. As in all other aspects of the Uruguay Round agreements, the proof of the pudding will be in the eating, i.e. how it will work in actual practice.

Considering the far-reaching consequences of legitimizing selective safeguards and the use of QRs for safeguard action, it is important to devise mechanisms to ensure transparency, facilitate adjustment, and prevent market shares from being frozen. First, it should be mandatory that every country applying a safeguard measure (as well as an anti-dumping or countervailing duty) publish a report on the costs of the measure for domestic consumers and foreign producers. Secondly, countries using these mechanisms should be mandated to set up financial schemes in support of adjustment. Thirdly, the principle that users of quantitative safeguards (or safeguards maintained for periods exceeding, say, one year) should provide financial compensation to affected countries could be added to current provisions. Such a scheme was first submitted to GATT in the 1960s by Uruguay and Brazil (Abreu, 1990). As Bhagwati (1989) has suggested, the best safeguard system is one in which temporary tariff surcharges are used, with the proceeds earmarked for adjustment assistance.

B. Anti-dumping measures

The overt intention of anti-dumping norms is to prevent cartelization of a market by a foreign producer. However, in practice, anti-dumping actions have worked in favour of cartelization by domestic producers (Messerlin, 1990). By imposing tariff surcharges or forcing foreign competitors to raise their prices (through so-called "price undertakings"), anti-dumping procedures have contributed to a significant reduction in competition in a number of industries in the developed countries (e.g. steel, chemicals, and electronics). Moreover, anti-dumping regulations have, on occasion, favoured predatory behaviour

by firms in the countries imposing them. By reducing exports, anti-dumping duties cause the profitability of the affected firm to decline, and it may wind up selling out to the firms in the country of the complainants.

The recent surge of anti-dumping proceedings by developing countries threatens the spread of this protectionist devise even to countries which have otherwise become new champions of free trade. By making the trade policy machinery hostage to special interest groups, the spread of anti-dumping practices to the developing countries could reintroduce through the back door, and even in a more harmful form, the worst excesses of the import substitution regimes of the past. The developed countries have only themselves to blame for this trend in the trade policies of developing countries, since, as in other respects, the developing countries are mere imitators.

Two conditions are necessary to establish the presence of dumping. First, export prices must be set below domestic prices. Secondly, the foreign firm must have the intention and ability to displace domestic producers and monopolize the market. In the case of developing country exporters of manufactures, while the first condition has often applied, particularly in cases of start-up operations or of new exporters, the second one is practically impossible to carry off, since most developing country firms are small and in no way in a position to capture an important share of a foreign market, particularly of a developed-country market.[13] However, most anti-dumping actions have been aimed precisely at developing-country exporters.

The Uruguay Round Anti-dumping agreement does little to eliminate the threat that anti-dumping procedures will continue to be used for protectionist and anti-competitive purposes. The Tokyo Round had dealt with this issue, and the Anti-Dumping Code agreed at its conclusion was considerably more detailed than the provisions of the GATT itself (Article VI). However, the Tokyo Round Code was unsatisfactory to both complainants and exporters accused of dumping. Complainants, mainly the United States, the European Union and some other developed countries, wanted to close the loopholes to what they saw as successful circumvention by exporters found to be guilty of dumping (for example, the establishment of so-called "screwdriver" plants by some Japanese firms in Europe) and, in addition, sought greater freedom than that allowed under the Tokyo Round Code to use anti-dumping proceedings. For developing countries and other parties affected by anti-dumping actions (notably Japan and the Nordic countries), the Tokyo Round Code had not been effective in restraining uncompetitive domestic industries in their major markets from capturing the anti-dumping machinery of their countries for protectionist purposes. Moreover, the conditional-MFN nature of the Code turned out to be a severe drawback. The little protection afforded to exporters by the Code's provisions on proof of injury was only available to the Code's signatories and not multilateralized on an MFN basis.

The most desirable outcome would have been the elimination of anti-dumping regulations altogether and the inclusion of the issue of "unfair" pricing by foreign firms within the purview of the competition policies of the importing countries. However, given that this outcome was simply not feasible, it would have been desirable to discipline to a greater extent than in the past the ability of importing countries to initiate anti-dumping proceedings and to impose anti-dumping duties.[14]

All anti-dumping regulations contain three elements: establishment of the existence of dumping, demonstration of injury, and proof of a causal relationship between them. With respect to the

13 It may be possible for firms of a large developing country to monopolize the domestic market of a much smaller neighbouring developing country. However, in practice, this is not terribly likely. At any rate, such possibility can be handled through the development of appropriate tools of competition policy. Anti-dumping regulations are the worst alternative.

14 As has often been observed, the very initiation of anti-dumping proceedings serves as a protectionist devise. Moreover, even if no anti-dumping duties are imposed, the outcome of the proceedings is often some kind of price undertaking or VER.

Tokyo Round Code, the Uruguay Round Anti-dumping Agreement represents an improvement on all three counts. The agreement foresees clearer, more transparent and detailed norms regarding the method to determine that a product is being dumped, the criteria that will be taken into account in establishing injury to domestic production, procedures that must be followed to initiate and carry out the investigations, and the application and duration of anti-dumping measures.

However, the agreement retains the use of "constructed values" in price comparisons and in the calculation of dumping margins, when domestic prices in the exporting country or prices in a third market are unavailable. There are many reasons why it is practically impossible to calculate objectively these "constructed values", especially when the economic systems and institutions in different countries differ (for example, accounting systems vary; if the firm involved produces several products jointly, the allocation of costs to each product is no easy matter). Therefore, the retention of reconstructed prices in the determination of dumping and in the calculation of dumping margins lends itself to the continued protectionist abuse of anti-dumping regulations.

More generally, price discrimination between different national markets can exist for reasons which have nothing to do with "unfair" pricing practices. In the first place, when markets can be effectively segmented, price discrimination may be entirely rational in the face of economies of scale. Secondly, in different economic systems, the items that enter into variable costs differ (for example, in large Japanese firms labour costs are fixed), and during recessions it is rational (and far from predatory) to price according to variable costs. In the latter case, the observation of prices which are below variable costs (in terms of the economic institutions of the importing country) is not conclusive evidence of dumping (Jackson, 1989, pp. 218-222).

There are some clauses in the agreement which are, potentially, an improvement over current practice but are insufficient to ensure against protectionist abuses. Such is the case of the *de minimis* provisions, under which anti-dumping investigations will be terminated when dumping margins do not exceed 2 per cent or when dumped imports are insignificant (less than 3 per cent of the imports of the product). Minimum dumping margins and minimum levels of imports to justify an investigation protect exporters against the most flagrant abuses of anti-dumping, but they have both been set at extremely low levels. Dumping is, in any meaningful sense, impossible when the dumped imports are not a substantial percentage of the product's consumption (and not just imports). Likewise, the agreement's sunset clause (set at five years) is a welcome addition, but the period is too long.

In conclusion, although some procedures have been tightened, particularly the injury test, one of the major failures of the Uruguay Round was to begin a process of winding down the use of anti-dumping. Moreover, being "lawyer-intensive", anti-dumping proceedings are the "rich man's trade remedy" and are particularly onerous on poor countries. The increasingly detailed nature of anti-dumping regulations, in itself, facilitates their abuse as a tool of contingent protection by powerful vested interests in the importing country, especially when the affected parties are small developing country exporters. Finally, the anti-dumping agreement subjects anti-dumping actions to less stringent standards of review in dispute settlement procedures than those applied in the case of other agreements (see chapter VII). This almost ensures their continued use for protectionist purposes, by both developed and developing countries.

IV. Intellectual property protection

A. Characteristics of the Agreement on Trade-Related Aspects of Intellectual Property Rights

Until the Uruguay Round, international agreements on the exchange of "ideas" were subscribed mostly by developed countries, with developing countries systematically ignoring them. Like all industrializing countries in the past, most developing countries have chosen to obtain foreign technology through diffusion (including copying, reverse engineering, and the hiring of foreign experts). The case of pharmaceuticals has been among the most contentious because it is at once a sector with very high R&D costs, potentially accessible process technology, and a

direct bearing on health costs and health policies generally. As a matter of fact, pharmaceuticals are the industry which is most often excluded from patent protection in developing countries.

This situation will change dramatically in the aftermath of the Uruguay Round. Departing from the assumptions that ideas are private property and that it is necessary to use some instrument permitting a certain degree of appropriability of the fruits of innovative efforts, the Agreement on Trade-Related Intellectual Property Rights (TRIPs) recognizes as universally valid what is prescribed in international conventions (Berne, Paris, Rome) administered under the auspices of the World Intellectual Property Organization (WIPO) and, in some instances, goes well beyond their provisions. The TRIPs agreement mandates the extension of patentability to virtually all fields of technology recognized by developed countries. Its scope covers copyrights, industrial patents, trademarks, trade secrets, industrial designs, layout designs of integrated circuits, and geographical indications.

In general terms, it can be said that the agreement differentiates, on the one hand, measures that protect an author's ideas exactly as he/she expressed them, but not the idea itself and, on the other, both the mode of expression and the idea itself. Literary and artistic works, computer programmes and data bases fall into the first category. These are given protection for 50 years. Trademarks, in a certain sense, are also in this group, since they are protected practically indefinitely, subject only to the condition that the titleholders continue to supply the domestic market.

The second group covers essentially industrial patents. The agreement recognizes that any innovation that fulfils the conditions of novelty, innovative effort and concrete application is patentable. It encompasses micro-organisms and microbiological processes needed for the creation of plants and animals, although it excludes biological or natural processes. The only obligation imposed on patent holders is the complete disclosure of the information contained in the innovation. Explicitly, access to a patent cannot be made conditional on working it nationally, which goes beyond what is recognized in international conventions. The duration of patent protection will be 20 years beginning on the date on which the patent is requested. The patent holder is also given exclusive rights of importation, thus banning competition from "parallel" imports. In a bow to developing country concerns, the agreement does not allow for "pipeline" protection (e.g., that granted to applications that are being processed, products or processes under development, or products which are not yet for sale in countries in the phase of transition to tighter patent laws when the legislation is passed). Integrated circuits receive a treatment similar to that of patents.

Dispute settlement procedures further tighten the concessions to developed country interests. In litigation procedures, the burden of proof is reversed; i.e. it devolves on the accused infringer rather than on the holder to prove his rights. Since the agreement is an integral part of the WTO, which will implement an integrated dispute settlement mechanism, "cross-retaliation" between non-compliance in this area and market access in goods will now become legitimate (although, as noted in chapter VII, difficult to implement in practice).[15] The agreement creates a Council on the Trade-Related Aspects of Intellectual Property Rights which is charged, together with WIPO, with the application of the new norms. The TRIPs Council should, in effect, substitute for the unilateral reviews of trade partner policies in the area of intellectual property rights currently undertaken by the United States and the European Union.

Developing countries are given a grace period for the implementation of the accord. It is five years in general (ten years for least developed countries) and ten years for products not currently patented. The pharmaceutical and agrochemical sectors are, in practice, excluded from these exemptions.

Summing up, the TRIPs agreement provides for upward harmonization of national legislation with regard to intellectual property protection

15 It is interesting to note that "cross-retaliation" opens up intriguing new possibilities to developing countries, which can also resort to cross-retaliation by denying intellectual property protection to a developed country trade partner that is illegally or unilaterally impairing its access to markets in goods.

towards the standards prevailing in the developed countries. If they intend to participate in the WTO, all developing countries whose existing patent laws fall below the standards must, sooner or later, prepare to implement the TRIPs agreement. Because the Uruguay Round is a single undertaking, even countries that have not adhered to the Paris Convention, notably India, will have to adjust to its provisions.

B. *Developing countries and intellectual property protection*

Long-standing legal and economic arguments have been advanced in favour of strong intellectual property rights. The legal argument rests on the concept of the natural right of human beings to own their ideas. The economic arguments are related to the concept of market failure. In effect, technology is characterized by imperfect appropriability. After a new design has been produced, anyone with access to it can reproduce it and use it free of cost. It is thus difficult, if not impossible, to exclude users. This characteristic of technology is aggravated by the fact that in most cases the design is implicitly contained in the goods and services which emanate from it. Therefore, information on the design begins to be disseminated at the very moment production begins. Since the development of any new design is costly, and its results are uncertain, it is very attractive to be a free rider through imitation or reverse engineering. If all firms were to behave in the same manner, the private allocation of resources to R&D would be well below the social optimum.

However, technology has two peculiarities which bear on the issue of intellectual property rights. First, much of it is tacit and incompletely specified; therefore, its transfer to another environment is always imperfect. Secondly, the strong informational asymmetries that are present in any technology transfer generate a serious problem of moral hazard: the seller has incentives to segment the information as much as possible, so as to discriminate against the buyer. These two characteristics, taken together, give rise to a severe retardation in the diffusion of technology. Neither should it be forgotten that the social benefits of innovation lie more in its diffusion throughout the economy than in its creation.

It has long been held that the creation of a system of intellectual property protection that grants exclusive rights for a certain period of time in exchange for complete disclosure of information would solve simultaneously the twin problems of encouraging innovation and of ensuring its diffusion. However, such a system (which is embodied in the TRIPs agreement) has severe shortcomings, particularly for developing countries. First, there are static social losses associated with the monopoly granted to the property holder. In addition, there will be severe dynamic losses owing to the technological retardation imposed on all other producers.

It has been argued that the gains in terms of stimulating innovation will exceed these losses. However, these gains have not been verified empirically. Given the fact that they are technology-importing countries in which little innovative activity takes place, for developing countries, the correlation between patenting and industrial development is likely to be non-existent. Katz (1977, p. 128) found that between 75 and 90 per cent of all patents registered in developing countries belonged to foreign firms. It is obvious that while these firms may carry out some adaptation activities the technological base has been developed in their home countries.

For developing countries, the disadvantages of patenting far outweigh the advantages, for several reasons. First, developing countries leg behind on the technological frontier, in some cases by several decades. Therefore, the technology they need has a strong public good component, even if still covered by patents. Even if technologies are in the public domain, owing to the existence of informational asymmetries, they are often not known to developing country entrepreneurs, who sometimes pay royalties on them even when they do not need to do so. Secondly, the upward harmonization of intellectual property legislation has often been advocated on the grounds that it will stimulate foreign direct investment. However, as product cycle theories suggest, transnational corporations are likely to invest in the manufacturing sectors of developing countries once the technologies employed

have become standardized and are, therefore, already in the public domain (Vernon, 1966). Nor does empirical evidence suggest that there is any relationship between the protection of intellectual property rights and FDI in developing countries (Katz, 1977, p. 129).

Thirdly, given their scarcity of human resources and the undeveloped nature of their national scientific and technological capabilities, it is far-fetched to think that the sole adoption of legislation favourable to intellectual property protection will stimulate scientific and R&D activity. On the contrary, the stringent protection of intellectual property rights is likely to retard technological development by obstructing imitation, which in developing countries is the main source of technological upgrading and of "learning how to learn".

Fourthly, the enforcement of intellectual property protection will place new burdens on the balance of payments through three alternative channels: it will become necessary to import goods which were produced domestically through reverse engineering or imitation; it will increase profits of foreign companies producing patented goods; and it will increase royalty payments. As an illustration of the problems to come, in 1981 Mexico, under a régime of intellectual property protection considerably less demanding than the one put in place by the TRIPs agreement, made payments on royalties of $818 million, representing 1.5 per cent of its manufacturing GDP. If it had paid full copyrights on illegal recordings, films and pirated software, another $263 million would have had to be added (Reichman, 1993). These new needs will require the provision of additional multilateral balance-of-payments financing during the transition to higher standards of intellectual property protection.

Moreover, new theoretical developments suggest that strict intellectual property protection may not benefit even the countries which are technology generators. New theories of endogenous growth in an open economy derive optimum rates of imitation. Since the principal input in innovation is skilled labour, a certain amount of imitation in the South frees resources in the goods-producing sectors of the North which face competition from the imitators and lowers the wages of skilled labour, increasing the profitability of R&D and the rate of innovation (Grossman and Helpman, 1993).

C. *Options for developing countries*

In spite of the fairly stringent limitations imposed upon developing countries by the TRIPs agreement, they still have some room for manoeuvre, which they will need to exploit to the full in coming years. Following Reichman (1993), we review these possibilities in the fields of patents, trademarks and copyrights.

To summarize, if developing countries succeed in excluding from their legislation on patenting the large part of innovation that is routine or minor advance, and if they can exclude general scientific principles from copyrighting, there are significant gaps in the international legal system of intellectual property protection which leave a certain margin for developing countries to continue to practice reverse engineering and engage in processes of adaptation or improvement of existing technology.

(1) Patents and trademarks

The point of departure is the recognition that any patenting system reduces imitation possibilities but does not eliminate them. This creates an important margin of manoeuvre for developing countries to put in place legislation that narrows the coverage of foreign legislation while at the same time encouraging national entrepreneurs to work around protected innovations and depart from them to create new ones adapted to local conditions. In this respect, developing countries can refer to the examples of Japan and Germany, where legislation recognizes a coverage by patents that is much more limited than in the United States. Moreover, Japanese legislation makes exhaustive use of exceptions, permitting reverse engineering for purposes of scientific research, which later finds its way to the private sector through the spillovers that characterize the national innovative system.

The international patenting system publishes information on a patent 18 months after its inscription. The TRIPs agreement does not prohibit developing countries from using this infor-

mation as a vehicle for the acquisition of foreign technological knowledge, with the objective of improving on foreign technology or adapting it to local circumstances.

The patenting of biotechnological innovations will reduce imitation possibilities and will increase the costs of agricultural inputs. In order to neutralize these effects, developing countries must take advantage of being the reservoirs of the earth's biomass. It is urgent that they gain control over these resources. To this end they will have to carry out integral biological censuses, build germoplasm banks, and set up strong measures of border vigilance. Once these tasks have been accomplished, developing countries can sell exploitation rights to their biomass, much as is done in mining, or exchange genetic material for technology. Reverse-engineering possibilities in this area are an important means of circumventing patents, since innovations are almost completely contained in the products themselves. Moreover, since the characteristics of biological products and processes vary with the environment, patenting a local innovation which is a marginal improvement over a foreign one is easy to justify.

The principal safety valve available to developing countries is the transitory provisions of the TRIPs agreement; the most important provision in this context is the maximum ten-year grace period to implement the agreement. Since "pipeline" protection has been specifically excluded, developing countries should not succumb to the pressures of the United States to grant it. The TRIPs agreement allows for compulsory licensing in certain cases,[16] and developing countries should avail themselves of the possibilities this provides.

(2) Copyrights

It must be remembered that copyright protects the expression of an idea but not the idea itself. This leaves a broad grey area which can be exploited by developing countries. As regards software, it is in the interests of developing countries to define it in narrow terms, in ways that enable them to practice reverse engineering so as to benefit from the ideas contained in a patented product, its parts and logical solutions for the development of new software for local needs. The less technologically sophisticated countries should make use of the ten-year grace period before enacting copyright legislation. As regards the protection of databases, national legislation should foresee exceptions for reasons of public order, educational applications, and protection against abusive practices. It should be kept in mind that the Rome and Paris Conventions, recognized in the TRIPs agreement, allow for the compulsory licensing of copyrights for educational and research purposes.

V. Services

Although services have typically been considered to be non-tradeable, the last two decades have witnessed a veritable explosion in international trade in services. The main explanatory factors have been the widespread dissemination of information technologies (which has reduced the technical barriers to trade in services) and the deregulation at the national level of a number of service industries (in particular, financial services, air transport, and telecommunications), implemented beginning in the 1970s, first in the developed countries then later and more gradually in the developing countries.

Trade in services was placed on the agenda of multilateral trade negotiations by the United States as early as 1982 and has been a controversial issue. One source of controversy lies in the fact that delivery of many services to foreign markets requires the establishment of an affiliate of a transnational corporation in the country where the service is to be sold; as already noted in the discussion on TRIPs, until quite recently, some developing countries were strenuously opposed to the inclusion of issues related to the "right of establishment" within the purview of

16 These are related to the abuse of the right by the patent holder, such as charging excessive prices or royalties, failing to supply the domestic market in sufficient quantities, or compelling buyers to purchase inputs or additional technology which they do not need.

GATT. Some services in which developing countries have a comparative advantage (professional services or services which are labour-intensive) require the movement of the service provider or of labour to the country of the customer; for these services the developed countries have traditionally placed barriers to the international mobility of workers. Finally, most service industries are heavily regulated, for prudential purposes (financial services) or in order to protect the consumer (professional services, which require qualifications that vary from country to country). Thus international service transactions involve a wide range of national policy issues which give rise to many institutional barriers to trade (Hindley, 1990; Hoekman, 1993a and 1993b).

A. The General Agreement on Trade in Services

The Final Act sets up a General Agreement on Trade in Services (GATS). Part I thereof defines trade in services and its four "modes of supply" (crossborder trade, which normally requires the movement of information; the movement of consumers; the establishment of a "commercial presence"; and the movement of physical persons). These definitions recognize that many categories of services require the movement of persons and capital across national borders and that, therefore, regulations regarding establishment and migration are fundamental and can act as serious barriers to trade. GATS contains two sets of obligations: a general framework (Part II); and specific commitments (Part III). There are also annexes dealing with specific sectors (notably, air transport, telecommunications, and financial services) and with the movement of physical persons.

The central element of the general framework is the MFN clause. Countries must explicitly claim sectoral exemptions from MFN treatment at the start; such exemptions must then be reviewed after five years; they must have a maximum duration of ten years. National treatment and market-access commitments are specified in the individual schedules of commitments relating to sectors and modes of supply. The increasing participation of developing countries in international trade in services and the promotion of development is an integral part of the general framework. For example, developing countries may liberalize their services sectors to a lesser degree than developed countries and can make market access conditional on measures to assist them in strengthening their service sectors.

All individual commitments with regard to national treatment and market access are specified in Part III of GATS. This approach implies that, with the exception of the general norms contained in the framework agreement, whatever does not appear in the schedules of commitments is not liberalized; whatever is included is subject to the limitations that are specified therein. Members commit themselves to continue negotiations to liberalize progressively trade in services. The first round of negotiations is to take place within a five-year period.

GATS achieved modest progress in liberalizing trade in services. In the case of developed countries, most commitments represent no more than a binding of current practice. In the case of developing countries, although commitments are more limited than for developed countries, they represent greater effective liberalization. The extent of sectoral coverage varies widely as between offers. Sectors with a high degree of coverage include: tourism, business services, value-added communication services and financial services. The majority of commitments involve the "commercial presence" mode of supply, reflecting the interest of countries (both developed and developing) in attracting foreign investment. However, GATS represents a milestone in international trade negotiations. Its most important achievement is the extension of the scope of multilateral rights and obligations to cover the wide variety of domestic policies and regulations encompassed by services.

B. Effects on developing countries

In general terms, GATS is a balanced agreement whose principal merit is to establish a relatively flexible basis for future negotiations. Nevertheless, the text also reflects the complexities intrinsic to the services sector, where trade often requires the movement of factors of production. For this reason, the agreement contains a series of exceptions and positive lists to which countries can resort, thus preserving an important degree of national autonomy.

There are two GATS annexes of particular importance to developing countries: on the movement of labour and on financial services. Developing countries have a comparative advantage in labour-intensive services (tourism, legal and financial consulting services, cleaning services, construction and engineering, data processing, medical and para-medical services, and the development of low-complexity computer software).[17] The full exploitation of their comparative advantage is directly related to the achievement of a significant reduction of barriers to labour mobility. The annex on the movement of labour specifies that agreements in this area will deal with measures that affect physical persons who are suppliers of services or are employed by a supplier of services, in relation to services in which specific commitments have been made by a member. Measures which affect citizenship, permanent residence or employment are specifically excluded. It should be noted that, with regard to the movement of persons, most countries confined their liberalization offers to the movement of company managers and specialist staff. Securing broad coverage for the right to the temporary movement of labour for purposes of supplying services or working in the employ of a service supplier is an area that developing countries ought to explore persistently in future negotiations.

The financial services sector is critical to developing countries, for several reasons. Many benefits may be reaped from opening domestic financial service sectors to foreign service providers. But there are also grounds for caution. Among the possible benefits, the most important one is the expansion of the range of financial services available to domestic firms. In many developing countries, foreign-trade financing is scarce, futures markets do not exist, insurance premiums are expensive, and risk coverage is narrower than in developed countries. The entry of foreign financial service providers could help relieve these constraints. Since international financial services providers enjoy considerable economies of scale and scope, the international competitiveness of developing countries' goods producers could be improved by more liberal market access for foreign providers of financial services.

Another benefit of liberalization relates to potential spillovers to domestic suppliers, stemming from the introduction into the domestic economy of previously unavailable soft technologies (such as organizational skills, managerial and marketing know-how). The entry of foreign financial service suppliers also holds the potential of providing the host developing country with access to new sources of external finance. In this respect, it is important that developing countries utilize the degree of selectivity and discretionality allowed for in GATS to discriminate in favour of long-term capital flows which increase investment and against short-term flows that are volatile and destabilizing to the domestic economy. However, this may be difficult to achieve in practice. Since international banks are interested more in international financial transactions than in transactions in domestic currency in the small domestic markets of most developing countries, as a condition for establishment they may demand freedom to move foreign exchange in and out of the host country. This may imply a liberalization of the capital account of the balance of payments which may not be in the interest of the prospective host country.

There are other drawbacks as well to trade liberalization in financial services. While the entry of foreign financial service providers may have beneficial effects on competition in the domestic economy of host developing countries and may lower costs, it may also retard the development of a competitive domestic industry. In many developing countries, financial services are infant industries. Therefore, the objective of improving competitiveness in goods must be weighed against the objective of developing competitive domestic financial services. Nor does the access of foreign financial service suppliers solve the basic problems that afflict financial markets which stem from asymmetric information flows and are reflected in such phenomena as moral hazard and adverse selection (Stiglitz, 1994). This means that, with or without liberalization, Governments will have to continue regulating the provision of

17 Of course, different developing countries are at different stages of development and, therefore, their comparative advantage in different service sectors may vary widely.

financial services. In theory, the annex on financial services in GATS recognizes the right of Governments to adopt prudential measures, such as those protecting investors, depositors or policy holders, and to protect the integrity and stability of the financial system. In practice, however, questions arise as to the effective power of small States when confronting powerful multinational financial holdings which, in addition, are their principal creditors.

These risks and drawbacks explain the reluctance of developing countries to make more substantial offers in the area of financial services. GATS commitments are bound, and therefore developing countries need to be extremely cautious before making commitments. Most developing countries have neither stabilized their economies nor completed their transition to export-oriented growth. The literature on sequencing of reforms (see Edwards, 1989) suggests that the liberalization of the capital account of the balance of payments (which is likely to accompany liberalization of trade in financial services) must await the achievement of the first two objectives.

VI. The status of special and differential treatment after the Round

A. Erosion of the S&D principle

Until the Uruguay Round, there was a consensus that developing countries, owing to their development needs and the fragility of their economies, were deserving of special and differential (S&D) treatment. Certainly, developed and developing countries have interpreted the meaning of S&D differently, although the notion itself was never in dispute. This consensus has, however, been seriously eroded with the Uruguay Round.

As it evolved, S&D contained two distinctive tracks. On the one hand, developing countries were largely exempted from most of the disciplines that applied to developed countries. On the other hand, the developing countries were deemed to be deserving of preferential market access. The first of these tracks was originally included in Article XVIII.B of the GATT of 1947, whereby developing countries were given the flexibility of imposing temporary trade measures, including QRs, for balance-of-payments reasons.[18] The second track was incorporated as Part IV of the GATT of 1965. It made an explicit commitment to preferential access, as well as formally waiving the obligation that developing countries make reciprocal concessions in trade negotiations. Preferential access was subsequently put into practice through the various Generalized System of Preferences (GSP) schemes instituted by the developed countries. These schemes have not lived up to expectations, mainly owing to their limited product coverage, their non-contractual character (preferences can be withdrawn unilaterally by grantors), the exclusion and "graduation" of beneficiaries at the discretion of the grantor, and the existence of tariff quotas and other limitations within the system.[19]

The Tokyo Round was a culminating point in the process of creating consensus in favour of S&D treatment. The so-called "enabling clause" provided a permanent legal basis for the GSP, but did not make it obligatory. The codification of S&D treatment resulted in the explicit introduction of the concept of graduation into the enabling clause, stating that S&D treatment should be available only according to need and for a limited time. The enabling clause failed to spell out criteria both for classifying a country as developing, which remained a matter of self-election, and, by implication, for graduation. In practice, as already noted, industrial countries have graduated developing countries unilaterally from GSP eligibility. The operational implications of graduation have thus been a source of debate.

18 Article XVIII.C also provided flexibility to protect infant industries. However, this clause has rarely been invoked, because the balance-of-payments provisions were less demanding.

19 Acceptance by developing countries of the creation of an instrument which is not contractually bound in GATT may have had more serious drawbacks than the benefits afforded to them by the GSP. Developed countries have used the threat of withdrawal of GSP benefits to extract concessions from beneficiaries in various policy fields (Whalley, 1990).

Up to the Uruguay Round, developing countries were not required to join in negotiations or to make any major commitments on tariffs; and they were given great latitude in the use of QRs for balance-of-payments considerations. They were either not required to sign the Tokyo Round Codes or were granted special advantages as signatories. The most significant dispensation was perhaps the acceptance that subsidies were an integral part of development needs, although countries were required to commit themselves to their gradual phase-out. All in all, developing countries were treated with benign neglect as marginal actors in the system.

The Uruguay Round was a watershed. First, pressure was brought to bear on developing countries (particularly the most advanced) to forego S&D treatment with regard to import regimes. The negotiations on access to GATT that some developing countries entered into concurrently with the Round required them to bind their tariffs as a condition of accession. At the same time, developed countries began to insist that "free-riding" on rules and disciplines had to end. It should be noted that developing countries themselves, in line with their trade liberalization efforts, began to show an inclination to accept greater multilateral commitments.

The result has been a considerable dilution of the S&D principle. The Final Act suggests that the concept of S&D treatment has been drastically revised; with minor exceptions, it is addressed merely by allowing developing countries longer periods of adjustment to international norms that are applicable to all countries and by granting them technical assistance to be able to do so (see table 4).

Market access negotiations have resulted in extended bindings of whole tariff schedules by developing countries. In some cases, this has served to consolidate the unilateral tariff reductions of the recent past. Nonetheless, bound tariffs have been set at levels which are substantially above currently applied tariffs. Bound tariff rates are mostly in the range of 25 to 35 per cent. This means that bound tariffs will continue to be, on average, substantially higher than in developed countries.[20] In this regard, a degree of S&D treatment survives in the tariff field. This freedom may prove useful in averting the need to pay compensation when balance-of-payments problems surface.[21]

As already noted in chapter II above, S&D has all but been eroded in the context of the new balance-of-payments provisions, whereby developing countries commit themselves to give preference to "price-based measures" over QRs. Moreover, their ability to use QRs for balance-of-payments reasons will be severely curtailed by the stringent procedures that surround their imposition and by the possibility that affected parties invoke the dispute settlement machinery. It is ironic that developing countries have been given less freedom than developed countries in the application of QRs (which are retained in sectors and issues of interest to the latter, such as agriculture, textiles and safeguards).

The agreement on subsidies also inherently favours developed countries over developing ones. It allows subsidies for basic R&D, labour retraining and environmental adaptation - used more by developed than by developing countries - but prohibits aid for product development, more appropriate to the stage of development and needs of developing countries. More fundamentally, it eliminates the acceptability of subsidies as a tool of economic development programmes, which had been included in the Tokyo Round Code. The new agreement sets a very low automatic trigger point for graduation. All countries with a per capita GNP above $1,000 will have to abide essentially by the same disciplines in this field. It should be noted that, besides the least developed countries, there are only 20 countries with a per capita GNP below $1,000: ten in Africa, five in America and five in Asia.

For reasons that are well known, per capita GDP is an imperfect indicator of development

20 Once the tariffication of NTBs in agriculture is effected, this may no longer be true.

21 The new understanding on Article XVIII.B allows countries affected by measures taken by developing countries for foreign exchange reasons to resort to the dispute settlement mechanism and demand compensation. Therefore, the room to raise tariffs from applied to bound levels provides some extra flexibility.

Table 4

SPECIAL AND DIFFERENTIAL TREATMENT AFTER THE URUGUAY ROUND

Subject	*S&D Provisions*
Institutional	- Exemptions for least developed countries; "due restraint" structure when brought under a trade dispute.
Tariffs	- Ceiling bindings at higher levels (25-30 per cent).
Agriculture	- Not applicable to least developed countries. - Smaller reductions in "tariffied" NTBs and domestic support (2/3 of total) required of developing countries; spread over ten years instead of six; greater number of permitted subsidies.
Textiles	- Special treatment for least developed countries, small suppliers and fibre-producing countries.
Safeguards	- Can maintain their own measures for a maximum of ten instead of eight years. - *De minimis* provisions in export markets. - Can re-apply measures more often.
Subsidies	- Phase-out of export subsidies within eight years with a possibility of extension. - No restrictions for countries with GDP per-capita below $ 1,000. - *De minimis* provisions in export markets. - Exemptions for privatization.
Anti-dumping	- Special regard for developing countries before action is taken. - *De minimis* provisions.
Trade-Related Aspects of Intellectual Property Rights (TRIPs)	- Longer transition period in order to adjust: five years for developing countries (extendable to ten years); ten years extendable for least developed countries. - Technical assistance.
Trade-Related Investment Measures (TRIMs)	- Longer phase-out period (five years for developing, seven years for least developed countries). - Allowable under Article XVIII.B.
Balance of Payments	- Simplified consultations for least developed countries.
Services	- Principle of increasing participation of developing countries; less market opening measures required; assistance in strengthening service sectors. - For financial services, less stringent provisions.

Source: GATT (1993a) and (1993b).

and should be supplemented by other dimensions (such as the share of manufacturing in output and exports) in setting criteria for graduation. Besides, the very low dividing line adopted in the subsidies agreement effectively graduates countries where export incentives could continue to play a useful role. This group includes countries classified by the World Bank as lower middle-income without significant industrialization (e.g. Congo, Paraguay, Jordan, Jamaica), as well as many classified as upper middle-income where GDP per capita has a significant upward bias as an indicator of development because of the existence of an oil sector (UNCTAD, 1994, p. 59).

Not surprisingly, the TRIPs agreement is particularly stringent with regard to S&D benefits. It envisages only longer transition periods for developing and least developed countries and least developed countries (see chapter IV). In theory, in a dispute over TRIPs, developing countries could invoke the Enabling Clause or the Understanding on Dispute Settlement, which require that "special attention" be given to their particular needs. However, in practice, the strict enforcement of TRIPs obligations would probably be demanded by developed countries on the grounds that trade concessions had been given as a *quid pro quo*.

In sum, S&D has become more targeted. It has been largely relegated to the confines of each individual agreement. The provisions in each agreement in this regard are specific, time-bound, and designed mostly to mitigate the effects of adjusting to a higher level of obligations. These grace periods and longer transitions will become pressure points as deadlines are approached. In some areas, such as agriculture, subsidies and safeguards, the respective agreements provide for more favourable thresholds for undertaking commitments and for preserving market access. *De minimis* clauses, although meagre, are meant to provide some leeway for small countries. By the same token, S&D, now more restricted and less open-ended, has become more contractual.

B. Options for the future

The binary division of GATT, with all developing countries *de jure* and *de facto* free from any obligations, is indeed something of the past and should not be resurrected. However, there are powerful arguments for preserving the S&D principle, while at the same time ridding it of the vices of the past. The new trade theories that have emerged over the past 15 years or so suggest that there are well-founded reasons for departing from non-interventionist trade policies in the case of developing countries. The pervasiveness in developing countries of phenomena such as learning by doing, economies of scale, and positive externalities associated with new manufacturing and service activities implies that a strong case can be made for time-bound departures from strict incentive neutrality (see Rodrik, 1992; Stewart, 1984). The empirical evidence of the post-war period also shows that successful outward-oriented industrialization in Asia was associated with policies that targeted individual industries for development and relied extensively on subsidization.

In order to rescue the notion of S&D, it is necessary to reach international agreement on the criteria for classifying a country in the category of "developing" and, by implication, on the criteria for eventual graduation. As already noted, indicators of industrial development need to supplement per capita GDP as graduation criteria. In order to mitigate the contentiousness of graduation, small and semi-industrialized countries should not be lumped together with the most successful exporters. Countries internationally recognized as "developing" would enjoy temporary but contractual derogation from the disciplines imposed on developed countries in all areas of the agreement (subsidies, tariff bindings at ceiling rates, use of QRs for balance-of-payments purposes, intellectual property protection, services). At the same time, they would be granted contractual GSP treatment that is truly generalized and applicable to all countries recognized as developing. Developing countries would renounce self-election and developed countries would renounce unilateral graduation. In line with current practice, it might be desirable to establish a three-tier system, whereby least developed countries would have little or no obligations, and developing countries would assume increasing obligations and eventually undertake all the obligations of the WTO.

VII. Institutional reform and dispute settlement

A. *The new trading system*

The Final Act transforms the GATT into a permanent international institution, the World Trade Organization (WTO), which will be responsible for the orderly management of trade relations into the next century. In many respects, a new international trading system has come into being. The WTO establishes a legal framework that ties together the various trade pacts that have been negotiated under GATT auspices. Its two most important features are the establishment of a Dispute Settlement Body (DSB) and the requirement that all its members adhere to the broad range of trade pacts that have been negotiated under GATT auspices. This "single undertaking" does not require much of the developed countries, which already adhere to almost all of the existing pacts. Developing countries, by contrast, are now required to assume substantial obligations from which they had been exempted in previous GATT rounds.

The tasks of the WTO include: facilitating the implementation and operation of all agreements and legal instruments negotiated in the Uruguay Round; providing a forum for all future negotiations; and administering the DSB and the Trade Policy Review Mechanism (TPRM) which was established on a temporary basis at the Montreal mid-term review of the Uruguay Round (December 1988). The WTO will continue the GATT practice of reaching decisions by consensus. However, since consensus will now be harder to reach, owing to the WTO's broader membership and the wider scope of its mandate, voting has been institutionalized when a consensus is not possible. Decisions will still be taken by the majority of the votes cast, on the basis of "one country, one vote". The system of unweighted majority voting means that developing countries retain a strong voice in the new organization. However, in two cases, the interpretation of the agreements and the waiver of obligations, the majority required will consist of three-quarters of the members, whereas under GATT it was only two-thirds of the votes cast, representing at least half of the members.

To become original members of the WTO, countries are required to be contracting parties to GATT 1947, to have accepted the three core agreements (GATS, TRIPs, and GATT 1994, which contains the agreements on goods resulting from the Uruguay Round), and to have made specific concessions with respect to market access for both goods and services.

The entry-into-force of the WTO will have important implications for the multilateral trading system in general and for developing countries in particular. First, the WTO will stand on a firmer legal basis than existing GATT arrangements. It will have a legal personality and will be accorded privileges and responsibilities for international trade, by placing it on an equal footing with the IMF and the World Bank. An integral part of its legal personality is the new DSB, which has more exacting and legally binding procedures than the dispute settlement machinery of GATT.

Secondly, surveillance is improved by the periodic reviews of individual countries' trade policies via the TPRM and annual reviews of international trade. Regular ministerial meetings are provided for so as to ensure the effectiveness of the WTO. Improved and centralized notification arrangements for trade measures are instituted.

Thirdly, the Final Act calls for cooperation between the WTO, the World Bank and the IMF, in order to improve the coordination of trade, financial and monetary policies. Depending on the form that this cooperation takes, it could be either very beneficial or very harmful to developing countries. In the immediate future, IMF financing should be made available to developing countries to ease the transition to higher standards of intellectual property protection, higher food prices for net food importers, and more stringent limitations on the use of measures aimed at the protection of the balance of payments.

Another obvious area of cooperation is financial services. The debate on financial services in the context of the GATS overlaps to a considerable extent the discussion within the IMF on appropriate rules for the capital account of the balance of payments. Both within the IMF

and more broadly there is an active debate on how to handle volatile short-term capital flows. This is certainly an area where cooperation between the WTO and the IMF would be welcome. Such cooperation must leave developing countries sufficient freedom of action to pursue policies that discourage speculative - and thus volatile - short-term flows, while at the same time encouraging long-term investment.

In the long run, it is important that cooperation between the three institutions not be restricted to the surveillance of national policies of developing countries (with all the risks of triple conditionality that this could now entail). There is a danger that the financial power of the Bretton Woods institutions will be deployed to enforce mainly on the developing countries the rules of the WTO, while leaving the stronger trading powers with wide latitude to apply restrictive trade measures (for example in the anti-dumping or safeguards areas). Instead, cooperation between the Bretton Woods institutions and the WTO ought to centre on ensuring global coherence of international policies in the areas of trade, finance and money, so as to promote rapid growth in the world economy.

Fourthly, in the Final Act, countries have committed themselves not to take unilateral action against perceived violations of trade rules. Instead, they have pledged to seek recourse to the new dispute settlement machinery and to abide by its rules and procedures. Moreover, the granting of waivers will be more strictly controlled: justification and time limits will be required, and recourse to dispute settlement will be possible if agreement is not reached.

Fifthly, following the growing trend towards accountability and relations with non-governmental organizations (NGOs) in all international economic institutions, the WTO has been given the mandate to consult and cooperate with them, a modality expected to be used with increasing frequency as the coverage of negotiations under its aegis is extended to matters such as labour standards, the environment and competition policy.

Finally, as already noted, the unified nature of the Final Act will preclude the splintering of the new trading system into multiple layers with differing rules. However, the survival of four plurilateral trade agreements binding only on signatories[22], and the threat that others may be signed in future, could jeopardize the universal application of the principles of unconditional MFN and non-discrimination in the trading system. Moreover, the system of unweighted majority voting might be undermined.

B. The dispute settlement mechanism

Under the WTO, there will be a single Dispute Settlement Body (DSB) dealing with all disputes arising from the agreements contained in the Final Act and with considerably expanded powers. Its creation is the most important contribution of the Round in terms of providing security and predictability to the multilateral trading system. The DSB will set up panels, adopt reports, supervise the implementation of rulings and recommendations, and authorize retaliation. This is a significant improvement in comparison to the current GATT, under which dispute settlement is fragmented between the GATT Council and the Committees set up by the Tokyo Round Codes.

An important new feature distinguishes the WTO mechanism from previous practice. There will now have to be a consensus against the establishment of panels or the adoption of panel reports for decisions *not* to be made, whereas under the former system there had to be consensus before a positive decision could be taken. Under the new system, parties to a dispute can no longer block decisions against them.

A last-minute modification proposed by the United States to the anti-dumping agreement has effectively isolated anti-dumping procedures from the unified dispute settlement system. In essence, multilateral panels have not been granted authority to challenge the substance of national investigations. Therefore, the new anti-dumping rules

22 The "package" approach of the Uruguay Round does not apply to some plurilateral agreements emanating from the Tokyo Round (the Agreement on Trade in Civil Aircraft, the Agreement on Public Sector Purchases, the International Agreement on Milk Products, and the Bovine Meat Agreement), which continue to be binding only on signatories.

will remain subject to discretionary interpretation in national laws. This is an important loophole which could transform anti-dumping into the cutting edge of protectionism. This clause is subject to review after a five- year period.

The most striking implication of the WTO is the linkage of market access in goods and the new obligations in the areas of intellectual property and trade in services. Cross-sectoral retaliation, under which restrictive action can be taken against exports of goods in retaliation for policy measures in the new areas is now possible. However, cross-retaliation is allowed only as the third stage in a three-step procedure. In principle, suspensions of concessions should be restricted to the sector in dispute. If this is not practicable or effective, the suspension can be made in a different sector of the same agreement. Only as a last resort should the suspension of concessions be made under another agreement (for example, a dispute under the intellectual property agreement leading to retaliation in the areas of goods or services).

The creation of the WTO and the DSB raises the question of how far recourse to unilateral action - such as that under Section 301 of the United States Trade Act of 1984 - will be curtailed. Although the spirit of the WTO is against unilateral action, it is far from certain that the United States will give up recourse to its Section 301.[23] However, the WTO can contribute to the disciplining of unilateral action, since countries will have to bring their disputes to the WTO and will have to go through the above-mentioned procedures before implementing cross- retaliation. This may prove to be a significant extension of the rule of law in international economic relations.

In sum, the new institutional arrangements have no doubt reduced the freedom of developing countries in the system. New levels of obligations are expected of them with respect to their trade and investment policies. Moreover, the rather stringent rules for becoming a member of the WTO imply that developing countries which are not members of GATT will now have to pay a rather stiff "entry fee". Yet, given the willingness of developing countries to take on greater obligations, this does not seem a high price to pay. The greatest benefit stems from the tighter dispute settlement procedures that have been introduced. If the political will is strong enough for the major trading powers to abide by the decisions of the DSB, its existence will provide a counter to the unilateral actions and threats to which developing countries have grown accustomed in recent years.

VIII. Recommendations for future trade negotiations

Trade negotiations will not end with the conclusion of the Uruguay Round. In fact, the Uruguay Round has opened up new areas of domestic policy to international scrutiny; in some of these areas (services in particular), negotiations have barely started. In addition, the Uruguay Round left a good deal of unfinished business in the form of agreements which will surely prove to be unsatisfactory in practice. Finally, there was serious retrogression with regard to the S&D principle; in future negotiations, developing countries should press for its strengthening in ways that are less likely to be abused (as was common in the past) and which are of more effective assistance to the development effort.

In future negotiations within the WTO, developing countries need to concentrate on issues of importance to them which were not completely settled during the Uruguay Round but which prove to be of continuing relevance. This concluding chapter will highlight the most important issues still outstanding which arise from the analysis of the various agreements reached in the Uruguay Round.

(a) As the accords are implemented, developing countries will experience balance-of-payments difficulties. As mentioned above, there will be a need to provide developing

23 In fact, Japan, the European Union, India, and Pakistan have recently been threatened with action under Section 301. Also, the French Government has proposed that the European Union adopt an equivalent instrument, thereby assuming that such legislation is compatible with the WTO.

countries with greater IMF financing during the transition to the new disciplines, many of which may have adverse repercussions on the balance of payments of developing countries. Among agreements with balance-of-payments implications for developing countries are: the adoption and enforcement of stricter intellectual property legislation, the agreement on agriculture, and the restrictions on the use of trade measures to protect the balance of payments.

(b) The Final Act calls for cooperation between the WTO, the World Bank and the IMF. In the long term, the main area of cooperation ought to be on ensuring consistency of international policies in the areas of trade, money and finance. It is especially important that such cooperation not become an additional source of pressure on developing countries, restricting their degree of freedom in policy formulation and implementation.

(c) With regard to market access, developing countries should continue to fight for the removal of tariffs on those goods that are of export interest to them (which will remain subject to higher tariffs than goods of export interest to developed countries) and for the elimination of tariff escalation. These are long-standing demands of developing countries which have been only partially addressed in the Uruguay Round.

(d) In future trade negotiations, developing countries should emphasize improvements in the S&D principle, which should be made contractual in all of its dimensions. As a *quid pro quo*, developing countries should be ready to accept internationally agreed and binding criteria for graduation. Thus, belonging to the category of "developing" would no longer be a matter of self-election. Likewise, developed countries would no longer be able to graduate countries at their own discretion. Countries classified as developing would enjoy access to a truly generalized and universal GSP and temporary derogation from some of the disciplines imposed on developed countries. These derogations would apply to all areas of the agreement (in different ways and to different extents), including tariffs (bindings at levels higher than actual tariffs should be retained), balance-of-payments trade measures, subsidies, more lenient safeguard rules, laxer intellectual property provisions, and leeway in the liberalization of markets for services. The criteria used for graduation ought to include, besides per capita GDP, indicators of the level of industrial development.

(e) In the short term, the S&D principle can be usefully applied to the process of "tariffication" of NTBs called for in the agreement on agriculture, by giving developing countries access to developed country markets at lower bound tariff rates than those applicable to developed country exporters.

(f) The agreement on safeguards has problematic aspects. Close monitoring will be required so as to prevent the major trading partners - and, perhaps, by imitation, some developing countries themselves, too - from using the loopholes in the agreement (particularly the right to use QRs and the "quota modulation" provision) to reintroduce grey area measures - under legal cover of the safeguards agreement. The addition of a clause calling for payment of financial compensation to parties affected by quantitative safeguards when they exceed a certain maximum duration would deter countries from abusing the system. The Uruguay Round cannot be considered to have settled the debate on this issue.

(g) The Uruguay Round has given legal sanction to new protectionism in the form of very unsatisfactory anti-dumping rules. This is an area that will undoubtedly continue to feature prominently on the agenda of future international trade negotiations. As a minimum, all the facts presented to national panels in anti-dumping cases should be subject to review by the DSB. Also, the use of reconstructed values in determining the existence of dumping and calculating dumping margins should be eliminated altogether. The anti-dumping mechanism would be improved if a clear distinction is made between price discrimination (which ought to be le-

gal) and predatory pricing. The optimal solution would be to eliminate anti-dumping altogether and to include the issue of predatory pricing within the framework of competition policy. There is already a precedent for this approach in the Australia - New Zealand Closer Economic Relations Trade Agreement. These countries have replaced their anti-dumping policies by mutual recognition of their respective competition policies, thereby ensuring equality of treatment to their own and their partner's domestic producers.

(h) The harmonization of competition policy is often mentioned as a major item for the post-Uruguay Round trade agenda (Hoekman, 1993a). Two issues of particular interest to developing countries in this area relate to investment measures and intellectual property. Particular TRIMs, such as export performance, local content and trade-balancing requirements, were seen in the Uruguay Round mainly as trade distortions, although they are also means of offsetting restrictive business practices of TNCs. These practices should be included in efforts to harmonize international competition policies. Similarly, many intellectual property issues impinge directly on competition policy. Impediments to "parallel" imports of patented goods can raise questions of competition. A major competition issue is the question of the scope and length of patent protection. Patents are, after all, instruments designed to restrict market entry.

(i) Much remains to be done in the area of trade in services. Developing countries ought to press for greater liberalization of the temporary movement of skilled labour and labour working in the employ of service companies. Great caution and selectivity needs to be exercised with regard to the liberalization of financial services, and, in this respect, the GATS gives developing countries the legal instrument to follow a gradual and selective approach. However, developing countries will have to be prepared to resist bilateral pressures from some of their developed country partners to liberalize their financial services sector rapidly.

(j) The incorporation into the WTO implies a major domestic challenge for most developing countries. They will have to make efforts to change and adapt domestic legislation in many new areas, including services, intellectual property, and certain areas of trade policy that have received little attention in the past (e.g., safeguards, subsidies and anti-dumping). The enforcement and administrative capacities of national institutions will have to be built up. Technical assistance in this area from the WTO and UNCTAD could make an important contribution to a smoother transition.

(k) The WTO has been given a mandate to include in future negotiations any trade-related subject. The issues of environmental and labour standards seem to be first in line.[24] It will not be an easy matter to harmonize policies in these areas. The reason is that harmonization can be expected to take the form of aligning policies on developed country standards, and this may reduce the grounds for competition between developing and developed country producers. It would be naive to pretend that the demands of environmental groups and labour unions on these matters can simply be ignored. Therefore, the challenge ahead is to participate constructively in drafting multilateral rules which expand or preserve access to markets and preclude punitive unilateral action, while taking into consideration environmental and labour concerns.

References

ABREU, M. de P. (1990), "Developing Countries and the Uruguay Round of Trade Negotiations", in World Bank, *Proceedings of the World Bank Annual Conference on Development Economics, 1989* (Washington, D.C.).

24 These issues are addressed in the paper by Dani Rodrik in this volume.

AGOSIN, M.R., and R. FFRENCH-DAVIS (1993), "Trade Liberalization in Latin America", *CEPAL Review*, No. 50 (August).

AGOSIN, M.R., and D. TUSSIE (1993), "Trade and Growth: New Dilemmas in Trade Policy - An Overview", in M. R. Agosin and D. Tussie (eds.), *Trade and Growth: New Dilemmas in Trade Policy* (London: Macmillan).

AMSDEN, A.H. (1989), *Asia's Next Giant - Korea and Late Industrialization* (New York: Basic Books).

BHAGWATI, J. (1989), *Protectionism* (Cambridge, Ma.: MIT Press).

EDWARDS, S. (1989), "The Order of Liberalization of the Current and Capital Accounts of the Balance of Payments", *Essays in International Finance*, No. 156 (Princeton, N.J.: Princeton University, International Finance Section).

GATT (1993a), *Analysis of the Draft Final Act of the Uruguay Round, with Special Attention to the Aspects of Interest to Developing Economies*, MTN.TNC/W/122, Geneva, 29 November.

GATT (1993b), *Final Act Incorporating the Results of the Uruguay Round of Multilateral Trade Negotiations*, MTN/FA, Geneva, 15 December.

GROSSMAN, G.M., and E. HELPMAN (1993), "Endogenous Innovation in the Theory of Growth", *NBER Working Paper*, No. 4527 (Cambridge, Ma.: National Bureau of Economic Research), November.

HAMILTON, C., and J. WHALLEY (1990), "Safeguards", in J. J. Schott (ed.), *Completing the Uruguay Round - A Results-Oriented Approach to the GATT Trade Negotiations*, (Washington, D.C.: Institute for International Economics).

HINDLEY, B. (1990), "Services", in J. J. Schott (ed.), *Completing the Uruguay Round - A Results-Oriented Approach to the GATT Trade Negotiations*, (Washington, D.C.: Institute for International Economics).

HOEKMAN, B. M. (1993a), "New Issues in the Uruguay Round and Beyond", *The Economic Journal*, No. 103 (November).

HOEKMAN, B.M. (1993b), "Developing Countries and the Uruguay Round - Negotiations on Services", *Policy Research Working Paper*, No. 1220 (Washington, D.C.: The World Bank).

JACKSON, J. (1989), *The World Trading System - Law and Policy of International Economic Relations* (Cambridge, Ma.: MIT Press).

KATZ, J. (1977), Importación de Tecnología, Aprendizaje e Industrialización Dependiente (México, D.F.: Fondo de Cultura Económica).

MESSERLIN, P. (1990), "Anti-dumping", in J. J. Schott (ed.), *Completing the Uruguay Round - A Results-Oriented Approach to the GATT Trade Negotiations*, (Washington, D.C.: Institute for International Economics).

NICOLAIDES, Ph. (1990), "Safeguards and the Problem of VERs", *Intereconomics*, Vol. 25, No. 1.

OCAMPO, J.A. (1992), "Developing Countries and the GATT Uruguay Round: A (Preliminary) Balance", in UNCTAD, *International Monetary and Financial Issues for the 1990s*, Vol. I (UNCTAD/GID/G24/1)(New York: United Nations).

RAYNER, A.J., K.A. INGERSENT and R.C. HINE (1993), "Agriculture in the Uruguay Round: An Assessment", *The Economic Journal*, Vol. 103 (November).

REICHMAN, J.H. (1993), "Implications of the Draft TRIPs Agreement for Developing Countries as Competitors in an Integrated World Market", *UNCTAD Discussion Paper*, No. 73, Geneva, November.

RODRIK, D. (1992), "Conceptual Issues in the Design of Trade Policy for Industrialization", *World Development*, Vol. 20, No. 3.

STEWART, F. (1984), "Recent Theories of International Trade and Some Implications for the South", in H. Kierkowski (ed.), *Monopolistic Competition and International Trade* (Oxford: Clarendon Press).

STIGLITZ, J. (1994), "The Role of the State in Financial Markets", in World Bank, *Proceedings of the World Bank Conference on Development Economics, 1993* (Washington, D.C.).

TUSSIE, D. (1989), *The Less Developed Countries and the World Trading System* (London: Pinter).

UNCTAD (1993), *Trade and Development Report, 1993*, (New York: United Nations Publication, Sales No. E.94.II.D.26).

UNCTAD (1994), "A Preliminary Analysis of the Results of the Uruguay Round and their Effects on the Trading Prospects of Developing Countries" (United Nations document TD/B/WG.4/13, 10 June 1994), Geneva.

UNCTAD/UNDP/WIDER (1990), *Agricultural Trade Liberalization in the Uruguay Round: Implications for Developing Countries* (Geneva).

VERNON, R. (1966), "International Investment and International Trade in the Product Cycle", *Quarterly Journal of Economics*, Vol. 81, No. 2 (May).

WADE, R. (1990), *Governing the Market - Economic Theory and the Role of Government in East Asian Industrialization*, (Princetion, N.J.: Princeton University Press).

WESTPHAL, L.E. (1990), "Industrial Policy in an Export-Propelled Economy: Lessons from South Korea's Experience", *Journal of Economic Perspectives*, Vol. 4, No. 3 (Summer).

WHALLEY, J. (1990), "Non-discriminatory Discrimination: Special and Differential Treatment Under GATT for Developing Countries", *The Economic Journal*, Vol. 100 (December).

DEVELOPING COUNTRIES AFTER THE URUGUAY ROUND

Dani Rodrik*

Abstract

The Uruguay Round marks an important turning point for the developing countries. The three core agreements on which the new World Trade Organization (WTO) is based present a remarkable range of obligations and responsibilities for a set of countries that were effectively outside any multilateral discipline on trade matters. Meanwhile, the few concrete gains that accrue to developing countries, such as the phasing out of the Multi-Fibre Arrangement, are suspiciously back-loaded. However, this is the wrong way to read the significance of the Uruguay Round for them. First of all, there are a number of important ways in which the Uruguay Round agreements promise to strengthen multilateral discipline in world trade. This is especially true in the area of dispute settlement. Secondly, since taking advantage of international trade is part and parcel of good development strategy, most of the developing-country "concessions" need to be entered on the positive side of the balance sheet, and not viewed as a liability. Finally, there may be some subtle ways in which the Uruguay Round agreements can help developing-country Governments build better structures of governance at home to enhance the performance of their economies in areas that go beyond trade. The real threats to developing countries lie in the post-Uruguay agenda, in the demands for upward harmonization in the areas of labour and environment. A well designed social-safeguards clause will not necessarily be inimical to the interests of developing countries, and may forestall the emergence of a new set of "grey area" measures outside of the WTO.

I. Introduction

The Uruguay Round of trade negotiations marks an important turning point for the developing countries. Prior to the Round, developing countries took little active interest in multilateral trade negotiations (except where trade preferences were involved) and were effectively exempt from most of the disciplines imposed on contracting parties to the General Agreement on Tariffs and Trade (GATT). Under the "special and differential treatment" doctrine, developing countries were provided with trade preferences (the GSP) and were asked to give up few concessions under successive rounds of trade liberalization. Meanwhile most-favoured-nation (MFN) treatment allowed them to benefit from the reduction in tariff barriers negotiated among the industrial countries. However, developing

* I am grateful to Gerry Helleiner for his help and many detailed comments. I have also benefited from the assistance of Jagdish Bhagwati, Ishac Diwan, Robert Lawrence, Patrick Low, Will Martin, Dave Richardson, Arvind Subramanian, and John Whalley.

Table 1

SHARE OF DEVELOPING COUNTRIES IN WORLD EXPORTS, 1982, 1987, 1992
(Per cent)

	Agricultural products	Mining products (excl. fuels)	Manufactures	Total merchandise exports (excl. fuels)	Commercial services
1982	29	30	11	16	21
1987	28	25	14	17	18
1992	27	26	19	20	18

Source: GATT (1993), table 1.

countries suffered disproportionately from the spread of protectionist practices that were either a derogation of GATT, such as the Multi-Fibre Agreement (MFA) and voluntary export restraints (VERs), or badly abused its spirit (as in the case of anti-dumping procedures in the United States or European Union).

The Uruguay Round has promised to change all that. For the first time, a large number of developing countries have participated actively in the various negotiations comprising the Round. Although "special and differential treatment" survives in principle, the agreements provide few real exemptions for developing countries that are not in the "least developed" category. They do, however, generally provide for more generous phase-in periods. The three core agreements on which the new World Trade Organization (WTO) is based - the Multilateral Agreement on Goods, the General Agreement on Trade in Services, and the Agreement on Trade-Related Aspects of Intellectual Property Rights - present a remarkable range of obligations and responsibilities for a set of countries that were effectively outside any multilateral discipline on trade matters. In return, the agreements require the phasing out of the MFA and of VERs; they will bring some clarity to anti-dumping and safeguard rules, and considerably strengthen the multilateral dispute settlement procedures.

These shifts are the consequence of two inter-related developments. First, the importance of developing countries as a group in world trade has steadily risen; it now stands at one-fifth of global merchandise trade. The increase has been particularly marked in manufactures, where the share of developing country exports practically doubled between 1982 and 1992 (table 1). These export gains have been heavily biased in favour of Asian countries; they led to a general reluctance on the part of Governments in industrial countries to prolong what came to be perceived as the free-riding status of developing countries. Secondly, a growing number of developing countries (mainly, but not exclusively, in Latin America) undertook drastic unilateral reforms of their trade regimes, dropping import-substitution policies and embracing outward orientation. Since the launching of the Uruguay Round in 1986, more than 60 developing countries have reported unilateral liberalization measures to the GATT, 24 have joined GATT, and over 20 are currently in the process of acceding (World Bank, 1994). This change in developing-country policies has transformed what were once viewed by these Governments as trade "concessions" (such as tariff reductions and bindings) into actions that are now deemed desirable in and of themselves.

These developments render an evaluation of the Uruguay Round results from the standpoint of developing countries somewhat tricky. From an old-fashioned perspective which views multilateral trade negotiations purely as a setting for the exchange of concessions, it can be argued that developing countries have not done

very well for themselves.[1] They are now burdened with a wider range of obligations while their few concrete gains, such as the phasing out of the MFA, are suspiciously back-loaded. For those developing countries that have traditionally hid behind the principle of special and differential treatment to demand concessions and preferences from developed countries while they themselves provided little in return, there is very little favourable to report.

However, I will argue that this is the wrong way to read the significance of the Uruguay Round for developing countries. First of all, there are a number of important ways in which the Uruguay Round agreements promise to strengthen multilateral discipline in world trade. This is especially true in the area of dispute settlement. Since the developing countries are the ones most likely to suffer from the breakdown of multilateralism, this strengthening is to be greatly welcomed. Secondly, as Governments are increasingly coming to realize, taking advantage of international trade is part and parcel of good development strategy. From this perspective, most of the developing-country "concessions" need to be entered on the positive side of the balance sheet, and not viewed as a liability. Finally, as I will argue below, there may be some subtle ways in which the Uruguay Round agreements can help the Governments of developing countries to build better structures of governance at home so as to enhance the performance of their economies in areas that go beyond trade. Such opportunities, however, will be available only to those Governments that approach the new rules as challenges to be embraced rather than as threats to be evaded.

The real threats to developing countries lie in the post-Uruguay agenda. The developed countries, led by the United States, are intent on seeking some upward harmonization in the areas of labour and environmental standards - areas that were left out of the Uruguay Round. The objectives are "fair" and "green" trade, laudable targets on their face value. Ultimately, however, what is at stake is nothing less than the comparative advantage that poor countries naturally have in labour-intensive and resource-using industries. For good reasons, then, developing countries have resisted being drawn into negotiations in these areas, citing national sovereignty and the GATT's (and now the WTO's) focus on border measures alone.

But it is very unlikely that the clamour for harmonization (or "deep integration", to use Lawrence's [1991] terminology) will go away. Consequently, developing countries will have to find creative ways in which to engage the developed countries in dialogue, without yielding on their (and the world trading system's) fundamental interests. I will argue that the way to begin doing so is by recognizing that while labour and environmental complaints are often a cover for protectionism pure and simple, they can also contain a legitimate core based on the right of nation-states to restrict the availability of products and processes which violate a widely held moral code at home. The challenge for the world community is to come up with procedures to deal with such legitimate instances, while safeguarding the exporting countries' interests and preventing a slide towards protectionism. I will suggest some guidelines towards that end in the penultimate section of the paper.

A number of studies have analyzed the implications of the Uruguay Round or its components for the developing countries (see GATT, 1993; Ocampo, 1992; Tussie, 1993; Hoekman, 1993; Reichman, 1993; Agosin et al., 1995; Weston, 1995). Numerous quantitative evaluations of the Round's market-access provisions have also been undertaken (see GATT, 1994; Goldin et al., 1993; OECD, 1993; Nguyen et al., 1993; Perroni; 1994). In view of these existing studies, I can permit myself a somewhat more selective and eclectic evaluation of the Uruguay Round and beyond. In particular, I will not have much to say about some of the traditional market-access issues of importance to developing countries, such as tariff preferences. I will try instead to highlight and discuss the newer challenges and opportunities that developing countries will probably face.

1 This is by and large the perspective adopted by Agosin, Tussie and Crespi in this volume.

II. The Uruguay Round: a time of transition for developing countries

A. *Overview*

The Uruguay Round is the widest-ranging and most ambitious multilateral trade agreement ever negotiated. Its centrepiece is a new multilateral organization, the World Trade Organization (WTO), which will house the various agreements negotiated during the Uruguay Round, as well as the original GATT, as modified by the Round (the so-called "GATT 1994"), under a single roof. In addition to providing a more solid institutional foundation for the discussion of global trade matters, the WTO's most significant contribution is its embodiment of a unified dispute settlement procedure which will apply to all the "covered agreements," including trade in both goods and services, and intellectual property rights.

Previous rounds of trade negotiation had succeeded in bringing average tariffs on industrial products in developed countries down to 6.3 per cent (from more than 40 per cent in 1947). The Uruguay Round has reduced average tariffs further to 3.9 per cent (which represents a 38 per cent reduction). Tariffs remain somewhat higher on imports from developing countries. This is owing to the generally higher tariffs on textiles, clothing, and fish and fish products (see table 2). Many products of interest to developing economies have also received below-average tariff reductions: textiles and clothing (a reduction of 22 per cent), leather, rubber footwear and travel goods (18 per cent), and transport equipment (23 per cent). Thanks to GATT, however, tariffs are no longer a major obstacle to world trade (including developing economies' exports); the Uruguay Round's major achievements lie elsewhere.

The Uruguay Round agreements commit all WTO members (except for least developed countries) to the phasing out of quantitative restrictions (QRs) on trade. The most significant provisions relating to QRs are as follows:

- In agriculture, all non-tariff measures (such as quotas, variable import levies and minimum import prices) are to be converted to their tariff equivalents, and the resulting tariffs reduced over time.[2] (The Agreement on Agriculture also envisages cuts in domestic supports and export subsidies.)
- In textiles and clothing, industrial countries have committed themselves to eliminating the MFA over a period of ten years. This is a matter of substantial significance to developing countries, even if the generosity of the offer is marred by the fact that no less than 49 per cent of the liberalization can be delayed until the very last day of the ten-year period.
- The new Agreement on Safeguards requires "grey area" measures like VERs and OMAs to be notified to the WTO and eliminated within four years.[3]
- Finally, an Understanding on the Balance-of-Payments Provisions of the GATT establishes more demanding conditions for the use of QRs by developing countries in response to payments difficulties.

These will be discussed in greater detail below.

The Uruguay Round agreements have also made some inroads into new areas, such as trade in services, trade-related aspects of intellectual property rights (TRIPs), and trade-related investment measures (TRIMs). In services, a new General Agreement on Trade in Services (GATS) establishes a framework requiring WTO members to present schedules of "concessions" in selected service sectors. The Agreement on TRIPs sets minimum standards of protection in patents, copyrights and trademarks. The Agreement on TRIMs requires the phasing out of performance requirements - chiefly local-content and export-

2 Tariff equivalents are to be calculated by taking the difference between domestic and world prices, using data from the 1986-1988 base period. The selection of the base period gives the tariffication process an upward (protectionist) bias as world prices for agricultural products were generally depressed during 1986-1988.

3 Each member is allowed one exception to these rules.

Table 2

TARIFF REDUCTIONS ON INDUSTRIAL PRODUCTS BY DEVELOPED COUNTRIES
(Per cent)

Origin of imports	Import value ($ billion)	Weighted average tariff		
		Pre-UR	Post-UR	Reduction
All industrial products *(excl. petroleum)*				
Developed countries	736.9	6.3	3.9	38
Developing countries (excl. least developed countries)	167.6	6.8	4.3	37
Least developed countries	3.9	6.8	5.1	25
Industrial products *(excl. textiles and clothing, and fish and fish products)*				
Developed countries	652.1	5.4	3.0	44
Developing countries (excl. least developed countries)	125.2	4.9	2.4	51
Least developed countries	2.1	1.7	0.7	59

Source: GATT (1994), table 9.

import linkage requirements - commonly imposed on foreign firms.

With respect to multilateral rules and procedures, the Uruguay Round agreements considerably tighten the dispute settlement procedures and bring some much-needed clarity to such areas of safeguards, anti-dumping and subsidies. The Understanding on Rules and Procedures Governing the Settlement of Disputes is particularly noteworthy. This Understanding not only establishes a dispute settlement procedure that for the first time applies to all forms of trade (and beyond, as in TRIPs), but also takes away the privilege of member countries to veto panel findings. The new rules allow members to appeal the findings of a panel, but the appellate panel's report can only be blocked by unanimity. Hence, a country that is found to violate the rules (and therefore required to provide compensation) can no longer block a decision against itself. The complainant's bargaining leverage is thereby greatly strengthened.

Numerical estimates put the global welfare gains of the Uruguay Round at around $200 to $300 billion per annum once all the market-access provisions are in effect, i.e. at the end of ten years.[4] Roughly two-thirds of this accrues to the developed countries (GATT, 1993; 1994).

4 However, as pointed out by Perroni (1994), practically all of the existing studies are based on early projections of what the Uruguay Round agreements were expected to achieve. The study by Nguyen, Perroni, and Wigle (1994), which is based on the actual outcome of the Uruguay Round, yields a much smaller global gain of $70 billion per annum (in 1986 prices).

Box 1

THE ARCHITECTURE OF THE WORLD TRADE ORGANIZATION

A. Multilateral Agreement on Trade in Goods

GATT 1994
Agreement on Agriculture
Agreement on the Application of Sanitary and Phytosanitary Measures
Agreement on Textiles and Clothing
Agreement on Technical Barriers to Trade
Agreement on Trade-Related Investment Measures
Agreement on the Implementation of Article VI of the GATT 1994 (anti-dumping)
Agreement on the Implementation of Article VII of the GATT 1994 (customs valuation)
Agreement on Preshipment Inspection
Agreement on Rules of Origin
Agreement on Import Licensing Procedures
Agreement on Subsidies and Countervailing Measures
Agreement on Safeguards

B. General Agreement on Trade in Services

C. Agreement on Trade-Related Aspects of Intellectual Property Rights

D. Understanding on Rules and Procedures Governing the Settlement of Disputes

E. Plurilateral Trade Agreements

Agreement on Trade in Civil Aircraft
Agreement on Government Procurement
International Dairy Agreement
International Bovine Meat Agreement

The gains among developing countries are unevenly distributed, with food importing countries potentially losing out from the reduction in agricultural subsidies in the North. As the GATT secretariat is quick to point out, however, these gains do not incorporate two sources of additional gains (which are hard to model). First, failure of the Uruguay Round might well have led to a deterioration of the world trading environment and perhaps even to trade wars. Secondly, its provision of improved multilateral surveillance and discipline fosters stability and credibility, generating added economic activity. As the weaker members of the international community, the developing countries stood to lose the most from the deterioration in multilateral discipline, and arguably stand to gain the most from its restoration.

B. New responsibilities

As pointed out in the introduction, the distinguishing mark of the Uruguay Round from the perspective of developing countries is the wider range of obligations that are now imposed on them. This is reflected first and foremost in the fact that membership in the new WTO involves signing on not only to the updated GATT ("GATT 1994"), but also to a dozen side agreements

Table 3

DEVELOPING-COUNTRY SIGNATORIES TO TOKYO ROUND CODES

Anti-dumping code	Code on subsidies and countervailing duties	Agreement on import licensing procedures	Agreement on government procurement	Agreement on technical barriers to trade	Customs valuation code
Brazil	Brazil	Argentina	Hong Kong	Argentina	Argentina
Egypt	Chile	Chile	Singapore	Brazil	Botswana
Hong Kong	Colombia	Egypt		Chile	Brazil
India	Egypt	Hong Kong		Egypt	Cyprus
Mexico	Hong Kong	India		Hong Kong	Hong Kong
Pakistan	India	Mexico		India	India
Republic of Korea	Indonesia	Nigeria		Mexico	Lesotho
Singapore	Pakistan	Pakistan		Pakistan	Malawi
	Philippines	Philippines		Philippines	Mexico
	Republic of Korea	Singapore		Republic of Korea	Republic of Korea
	Singapore			Rwanda	Zimbabwe
	Uruguay			Singapore	
				Tunisia	

Source: OECD (1992), table 4.

(which together with GATT 1994 constitute the Multilateral Agreement on Trade in Goods) as well as the agreements on services and TRIPs. Box 1 presents a schematic listing of the WTO's contents. The only agreements to which member countries can decline to accede to are the four plurilateral agreements in part E. Excepting these four agreements, developing-country Governments are now denied the luxury of picking and choosing their obligations if they want to become members of the WTO.

One way of gauging the practical importance of this is to look at the participation of developing countries in the codes negotiated during the earlier Tokyo Round. These codes were "plurilateral" in the sense of the WTO, as accession was voluntary and failure to accede did not prejudice a country's privileges under the GATT. As table 3 shows, few developing countries chose to sign on to these codes: none of the codes garnered more than 13 developing-country signatories, and no developing country or territory other than Hong Kong has signed all of them. By revealed preference, the attitude of developing countries towards these codes can be said to have been less than enthusiastic. As a comparison with box 1 will show, all but one of these codes have now been folded in revised form into the WTO, rendering all developing-country members signatories. (The only exception is the code on government procurement, which remains one of the WTO's plurilateral agreements.) In addition, of course, the WTO contains the agreements on TRIMs, services, TRIPs, and more. All this represents a remarkable extension of multilateral discipline to developing-country trade policies.[5]

I will now discuss more specifically some of the important responsibilities which developing

5 The least developed countries, however, remain exempt from many of the new obligations.

Table 4

PRE- AND POST-URUGUAY ROUND TARIFF BINDINGS FOR INDUSTRIAL PRODUCTS[a]

	Import value ($ billion)	Percentage of tariff lines bound		Percentage of imports under bound rates	
		Pre-UR	Post-UR	Pre-UR	Post-UR
By major country groups					
Developed countries	737.2	78	99	94	99
Developing countries	306.2	22	72	14	59
Countries in transition	34.7	73	98	74	96
By region					
North America	325.7	99	100	99	100
Latin America	40.4	38	100	57	100
Western Europe	239.9	79	82	98	98
Central and Eastern Europe	38.1	63	98	68	97
Asia	415.4	17	67	36	70

Source: GATT (1994), table 1.

a Excluding fuels.

Note: The data on developing countries cover 26 participants. These 26 participants account for approximately 80% of the merchandise imports of the 93 developing country participants in the Uruguay Round.

economies have undertaken as a result of the outcome of the Uruguay Round.

1. Traditional market-access issues

(a) Tariffs (and bindings)

Concerning developing-country tariffs, the big news is not tariff reductions *per se* but a significant increase in the extent of "bindings". When a country binds its tariff, it commits itself not to increase the tariff beyond the level specified, except by negotiation with affected trade partners and possibly the payment of compensation to them. Prior to the Uruguay Round, developing countries had on average 22 per cent of their industrial tariff lines bound, and only 14 per cent of their industrial imports came in under bound rates. These ratios have now increased to 72 per cent and 59 per cent, respectively (table 4).[6] The increase in the extent of bindings is especially marked for Latin American and Asian countries. A new development in this respect has been the binding of entire tariff schedules at a common rate. Four Latin American countries took this course of action during the Uruguay Round upon their accession to the GATT: Mexico and Venezuela bound their tariff schedules at 50 per cent, Bolivia at 40 per cent, and Costa Rica at 55 per cent (OECD, 1992). Chile, always a leader in trade matters, had already bound its tariffs at a common rate of 35 per cent

6 Developing countries were given "negotiating credit" for binding tariffs during the Uruguay Round even when the level of the binding stood above the currently applied level.

during the Tokyo Round. Developing economies as a group have also offered reductions in bound rates for 44 per cent of tariff lines. But these reductions pale in significance compared to the wider coverage of bindings, especially since the bound rates are often above applied rates.

(b) Quantitative Restrictions

While the use of QRs has always been against the letter and spirit of the GATT, discipline in this area has been weak due to several loopholes and ineffective surveillance. Developing countries have widely appealed to one loophole in particular, the balance-of-payments provision of the GATT which allows the use of QRs in the face of payments difficulties (Article XVIII:B).

According to the OECD, this provision "has represented the single most widely applied exception to the prohibition contained in Article XI on the application of quantitative restrictions". (OECD, 1992, p. 100; see also Anjaria 1987). The provision has been almost continuously invoked by some developing countries, and others have escaped multilateral surveillance altogether by not reporting their full panoply of QRs.

Article XVIII:B is based on two outmoded features of the early postwar system: fixed exchange rates and elasticity pessimism. There is now widespread consensus among economists that balance-of-payments difficulties reflect macroeconomic imbalances, and that they are best dealt with via fiscal, monetary, and exchange-rate corrections. The Uruguay Round resulted in a new Understanding on the Balance-of-Payments Provisions of the GATT 1994. This agreement will make it more difficult for developing countries to resort to QRs, without making it impossible. It commits them to "announce publicly, as soon as possible, time-schedules for the removal of restrictive import measures taken for balance-of-payments purposes" (Art. 1). It also calls on them to give preference to "price-based" measures such as import surcharges or import deposit requirements. QRs can still be imposed when "because of a critical balance-of-payments situation, price-based measures cannot arrest a sharp deterioration in the external payments position" (Art. 3). A member applying new restrictions or raising the level of existing restrictions is asked to enter into consultations with the Committee on Balance-of-Payments Restrictions within four months. It is likely that these new provisions will give the IMF a greater role than it has so far played within GATT in certifying member governments' policies The modalities of this role have still to be worked out.

Hence, while the old philosophy that allows the use of trade restrictions to deal with external payments problems has survived, it will henceforth be somewhat more difficult to employ QRs for that purpose.

2. *New issues*

(a) Services

Trade in services was one of the new areas added on to the agenda of the Uruguay Round, and one whose inclusion developing countries ardently resisted in the early stages of the negotiations (Bhagwati, 1987; Hoekman, 1993). Over time, this opposition was considerably mollified as many of the leading developing-country Governments (such as Brazil, Argentina, and India) began to re-evaluate their own views on the benefits of openness. In the end, the negotiations have yielded a rather weak document which leaves developing countries relatively free in choosing the extent and range of liberalization they will undertake.

The General Agreement on Trade in Services (GATS) consists of a set of general obligations and a set of specific commitments. The general obligations apply to all areas of services, and they require, most significantly, MFN treatment. The heart of the agreement is in the specific commitments, which apply only to service sectors or sub-sectors that are listed in a schedule presented by each country as its contribution to the effort. The most important principle that applies to services listed in these schedules is that of national treatment. Hence, the schedule submitted by each participant indicates which sectors it has agreed to subject to national treatment.

While developing countries are expected to liberalize fewer service sectors and activities (Art. XIX:2), the GATS does not provide any provisions similar to that contained in Part IV of GATT on more favourable treatment of devel-

oping countries (Hoekman, 1993, pp. 8-9). Every member of WTO, developed or developing, must make an offer. The practical consequence of this is counterbalanced by the fact that restrictions on services trade are ubiquitous and their liberalization hard to gauge. Hence, even though most developing countries have already offered their schedules, the nature of the exercise makes it difficult to uncover the degree of liberalization. A note by the GATT secretariat at the bottom of a table summarizing these schedules makes it painfully clear that the avenues of escape are many, even in listed sectors:

> The fact that a sector is identified as covered by a particular country's schedule does not give an indication of either the *extent* of the liberalization being offered in the sector in terms of sub-sector or activities, or, for covered service activities, the *degree* of liberalization that is being offered. For example, an offer made by a participant for "Business Services" may cover only one sub-sector (e.g., only "building-cleaning services") or several sub-sectors or activities listed in that category (e.g., a large variety of Professional Services, Computer Services, Research and Development Services, Rental Services, etc.). (GATT, 1994, table 18)

Consequently, the effects of the current round of offers will become clear only over time. It is expected that mutual liberalization under the GATS will be an ongoing process.

On the whole, my reading of the GATS is that it does not impose a tremendous amount of obligations on developing countries. On the other hand, countries desiring more discipline could certainly use GATS to bring it on themselves.

(b) Trade-related investment measures

Developing countries have long made active use of what in GATT parlance are called trade-related investment measures. These measures comprise regulations that restrict firms' imports to a certain ratio of their exports (export-import linkage), that require them to utilize a minimum amount of domestic inputs (local-content), or that force them to export a certain share of their output. These measures - often called performance requirements - are applied disproportionately to subsidiaries of multinational firms (hence the appellation). They are still quite prevalent around the developing world, although their prominence in Latin America and East Asia is nothing compared to levels existing in the 1960s and 1970s. The Agreement on TRIMs explicitly bans the use of such policies and all others that are inconsistent with Articles III (national treatment) or XI (elimination of QRs) of the GATT. Interestingly, the Agreement does not draw a distinction between restrictions on foreign-owned firms and on local firms; it applies to all such measures regardless of ownership.

Developing countries are given 5 years to eliminate these practices (compared to two years for developed countries), and least developed countries 7 years. The long transition period notwithstanding, this agreement seriously restricts policy autonomy in an area that has traditionally been viewed as being of primarily domestic concern.

(c) Intellectual property rights

Of all the new areas in the Uruguay Round, probably none was as controversial as TRIPs. The reason is clear: this is a set of issues presenting as stark a clash of interests between the North and South as one can imagine. Under the guise of protecting the property rights of inventors and innovators, what Northern Governments were really asking for was the transfer of billions of dollars' worth of monopoly profits from poor countries to rich countries. One can argue that developing countries would in return be rewarded with a greater number of innovations that are appropriate to their own needs (see Diwan and Rodrik 1991), but in view of the small share of developing countries in the global marketplace, the measurable change in incentives would surely be small. The more direct and quantifiable consequence would likely be an increase in the prices of items like pharmaceuticals for which patent treatment in the South has been traditionally relaxed.

The magnitude of the price increase one can expect is indicated by an exercise carried out by Subramanian (1994). Subramanian compares the prices for patented drugs in Malaysia (where patent protection for pharmaceuticals is reasonably tight) with those in India (where it is not). He finds that Malaysian prices are significantly higher than Indian ones, with the premium ranging from

17 per cent (for Pentoxyphyllin 400 mg tablets) to 767 per cent (for Atenolol 50 mg tablets). Insofar as the owners of patents in such drugs are foreign-owned firms (as is the case almost always), developing countries are faced not only with monopoly distortions in the home market, but more importantly with a potentially huge transfer of rents abroad.

The final agreement on TRIPs extends intellectual property rights to all WTO members by establishing minimum standards of protection in seven areas: patents, copyright and related rights, trademarks, geographical indications, industrial designs, layout designs of integrated circuits, and undisclosed information. In patents, members are required to provide protection for a minimum of 20 years in all areas of technology, pharmaceuticals included. The patent holder does not have to "work" the patent locally, but the Government may effectuate compulsory licensing provided the domestic user "has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable time" (Art. 31:b). An important additional feature is that disputes in the area of intellectual property can be brought to WTO, to be resolved under the WTO's unified dispute settlement procedures.

Developing countries are given 5 years, and least developed countries 11 years, to bring their practices into conformity with the TRIPs agreement (compared to one year for developed countries).[7] Developing countries can have an additional 5 years for patents on specific products, when such products remain domestically unprotected by patents at the end of the first 5-year period. In practical terms, what these transitional arrangements mean is that a country like India can delay bringing many items under patent protection for another 10 years. However, in the case of pharmaceuticals and agricultural chemical products, the transitional arrangements are more strict: where patent protection for such items is lacking, Governments must still allow the filing of patent applications at the entry into force of the WTO agreement (with eventual patent protection provided from the date of filing), and they must provide exclusive marketing rights for a period of five years (Arts. 70:8 and 70:9). In any case, the impending changes in domestic legislation will have present-day implications both for domestic competitors and for government strategy.

(d) Subsidies

The Agreement on Subsidies and Countervailing Measures contains a radical prohibition of two types of subsidies: (a) export subsidies, defined as "subsidies contingent, in law or in fact, ... upon export performance" (Art. 3:1(a)); and (b) subsidies that encourage local content. The prohibition applies to all countries, with the following exception: least developed countries as well as a few others[8] remain exempt from the prohibition on export subsidies, except for products in which they have reached "export competitiveness" (defined as a share in world trade of 3.25 per cent for two consecutive years). Developing countries are given eight years to phase out export subsidies, plus a minimum of two years if they wish to enter into consultations with the new Committee on Subsidies and Countervailing Duties at the end of the eight-year period. (The possibility that further extensions may be granted by the Committee is allowed for.) In any case, they are prohibited from *increasing* their level of export subsidies during the transition period. They get 5 years to phase out local-content subsidies.

Aside from prohibited subsidies, the Agreement also creates the category of "actionable subsidies": these consist of subsidies that cause serious injury to the domestic industry of a member country, nullify or impair benefits accruing

7 However, the requirements of national treatment and MFN must come into force within one year.

8 These countries are: Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, and Zimbabwe. The exemption is automatically revoked when a country on this list reaches a GNP per capita of $1,000 (annex VII).

to any member under GATT 1994, or cause "serious prejudice" to the interests of another member. Subsidies that are not specific to certain firms or industries, subsidies for R&D, and subsidies for disadvantaged regions are deemed to be non-actionable.

One way to gauge the significance of these new obligations is to point out that they will preclude any developing country in the 1990s attempting to replicate the export strategies of the Republic of Korea or Taiwan Province of China during the 1960s and 1970s. As is well recognized by now, an important component of these East Asian miracles was the deployment of an extensive set of inducements to domestic firms contingent on satisfactory export performance, i.e. subsidies precisely of the type that the Uruguay Round agreement now prohibits. Interestingly, such inducements have received rave reviews from analysts that agree on little else (compare, for example, Amsden, 1989 and World Bank, 1993). Export subsidies are often a desirable, and politically more palatable way of decreasing anti-export bias in economies with import restrictions. Of course, one can question the efficacy of many export-subsidy programmes as they have operated in places other than East Asia (Rodrik, 1993). In addition, it is possible that exchange-rate policy can substitute for these subsidies. But these palliatives are also somewhat beside the point. The inescapable fact is that an important new discipline has been imposed on developing-country trade policies.

C. *New opportunities*

The Uruguay Round has offered developing countries few direct concessions in exchange for these new obligations. The phased removal of the MFA and possibly the agreement on agriculture are the few concrete benefits to which one can point. The agriculture agreement itself may be a mixed blessing, insofar as the elimination of export subsidies by developed countries will deteriorate the terms of trade of food-importing developing countries. In my view, the more important and potentially highly significant gains will come indirectly, from the strengthening of multilateral discipline in the areas of safeguards, anti-dumping and, above all, dispute settlement.

1. Market Access

(a) Agriculture

The Uruguay Round has created new opportunities of market-access for certain developing countries. The Agreement on Agriculture envisages the tariffication of all non-tariff border measures, and a reduction of the resulting tariffs. In addition, all tariffs will be bound at their new levels, greatly increasing the ratio of bound tariffs in agriculture. Developed countries are to reduce tariffs (including tariffs resulting from tariffication) by an average of 37 per cent. The cut for tropical agricultural products, which are of special interest to developing economies, is above average at 43 per cent. The average cut for tropical beverages (coffee, tea, cocoa) is 46 per cent (GATT, 1994, table 10). However, tariff escalation in developed countries remains a deterrent to increased processing of tropical beverages in developing economies. Secondly, the agreement envisages cuts in domestic support for agricultural producers. Thirdly, export subsidies are to be cut in terms of both budgetary outlays (by 36 and 24 per cent for developed and developing economies, respectively) and the volume of subsidized exports (by 21 and 14 per cent).

Excluding petroleum, only 13 per cent of developing countries' exports are agricultural, so the reduction in agricultural protection in developed countries may not seem a big deal. However, by the GATT secretariat's reckoning, more than half of the developing economies participating in the Uruguay Round had a "substantial" interest in agriculture, where substantial is defined as an agricultural share in total exports (excluding fuels) higher than 20 per cent (GATT, 1993, p. 14). Moreover, low-income developing countries (such as Pakistan, Egypt, Ghana, Kenya, and Côte d'Ivoire) are well represented in this group. Thus, the agriculture agreement is potentially of some importance to these countries.

(b) Multi-Fibre Arrangement

For a long time, the Multi-Fibre Arrangement has stood as the most severe and costly derogation of GATT principles from the perspective of developing countries. Under the arrangement, developed countries have been able to impose quotas on their imports of the one item in

Table 5

NUMBER OF RESTRAINT AGREEMENTS APPLIED BY IMPORTERS TO EXPORTERS UNDER THE MFA

Affected countries	Importing countries					
	United States	Canada	European Union	Norway	Finland	Austria
Developing countries	24	18	16	13	7	6
Least developed countries	1	1	0	0	0	0

Source: GATT (1993), table 17

which most developing countries have a sure comparative advantage, namely, garments. Textiles and clothing together account for about a quarter of the manufactured exports from developing countries. Table 5 gives a rough sense of how widespread the resulting restrictions have been, often affecting extremely poor countries (such as Haiti and Bangladesh) on their initial foray into world markets. The MFA has not been without benefits for some exporting countries: it has provided guaranteed market shares and created rents for exporters. It has also failed to stem the increasing flow of exports from enterprising firms in developing countries, which have responded by altering their product mix and investing in non-restricted countries (for more details, see Hamilton, 1990). However, the machinations required to adjust to a world of quotas are in themselves costly.

The Uruguay Round has tried to tackle the MFA problem once and for all. The good news is that the MFA will cease to exist at the end of ten years from the entry into force of the WTO. The bad news is that half of the effective liberalization can be delayed until the very last day of the ten-year period. That is because the phase-in of the liberalization is heavily back-loaded: The importing countries are required to bring only 16 per cent of the affected imports under regular GATT rules upfront. An additional 17 per cent (of 1990 imports) is to be integrated into GATT after three years, and another 18 per cent at the end of seven years. The remaining restrictions are to be lifted at the end of ten years: that is, 49 per cent of the imports that were restricted in 1990 will be completely liberalized only after a full decade has elapsed. This raises an obvious issue of credibility: assuming that garments trade remains as controversial in developed-country markets as it is now, is it realistic to expect that a future Government will undertake the large-scale liberalization that is required when the time comes? Will there not be pressure on developing countries to re-negotiate the agreement, and to stretch out the transition period further?

On the other hand, there is a provision to ensure that MFA restrictions will be less binding than in the past: Remaining quota restrictions during the transition period will be allowed to expand at the prevailing quota growth rates plus 16 per cent annually in the first three years, by 25 per cent in the subsequent four years, and by 27 per cent in the final three years. A special "transitional safeguard" mechanism is put in place allowing importers to restrict exports from specific countries in case of "serious damage, or actual threat thereof" to a domestic industry.

While the long and back-loaded transition

Table 6

NUMBER OF INVESTIGATIONS UNDERTAKEN BY THE UNITED STATES INTERNATIONAL TRADE COMMISSION

	Anti-dumping	Countervailing duty	Safeguards
1970-1979	172	10	42[a]
1980-1990	494	306	20

Source: Baldwin and Steagall (1994)

a 1975-1979.

period and the "transitional safeguard" mechanism will limit the immediate benefits to developing countries, the Agreement on Textiles and Clothing is clearly something to cheer about. Together with the improved dispute settlement procedure (see below), it is the Uruguay Round's single most important contribution towards levelling the playing field in world trade.

2. Safeguards and anti-dumping

The Uruguay Round has resulted in some strengthening of multilateral discipline in the areas of safeguards and anti-dumping, and this, too, is welcome news for developing countries. In the area of safeguards, the Uruguay Round document explicitly prohibits the use of "grey area measures", such as VERs and OMAs. It requires that an investigation by competent authorities, including "public hearings and other appropriate means in which importers, exporters, and other parties could present evidence and their views" (Art. 3:1), be carried out prior to the application of a safeguard measure. It also imposes additional obligations regarding the duration of safeguards, the factors to be evaluated in determining serious injury or the threat thereof, and the restrictiveness of the safeguard measures.

In the area of anti-dumping, some important clarifications have been made. For example, it is recognized that costs may vary over the product cycle and that prices need to recoup costs not at every instant but "within a reasonable period of time." Investigating authorities are explicitly asked to separate out the effects of "any known factors other than the dumped imports which at the same time are injuring the domestic industry" (Art. 3:5). Each member possessing anti-dumping legislation is required to maintain a mechanism of judicial review which is independent of the anti-dumping authorities.

These provisions are important to developing countries because anti-dumping action has become the principal means by which developed countries are now exercising discretionary protectionism. Table 6 summarizes the United States situation. Anti-dumping cases, many against the developing countries, almost tripled in the 1980s over the previous decade. This is an area in need of multilateral discipline. The Uruguay Round has not achieved much, but at least it has committed the developed countries to a few initial steps in the right direction.

3. Dispute settlement

As a guarantor of non-discrimination, the GATT was only as good as its dispute settlement procedure - which was not a very good one. The same will be true of the WTO. Much of the enhanced discipline on developed-country trade policies will be lost unless the WTO can be used to mediate and settle disputes effectively.

The Uruguay Round document contains an important piece of good news in this regard: a country will no longer be able to veto a panel's decision against itself. Under the GATT system,

the adoption of a panel's report on a dispute required a unanimous vote, which meant that any country could block a decision that went against it. Under the WTO, a party to the dispute will be allowed to "appeal" the panel's decision, in which case the dispute will go to an appellate panel, but the concerned party will be unable to block the decision of the appellate panel itself. That decision will be automatically adopted unless there is an unanimous vote against it. Since the party on whose side the appellate panel has ruled is unlikely to vote against the decision, it will be virtually impossible to turn down an appellate panel's decision. In the words of John H. Jackson (1994, p. 6), "the presumption is reversed, compared to previous procedures, with the ultimate result of the procedure that the appellate report will in virtually every case come into force as a matter of international law". The concerned party must then either implement the panel's decisions or provide adequate compensation. The final recourse is for the injured party to suspend concessions or other obligations to the other party. Furthermore, the new dispute settlement procedure will apply to all matters covered by the WTO, and not just trade in goods.

D. How to make the best of the Uruguay Round

As the discussion above indicates, the Uruguay Round contains slim pickings for developing countries, if the accounting is done in terms of concessions received and obligations accepted. The balance sheet is full of new obligations, in the areas of tariff bindings, QRs, services, TRIPs, TRIMs, and subsidies. Meanwhile the phasing out of the MFA represents the only tangible concession received from developed countries, albeit a significant one. Have the developing countries been had?

There are reasons to believe not. Taken as a whole, the Uruguay Round agreements and the WTO constitute an important stimulus for the multilateral trading system. It is trite but true to say that the developing countries are the ones that stand to lose the most from a breakdown in multilateralism. Moreover, the Uruguay Round has gone beyond simply making sure that the proverbial bicycle is still in motion. As shown above, new disciplines have been imposed on developed-country Governments in the areas of safeguards, anti-dumping, and above all dispute settlement, and these amount to much more than just a patching up of the existing system. To continue the metaphor, the old bicycle is starting to look more like a quality motorcycle.

What the Uruguay Round has certainly done, however, is to drive a wedge between countries (mostly in Latin America and Asia) who have made a clear break with the import-substitution policies of the past and hitched their wagons to world trade, and those (mostly in Africa and a smattering elsewhere) who have either not yet made the break or have done so with little conviction. Countries in the first group have often undertaken unilateral liberalization measures that go far beyond what the WTO would require of them. Mexico, Argentina, Bolivia, and Chile, to cite some of the more prominent cases, have accepted few obligations that they were not willing to undertake of their own accord. For Governments in such countries, the Uruguay Round is nothing but good news. Governments in other countries with more hesitant reforms, on the other hand, are taking on responsibilities that may not be entirely in line with their current economic philosophies.

This wedge manifests itself most clearly in the areas of special and differential treatment and of preferences. Unlike the first group of countries, the second group has not yet given up on these concepts. But perhaps even the latter have come to realize that special preferences for developing countries (as in the case of the Generalized System of Preferences) have largely not worked in the past, and are even less likely to be put to a good test in the future. The more realistic option for all but perhaps the least developed countries is to seek to participate in the WTO as full-fledged members. Further, a good case can be made that equal participation may prove of greater value to many developing countries than special and differential treatment has turned out to be in the past.

To make the best use of the WTO, developing countries in both groups will need to employ two sets of strategies, one external and the other internal. The external strategy is the obvious one of exploiting the new opportunities created by the presence of the WTO and its dispute settlement mechanism. The internal strategy is a more subtle one and has to do with domestic economic

policies: creative use of the new constraints imposed by the WTO can, perhaps paradoxically, make an important contribution to many developing countries by improving the quality of their governance.

1. *Taking advantage of the WTO's dispute settlement mechanism*

The efficacy of the dispute settlement procedure is of considerably greater importance to developing countries than it is to developed countries. Important traders like the United States and the European Union can often extract compliance from smaller partners by virtue of size and influence, without having to go through GATT/WTO procedures. Most developing countries cannot do so, especially when their dispute concerns one of the economic giants.

The GATT's dispute settlement mechanism does not have a great reputation, for some of the reasons already discussed. Developing countries have made very little use of it, and have generally preferred to "settle out of court" by taking up offers from the developed-country importers to negotiate quantitative restrictions or price undertakings. In view of the weakness of the GATT procedures, as well as their non-transparent nature, the latter course has naturally seemed the better bet: developing-country exporters are at least assured of retaining scarcity rents when adopting "voluntary" restrictions outside the GATT's purview.[9]

The revised procedures, which prevent blocking by an offending country, should redress the balance. WTO findings can provide developing countries with a stamp of legitimacy, and serve as a much needed additional source of leverage.

That these new procedures are quite radical can be observed from the extent of opposition they have generated in the United States, a country where infringements on national sovereignty - real or supposed - are not taken lightly. In the words of an anti-WTO coalition:

> ... the WTO would be the first major international organization where the United States has neither veto power [nor] weighted voting. Unlike the UN Security Council, the World Bank, the IMF. Or the current GATT.[10]

The new procedures should therefore be music to the ears of developing-country Governments. However, rejoicing should be tempered by a realization that power politics is not hereby condemned to extinction. A more sober evaluation can be found in an editorial by the *New York Times* (1994, p. 18):

> ... the United States has so much leverage that it has little to fear from retaliation; in fact, the World Trade Organization would not change the dynamics of trade for any strong industrialized nation. Currently, the United States can legally block unfavourable rulings; and while complaining countries can still retaliate, they rarely do so out of fear of triggering a self-destructive trade war. The same fear would govern retaliation under the Trade Organization even though the United States could not resort to the legal nicety of blocking unfavourable rulings. Indeed, the trade body could do a lot of good if its proceedings bring domestic pressure to bear on protectionist practices that reward special interests at the expense of ordinary consumers.

This attitude of "eating one's cake and having it too" appears to reflect the views of the current United States administration.

There remains an important asymmetry in the dispute settlement procedures which works to the disadvantage of smaller countries. As mentioned previously, the last recourse for a plaintiff Government is the suspension of concessions or obligations to the other party. When the plaintiff is Costa Rica or Bangladesh, such a suspension cannot be said to have earth-shatter-

---

9 Sathirathai and Siamwalla (1987) present two interesting case studies on Thailand's trade disputes with the European Community (in cassava) and the United States (in rice). In both cases, the Thai Government was unable to use the GATT dispute settlement procedures effectively. The reasons had to do with the lack of clarity of GATT procedures and GATT laws.

10 "Why is Mickey Kantor Deceiving You About GATT?" in the *New York Times* op-ed page, 1 August, 1994. The ad is signed by the executives of Public Citizen, Greenpeace, and Citizen's Clearinghouse for Hazardous Wastes.

ing consequences for a country such as the United States. By contrast, in a truly multilateral dispute settlement procedure, all WTO members would have been required to join in the punishment of the "defecting" country. Consequently, the United States (or the European Union, for that matter) may often be able to ignore WTO findings, with little cost to themselves save for the erosion of the credibility of the system they have helped to created. The latter cost counts for something, of course, which is why the WTO is likely to be more than a paper tiger. There remains a fundamental problem in that the "punishment" phase of the dispute settlement procedure has still not been multilateralized, and will therefore not be as effective as it could be.

In any case, it would be advisable for individual developing countries to test the new procedure by making use of it whenever they have reason to believe that a violation of WTO rules has occurred or some of the benefits accorded to them have been nullified or impaired. This will require some investment in developing familiarity with GATT/WTO practices, but the investment should pay off if the new system works as it is supposed to work. In addition, developing countries should attempt to include multilateralization of sanctions in the longer-term agenda for future negotiations.

2. *Using the WTO to fashion a new social contract with the private sector*

There is a significant positive side to the fact that the WTO system as a whole imposes a wider range of responsibilities and obligations on the Governments of developing countries. That is because the traditional pattern of interactions between state and society in much of the developing world has failed miserably and, as many Governments have already come to realize, is in need of reform. What I have in mind here is not simply tinkering with specific policies - such as trade protection or subsidies - but altering the manner in which these and other policies are exercised. Too often, policy regimes are characterized by uncertainty and lack of credibility, excessive discretion, particularism and favouritism, lack of transparency, and inadequate provisions regarding property rights. These have the effect of stunting production incentives in the private sector. They are much more damaging than price distortions *per se* insofar as price distortions skew sectoral incentives without diminishing the overall incentive to participate in markets. Hence, one interpretation of the failure of development policy in Latin America and Africa is that growth has been hampered primarily by these features of policy-making, with price distortions playing only a secondary role (Rodrik, forthcoming).

How can the WTO help? Wisely used, the restrictions placed on economic policy by the Uruguay Round agreements can assist in overcoming the traditional shortcomings of governance in the developing world. For one thing, the agreements require greater transparency and predictability in many areas of trade policy.[11] For example, they often call for advance publication of information and regulations relating to the administration of the import regime. Similarly, the wider range of tariff bindings enhances the credibility and predictability of the rules of the game. The new restrictions on the use of QRs in response to payments difficulties limit an important source of discretionary behaviour. The obligations in the area of TRIMs make it harder for the Government to play favourites by differentiating among firms. All of these are meant to ensure that foreign firms are not discriminated against; but their potentially greater payoff may lie in levelling the playing field among domestic firms. If the operation of the WTO contributes to a perception that Governments will renounce particularism and respect property rights, that would be a significant contribution indeed.

More broadly, the WTO presents an opportunity for reformist Governments in the developing countries to lock in their reforms and render them irreversible. They can make use of tariff bindings, abide by the agreements on QRs, subsidies, TRIMs, and import licensing, and include a broad range of services in the schedules they offer. In other words, the WTO can be used as a "commitment technology" by reformist Governments. This is useful in signalling to the pri-

11 The Trade Policy Review Mechanism, created at the mid-term review of the Uruguay Round, is already playing a role towards this end.

vate sector that the rules of the game are now changing for good and to forestall political lobbying by groups seeking a return to the old policies.

However, since most of the WTO obligations stop at border measures and are in any case riddled with opt-out clauses, the commitment that is made by acceding to WTO is a weak one.[12] Consider the area of services, for example. A Government can avoid any discipline whatsoever by simply not listing a service sector in its GATS schedule. Even in a listed sector, the only real commitment is that of non-discrimination across different sources of supply. Moreover, the GATS allows this commitment to be withdrawn, subject to negotiation with and compensation of affected countries. The implication is that Governments that want to purchase real commitment from the WTO cannot assume that membership alone will suffice. They must seriously think through their strategies. What that means, in particular, is that they may wish to maximize rather than minimize their obligations where the WTO gives them a choice. In services, for example, a more complete coverage of sectors in their GATS schedules will render subsequent backsliding more difficult, and will make more of an impression on the private sectors back home.

III. The Post-Uruguay Agenda

A. The new dangers: labour and environmental standards

Even before the Uruguay Round agreements were signed in Marrakesh, two new issues had made their way to the top of the trade agenda of developed countries: labour and environment. The recently completed North American Free Trade Agreement (NAFTA) contains two supplemental agreements on labour standards and on environment, and it is doubtful that NAFTA would have been ratified by the United States congress without these side agreements. The United States has already moved to include labour standards in the next round of multilateral trade negotiations. These issues pose important dangers to developing countries, and will have to be tackled carefully.[13]

In the area of labour, the concern is to prevent "unfair" competition from countries where labour standards are incomparably weaker than in rich countries. Feelings run particularly strong about the use of "child labour" in developing countries, but other issues that have been raised include the rights to organize and strike, safety at the workplace, and working conditions more broadly. These concerns are rooted in the labour-market difficulties experienced in the developed countries. The European Union has a severe unemployment problem, with an average rate of 11 per cent. In the United States, unemployment is less of a problem, but there has been a marked deterioration in the relative earnings of unskilled labour.

In the environmental area, the concern is that free trade acts as a conduit for the downward harmonization of environmental standards. Transnational corporations as well as domestic firms are encouraged, the argument goes, to produce in countries where environmental regulations are the weakest. This harms the global environment and puts pressure on developed countries to relax their own standards for fear of losing employment to the South.

Leaving aside for a moment the validity of these concerns, the trouble is that they may hit developing countries precisely in products where

12 In this respect the WTO differs significantly from regional arrangements (like NAFTA and the European Union) that entail substantially greater amount of policy harmonization. It is no secret that President Salinas wanted NAFTA at least as badly for its potential role in cementing Mexico's institutional reforms since 1986 as for its market-access provisions. Arguably, the greatest contribution of the European Community to the long-run prosperity and stability of Spain, Portugal, and Greece lies in its having made a return to military rule in these countries virtually impossible.

13 Labour issues are not entirely new to the GATT. As Bhagwati (1994) points out, Article XX(e) of the original GATT permits exclusion of goods made by prison labour.

their comparative advantage is greatest. Most developing countries compete on the basis of their relatively large endowments of unskilled labour, that is on the basis of low-cost labour. The upward harmonization of labour standards serves to raise labour costs, and hence to reduce the poor countries' gains from trade. The situation is analogous in many pollution-intensive basic industries in which middle-income developing countries have become competitive. One can legitimately claim that the low valuation of environmental amenities in such countries (compared to developed countries) is a genuine source of comparative advantage. Most fundamentally, the logic of harmonization of environmental and labour standards contradicts the fact that it is precisely diversity that is the foundation of the gains from trade.

The dangers are magnified by the obvious reality that both sets of issues lend themselves to capture by protectionist groups in developed countries. Alleged concern with labour rights and the environment promises to give such groups the moral high ground, even when their true objective is none other than old-style protectionism. Groups with legitimate moral concerns, on the other hand, may be too happy to have company in the political arena to question their allies' motives.

B. *How to deal with pressures for harmonization*

In resisting pressures for upward harmonization in labour and environmental standards[14], developing countries have many good arguments on their side. First, most careful empirical studies have found that the quantitative importance of social and environmental dumping, if it exists at all, is quite small. Among professional economists, the explanation favoured for the decline in relative wages of unskilled workers in the United States is skill-biased technological change, rather than imports from developing countries (Bhagwati and Kosters, 1994, Krugman and Lawrence, 1993; see Wood, 1994, for a differing perspective). Similarly, the costs imposed on production by environmental regulation in developed countries are too small to account for shifts in global trade and investment patterns (Grossman and Krueger, 1993).[15] Secondly, as the advocates of free trade never cease to point out, in enhancing labour standards and environmental protection nothing works like an increase in income levels, which is of course what free trade is designed to achieve.

Thirdly, trade restrictions are a very blunt and often counterproductive instrument for achieving their stated moral objectives. It is arguable, for example, whether young carpet weavers in India would really be helped by the United States imposing punitive duties on imports from India. Fourthly, the experience within the United States and the European Union demonstrates that a high degree of economic integration can coexist with widely varying labour practices and institutions at the level of States or member countries (Ehrenberg, 1993). Fifthly, many environmental concerns can be adequately dealt with by appropriately labelling imported goods.[16] Finally, since labour and environmental questions go beyond trade relations, these issues should be discussed in their own appropriate multilateral fora and not in the WTO. The International Labour Organization already exists; it sets and monitors labour standards. Similarly, one can envisage the formation of a global environmental organization (Esty, 1994).

---

14 On environmental matters, I will be focusing on issues that do not involve the generation of negative cross-border externalities. Where such externalities exist, as in the case of ozone depletion, acid rain, or global warming, it is widely recognized that multilateral negotiations should take place in their own separate fora.

15 Of course, it is possible that environmental standards may alter competitive advantage in certain specific industries. The point that such standards may have important effects for individual firms or industries which are hidden at the aggregate level is argued by Bhagwati (n.d.).

16 Goods that do not adhere to an international environmental code, for example, could be labelled as such in the importing country, leaving consumers free to go by their pocketbook or their environmental conscience. An issue here is who should bear the cost of the labels.

These and many other debating arguments[17] can be deployed to bolster the developing-country case that labour and environmental concerns do not justify trade restrictions or their inclusion in the WTO. However, it may be a mistake for developing countries to believe that the danger will recede if such arguments are repeated often enough. For one thing, there is a potentially legitimate core to the clamour for upward harmonization. By granting this, developing countries would not be giving up much and yet they would be engaging developed countries in a more productive dialogue than the current dialogue of the deaf. Secondly, and perhaps more to the point, the demands for harmonization are likely to stay with us for the foreseeable future. Consequently, a purely rejectionist strategy will simply not work. I will elaborate on these points in the rest of this section, and outline the elements of a possible strategy for developing countries.

1. *Is there a legitimate core to the clamour for harmonization?*

One of the paramount objectives of a system of laws and regulations is to maintain a perception of legitimacy in the operation of markets. Without a widespread belief that markets operate in a "fair" manner, it becomes difficult to preserve the market system itself. Hence, a nation's laws and regulations often sacrifice narrow concepts of market efficiency in order to maintain faith and legitimacy in the operation of the market system at large. Of course, what is fair and legitimate varies across cultures and over time. But the point is that preserving and sustaining markets can sometimes require restricting certain market activities.

Insider trading provides a nice analogy. On grounds of market efficiency, there is little reason to ban insider trading. In fact, insider trading enhances efficiency because it allows new information to be reflected in stock prices more quickly than it would otherwise be. However, most economists would be in favour of penalizing insider trading, on the grounds that such activity damages the integrity of equity markets and hence their long-run performance. That is, ordinary people would start to think that the dice are loaded against them and it would become less likely that they invest in equity. In the longer run, the operation of the stock market would be seriously stunted as the supply of risk capital dried up. Even worse, the citizenry may be willing to countenance much more severe restrictions on equity trading.

In the same manner, gains that accrue to exporters or consumers through trade have to be widely perceived as legitimate for the trading system to maintain its long-run viability. To take an extreme case, profiting from trade with a country that allows slavery would be widely perceived as illegitimate, and appropriately prohibited. Slavery, of course, is the easy case. The real problems lie with a host of intermediate cases, where a genuine conflict of cultures, preferences, or moral values may exist among nations. I will discuss such cases below. The first step, however, is to recognize that restricting market transactions when such transactions violate a widely held moral code is an established and accepted practice in domestic trade. There is little reason to believe that the attitude towards international trade should be any different, save for the complication that restrictions on international trade may impose direct costs on other nations.

This, then, is what I take to be the legitimate core of the clamour for upward harmonization: no nation has to maintain free trade with a country or in a specific product if doing so would require violating a widely held ethical

17 Bhagwati (1994) provides a good list: "Take the United States itself. Worker participation in decision-making on the plant is more widespread in Europe than in North America: are we to then condemn North America to denial of trading rights by the Europeans? Migrant labour is ill-treated in United States agriculture due to inadequate enforcement, if investigative television shows are a guide: does this mean other nations should prohibit the import of United States agricultural products? Even the right to organize trade unions may be considered to be inadequate in the United States if we go by 'results', as the United States favours in judging Japan: less than 20 per cent of the United States labour force is unionized ... Even the developing country phenomena such as the use of child labour raise complex questions.... Few children grow up even in the United States without working as babysitters or delivering newspapers: many are even paid by parents for housework in the home."

standard or social preference. Such ethical or social opprobrium could attach to environmental degradation or unfair exploitation of labour, but it has to be shared widely within the importing country to justify trade restrictions. I call this the "social-safeguards principle". Stated as such, developing countries should have little difficulty with this principle. After all, they may want to reserve the same right for themselves. The question is whether and how the principle can be rendered operational in the context of the WTO. There are two immediate problems. First, how can we ensure that the principle is invoked only when the violation involves a "widely held ethical standard or social preference". In other words, how do we prevent its derogation into standard protectionism? Secondly, what do we do in cases where its invocation results in a loss to a foreign trade partner (a developing country in particular)? I take up each question in turn.

2. *Guidelines for a "social safeguards" clause*

"Central to American thinking on the question of the Social Clause", writes Bhagwati (1994), "is the notion that competitive advantage can sometimes be 'illegitimate'. In particular, it is argued that if labour [or environmental] standards elsewhere are different and unacceptable morally, then the resulting competition is illegitimate and 'unfair'." As I indicated above, there is little that is objectionable in this line of argument, provided that the moral standard in question is one that is widely shared in the importing country, including by exporters and consumers (who stand to lose from the restriction of imports). The real threat to developing countries comes from the hijacking of moral arguments by protectionist import-competing groups. What we need then is a procedure that "tests" for the validity of the moral claim by attempting to ascertain whether the values in question are held widely at home or not.

Consider the following procedure. Any domestic producer, consumer or public-interest group is allowed to bring a social-safeguards case before the domestic investigating authority (the International Trade Commission in the United States), asking for import restrictions from the offending country. The authority is then required to solicit public testimony from all concerned parties, and in particular from consumer groups and from a representative sample of exporters to the country concerned. These groups are asked to present their own views on the specific moral, social or environmental charge, and on the likely effectiveness of the remedy being sought. After public debate and hearing of all sides, the investigating authority finally makes a judgement on (a) whether the specific charge has widespread public support, and (b) whether import restrictions are called for.

This procedure has a precedent of sorts in Article 3:1 of the Uruguay Round Agreement on Safeguards, which says in part:

> ... A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member .... This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest.

To serve the purposes of a social-safeguards clause, the requirements stated above could be strengthened in a number of directions. First, there could be an explicit mention of consumer groups, alongside exporters, as the parties whose views should be sought. Secondly, the investigating authority could require testimony from such groups, rather than simply allowing it, as in the present text. Thirdly, it could be made clear that the investigating authority has two questions to resolve: (a) is the moral, environmental or social principle on which the complaint is based one that is also shared by groups whose material interests would be adversely affected by trade restrictions? (b) If the answer is yes, does the proposed remedy fulfil an objective consistent with the principle(s) in question? The authority would authorize trade action only when the answer to both questions is yes.

The suggested procedure has a number of advantages. First, note that the public nature of the investigation should discourage purely opportunistic behaviour by groups whose economic interests would be adversely affected by trade restrictions. When widely held social and moral principles are at stake, it is unlikely that such groups would deny the strength of the case for

the simple reason that their own legitimacy in the public's eye would be cast in doubt. For example, we can hardly imagine an exporting industry association professing that there is nothing wrong with slavery, or a particularly egregious form of child labour, or a process that causes environmental damage of major proportions. Hence, soliciting the views of such groups should be an adequate test of the validity of the case for social safeguards. Another useful test would be to allow social-safeguards cases to be brought only for a standard the importing country itself has accepted (say in the ILO or in some future environmental agreement).[18]

More often than not, of course, consumer and exporting interests will disagree with the import-competing industries. The disagreement can centre on either the moral issues or on the efficacy of the trade remedy. With respect to the former, we can visualize exporting groups arguing, for example, that lax labour safety standards in, say, Bangladesh are not necessarily morally objectionable since poverty places limits on the stringency of standards. With respect to the latter, we can envisage a public debate - as happened during the recent renewal of China's MFN status in the United States[19] - on whether trade restrictions are an acceptable way of discharging a nation's moral or ethical obligations. In both cases, the process would be doing its job appropriately, distinguishing legitimate ethical and environmental concerns from pure protectionist chaff.

3. *Compensating countries adversely affected by social safeguards*

Under the GATT 1994 safeguard rules, the country applying the safeguard is expected to "endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the Members which would be affected by such a measure" (Art. 8:1). If adequate compensation is not offered, affected exporting countries are free to retaliate by suspending some of their concessions or obligations to the importing country. Developing countries should naturally seek to extend these principles to the area of social safeguards as well. In addition, they should seek to strengthen the requirement of compensation.

The issue of compensation is likely to be controversial. Developed-country Governments could argue that countries that defile the environment and exploit their workers should not be allowed to profit from these acts and do not deserve compensation for trade restrictions imposed on them. Developing countries with reasonably democratic regimes would be on strong grounds in rejecting this argument. In such countries, the prevailing labour and environmental standards can be taken to reflect *prima facie* their own principles and priorities. It is a reasonable principle that nations should not be made to suffer for having made, in broadly democratic fashion, institutional choices that differ from those in the advanced industrial countries. The case is well argued by Cooper (1993, pp. 33-35):

> ... decisions on environmental matters may affect others through foreign trade, just as do other policy decisions, such as those on transportation infrastructure or educational policy. But if they adequately reflect the collective preferences and circumstances of the country, they enter into its comparative advantage in the world economy, just as do many other factors .... It would not be appropriate to impute, say, the value Los Angelenos place on clean air to Mexico City, any more than it would be to impute Tokyo real estate values to Los Angeles... Surely the international community cannot, and should not be able to, force a country to purchase products the production of which offends the sensibilities of its citizenry... [But when trade sanctions are used], the sanctioning country should offer compensation in other areas of trade.

The same goes equally well for labour matters.

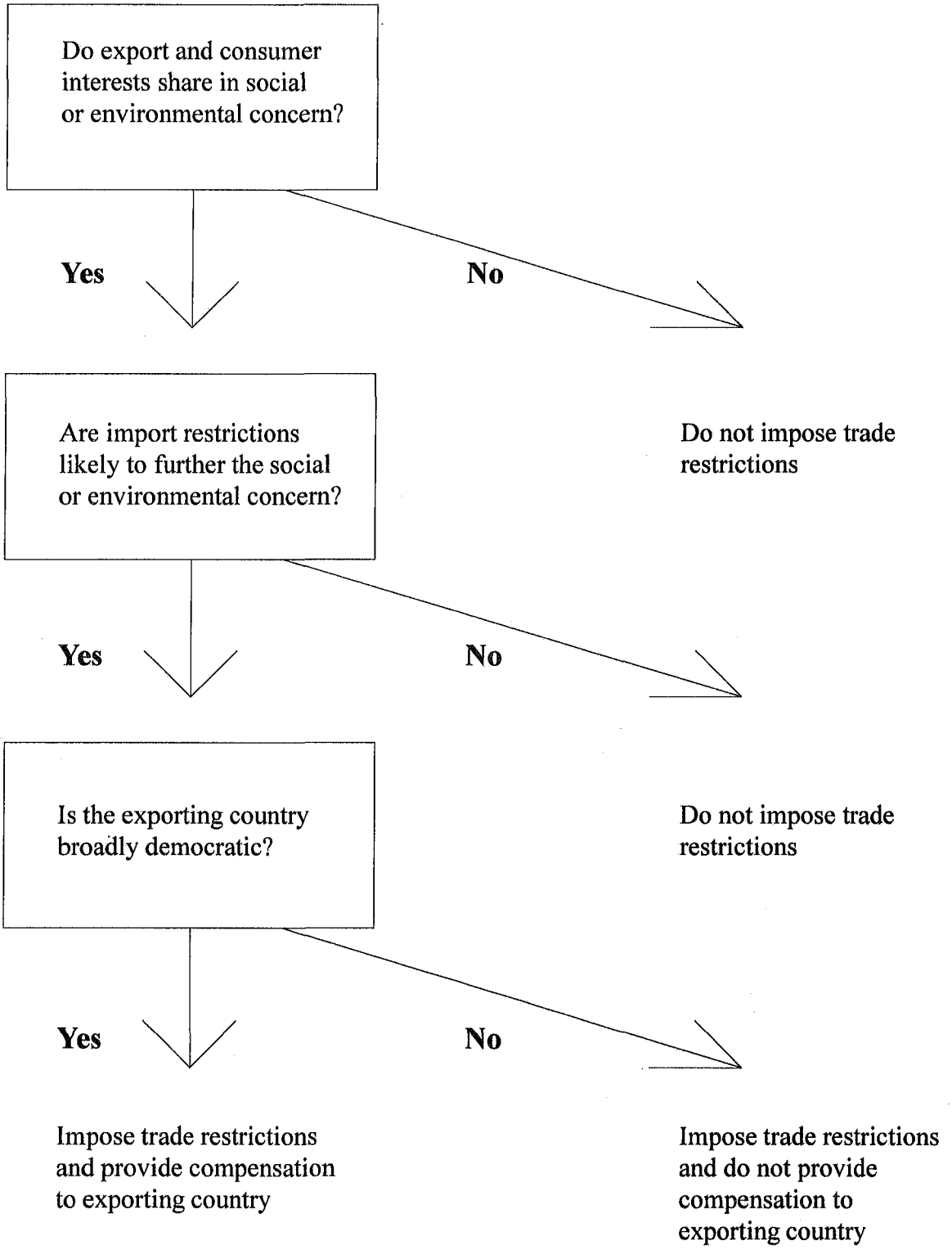
---

18 This suggestion was made by Dave Richardson. This requirement would put the United States in an awkward corner as it has not accepted many ILO standards.

19 The fact that this debate actually took place is no guarantee that it always will. China is an important trade partner and United States exporters rallied to the cause for fear of losing an important market. Suppose the country in question had been Bangladesh, instead. Would there have been as much public debate? Probably not. Hence a major advantage of the proposed procedure is that it forces the debate to take place, even when the foreign country is a relatively small player in world markets, as most developing countries individually are.

Figure 1

HOW TO EVALUATE DEMANDS FOR TRADE RESTRICTIONS BASED ON LABOUR AND ENVIRONMENTAL CONCERNS



Developing countries that lack participatory political systems will have a harder time convincing their trade partners that they deserve compensation when they become the object of social-safeguard action. Authoritarian regimes cannot make the claim that their environmental and labour standards are reflective of broad social preferences. These standards may well be consistent with social preferences of course, but there is no *prima facie* case that they will be. Consequently, the case for compensating such countries is considerably weaker.[20] What is or is not a full democracy can of course be highly subjective. But in practice there will probably be only few cases in which the question of whether a country is "broadly democratic" or not would be seriously at issue.

4. *Reprise: The pros and cons of a social-safeguards clause*

The proposed procedure on "social safeguards" is summarized in figure 1 in the form of a decision tree. The tree specifies the conditions under which trade restrictions would be allowed and compensation provided.

Accepting the principle that countries can impose trade restrictions in response to labour or environmental concerns may appear to be a big risk for developing countries. Whether it is or not depends on one's political judgement regarding the likelihood that developed-country Governments will be persuaded to resort to benign strategies in the absence of such a social-safeguard clause. For example, it is possible that developed countries can be convinced to divorce trade matters from labour and environmental ones, and to discuss the latter in separate international fora. If any multilateral codes or standards emerge from such negotiations, they will have the virtue of being mutually agreeable. Or, rich Governments may be willing to deal with environmental issues by adopting an appropriate labelling system. Even better, of course, they may simply choose to resist protectionist pressures at home on labour and environmental grounds. Under these more-or-less desirable scenarios, a social-safeguards clause may do more damage than good.

Conversely, there is a danger that increasing domestic pressures on labour and environmental matters will lead to a new set of "grey area" protectionist measures because there are no internationally agreed rules to channel these pressures into less harmful directions. If that happens, the consequences will be more damaging to developing-country interests than those of a social-safeguards clause negotiated under the WTO. The social-safeguard guidelines proposed above are restrictive, and should protect exporters well. The hurdles that protectionists need to jump in order to achieve their aim are high (see figure 1) and differ substantively from those contained in existing investigations by, say, the United States International Trade Commission. In any case, developing countries need not commit themselves to any single proposal. It would probably be wise for them to pursue different strategies in parallel, with a well designed social-safeguards clause along the lines sketched above as one of the options.

IV. Concluding remarks

Whatever its pros and cons, the Uruguay Round is over and developing countries have to live with its consequences. A number of ways has been proposed here in which they can make the best of the WTO which has emerged from the Round. For one thing, the WTO's integrated dispute settlement procedure greatly enhances small countries' leverage, and developing countries can henceforth make much better use of it. For another, the Uruguay Round agreements provide new ways in which developing-country Governments can employ their external obligations in order to improve their style of policy-making at home. In addition, the Uruguay Round has enhanced market access in textiles and clothing (with the phased-in elimination of the MFA) and in agriculture.

What is also clear is that the Uruguay Round has transformed the relationship of developing countries to the world trading system: they can no longer remain passive beneficiaries, with gains

20 See Cooper (1993) for a good discussion on this issue.

accruing to them without much action on their part. To make the best use of the WTO, developing countries will have to be active participants both in the WTO and in world trade. This is bad news only for countries that continue to regard trade with suspicion.

The next major challenge for the developing world will be to deal with charges of social and environmental dumping and with demands for upward harmonization in these areas. Since these issues are unlikely to disappear on their own, developing countries will have to work towards establishing a mechanism by which legitimate demands on ethical, environmental or social grounds can be handled without being hijacked by protectionist interests. I have argued here that a well-designed social-safeguards clause is not necessarily inimical to the interests of developing countries. However, such a clause will have to contain two significant provisions: (a) a mechanism to test the legitimacy of the social claim by enlisting exporting and consumer interests in the importing country in the decision-making process; and (b) compensation of the affected exporters, at least in cases where the exporting country possesses a reasonably democratic regime.

Such a system will not cost developing countries much. It will have the advantage of engaging the developed countries in a constructive dialogue, and of forestalling the emergence of a new set of "grey area" measures outside of the WTO.

References

AGOSIN, Manuel, Diana TUSSIE and Gustavo CRESPI (1995), "Developing Countries and the Uruguay Round: An Evaluation and Issues for the Future", in UNCTAD, *International Monetary and Financial Issues for the 1990s*, Vol. VI (UNCTAD/GID/G24/6)(New York and Geneva: United Nations).

AMSDEN, Alice (1989), *Asia's Next Giant: South Korea and Late Industrialization* (New York: Oxford University Press).

ANJARIA, Shailendra J. (1987), "Balance of Payments and Related Issues in the Uruguay Round of Trade Negotiations", *The World Bank Economic Review*, Vol. 1, No. 4 (September), pp. 669-688.

BALDWIN, Robert E., and Jeffrey W. STEAGALL (1994), "An Analysis of ITC Decisions in Antidumping, Countervailing Duty and Safeguard Cases", *CEPR Discussion Paper*, No. 990 (London: Centre for Economic Policy Research), July.

BHAGWATI, Jagdish N. (1987), "Trade in Services and the Multilateral Trade Negotiations", *The World Bank Economic Review*, Vol. 1, No. 4 (September), pp. 549-569.

BHAGWATI, Jagdish N. (1994), "Labor Standards, Social Clause and WTO", mimeo., Columbia University, New York.

BHAGWATI, Jagdish N. (n.d.), "Towards a Consensus on Trade and the Environment: Key Issues in Contention", unpublished manuscript.

BHAGWATI, Jagdish N., and Marvin H. KOSTERS (1994), *Trade and Wages: Leveling Wages Down?* (Washington, D.C.: The AEI Press).

COOPER, Richard N. (1993), "Natural Resources and Environmental Policies", mimeo., Harvard University, Boston, September.

DIWAN, Ishac, and Dani RODRIK (1991), "Patents, Appropriate Technology, and North-South Trade" *Journal of International Economics*, Vol. 30 (February), pp. 27-47.

EHRENBERG, Ronald G. (1993), "Labor Markets and Economic Integration", mimeo., Cornell University, September.

ESTY, Daniel C. (1994), *Greening the GATT: Trade, Environment, and the Future* (Washington, D.C.: Institute for International Economics).

GATT (1993), "An Analysis of the Proposed Uruguay Round Agreement, with Particular Emphasis on Aspects of Interest to Developing Economies" (MTN.TNC/W/122, MTN.GNG/W/30), Geneva, 29 November 1993.

GATT (1994), "Increases in Market Access Resulting from the Uruguay Round", 13 April 1994.

GOLDIN, Ian, Odin KNUDSEN and Dominique van der MENSBRUGGHE (1993), *Trade Liberalization: Global Economic Implications* (Paris: OECD Development Centre and the World Bank).

GROSSMAN, Gene M., and Alan B. KRUEGER (1993), "Environmental Impacts of a North-American Free Trade Agreement", in P. Garber (ed.), *The United States-Mexico Free Trade Agreement* (Cambridge, Ma.: MIT Press).

HAMILTON, Carl B. (ed.) (1990), *Textiles Trade and the Developing Countries* (Washington, D.C.: The World Bank).

HOEKMAN, Bernard (1993), "Developing Countries and the Uruguay Round Negotiations on Services", *CEPR Discussion Paper*, No. 822 (London: Centre of Economic Policy and Research), October.

JACKSON, John H. (1994), "Testimony Prepared for the United States Senate Finance Committee Hearing, March 23, 1994, on Uruguay Round Legislation", University of Michigan, March 18.

KRUGMAN, Paul, and Robert LAWRENCE (1993), "Trade, Jobs, and Wages", *NBER Working Paper*, No. 4478 (Cambridge, Ma.: National Bureau of Economic Research), September.

LAWRENCE, Robert Z. (1991), "Scenarios for the World Trading System and Their Implications for Developing Countries", *Technical Papers*, No. 47 (Paris:

OECD Development Centre), November.

New York Times (1994), "Falsely Demonizing the Trade Pact", 23 July.

NGUYEN, T., C. PERRONI and R. WIGLE (1993), "An Evaluation of the Draft Final Act", *Economic Journal*, Vol. 103.

NGUYEN, T., C. PERRONI and R. WIGLE (1994), "A Uruguay Round Success?", *The World Economy*, forthcoming.

OCAMPO, José Antonio (1992), "Developing Countries and the GATT Uruguay Round: A (Preliminary) Balance", in UNCTAD, *International Monetary and Financial Issues for the 1990s*, Vol. I (UNCTAD/GID/G24/1)(New York: United Nations).

OECD (1992), *Integration of Developing Countries into the International Trading System* (Paris).

OECD (1993), *Assessing the Effects of the Uruguay Round* (Paris).

PERRONI, Carlo (1994), "The Uruguay Round and its Impact on Developing Countries", mimeo., Centre for the Study of International Economic Relations, University of Western Ontario.

REICHMAN, J.H. (1993), "Implications of the Draft TRIPS Agreement for Developing Countries as Competitors in an Integrated World Market", *UNCTAD Discussion Paper*, No. 73 (Geneva), November.

RODRIK, Dani (1993), "Taking Trade Policy Seriously: Export Subsidization as a Case Study in Policy Effectiveness", *NBER Working Paper*, No. 4567, (Cambridge, Ma.: National Bureau of Economic Research), December.

RODRIK, Dani (forthcoming), "Trade and Industrial Policy Reform", in J.R. Behrman and T.N. Srinivasan (eds.), *Handbook of Development Economics*, Vol. III (Amsterdam: North-Holland).

SATHIRATHAI, Surakiart, and Ammar SIAMWALLA (1987), "GATT Law, Agricultural Trade, and Developing Countries: Lessons from Two Case Studies", *The World Bank Economic Review*, Vol. 1, No. 4 (September), pp. 595-618.

SUBRAMANIAN, Arvind (1994), "Putting Some Numbers on the TRIPs Pharmaceutical Debate", *International Journal of Technology Management*, Vol. X, No. 10.

TUSSIE, Diana (1993), "The Uruguay Round and the Trading System in the Balance: Dilemmas for Developing Countries", in M.R. Agosin and D. Tussie (eds.), *Trade and Growth: New Dilemmas in Trade Policy* (London: St. Martin's Press).

WESTON, Ann (1995), "The Uruguay Round: Unravelling the Implications for the Least Developed and Low-Income Countries", in UNCTAD, *International Monetary and Financial Issues for the 1990s*, Vol. VI (UNCTAD/GID/G24/6) (New York and Geneva: United Nations).

WOOD, Adrian (1994), *North-South Trade, Employment and Inequality: Changing Fortunes in a Skill-Driven World* (Oxford: Clarendon Press).

WORLD BANK (1993), *The East Asian Miracle: Economic Growth and Public Policy* (Washington, D.C.).

WORLD BANK (1994), "The Uruguay Round: A Preliminary Assessment", International Economics Department (Washington, D.C.), February.

The Uruguay Round: Unravelling the Implications for the Least Developed and Low-Income Countries

Ann Weston

Abstract

This paper reviews the results of the Uruguay Round from the viewpoint of the least developed and low-income countries. Preliminary estimates of the economic impact of the Round suggest that some of these countries will experience losses as a result of reduced preferences and higher food import costs, which will only partly be offset by the gains from expanded and more secure world trade, notably in clothing. Most estimates do not take account of the costs of strengthened intellectual property rights, or the other obligations now expected of these countries (ranging from less use of subsidies to liberalized investment and more transparent institutions). In most cases even the least developed will be expected to meet the same rules as developed countries, though generally over a longer period. In contrast to these legally binding commitments, various offers by developed countries of compensatory technical and financial assistance and improved tariff preferences, as spelt out in the Round's Final Act, remain vague.

I. Introduction

The ministerial declaration which launched the Uruguay Round in September 1986 included as its first objective the expansion of world trade, especially to benefit developing countries. The principle of special and differential treatment, as set out in various GATT Articles and Agreements, was to be respected both in terms of the offers made by developed countries and the obligations which developing countries would assume in return. Special attention was to be given to the least developed countries and ways to promote their trade. The aim of this paper is to evaluate the extent to which these initial statements were respected in the negotiations, focusing particularly on the interests of the less advanced developing countries, i.e. the least developed countries and the low-income countries.

The paper begins with a brief summary of some background information about these countries and their major trade interests in the 1990s. Next, there is an overview of the special and differential treatment given to developing countries and especially to least developed countries in the Round. This is followed by an evaluation of the Round's results in key areas of importance to least developed and low-income countries. The first part reviews the results on tariffs and non-tariff barriers - traditional issues primarily concerning market access for developing country exports, though developing countries have also offered to open their own markets in a number of ways.

Most evaluations suggest that the least developed countries, and especially countries in sub-Saharan Africa will be net losers. This pri-

marily arises from a deterioration in the terms of trade as a result of projected increases in food import prices. Beyond a general boost to world demand, the agreements do little to address the problems of other primary commodity exporters, i.e. oversupply, price instability and supply-side difficulties in diversification. In addition many of these countries will experience erosion of preferential tariff margins in their major export markets and where preferences do not apply to persistent (and in some cases increasing) tariff escalation.

A number will benefit from the ending of the major non-tariff barrier (NTB) for most poorer countries, namely the restriction of clothing exports under the Multi-Fibre Arrangement. These are to be phased out over a ten-year period, with over half of the products returning to GATT rules only at the end of the tenth year. Some countries will experience a surge in their exports - but these will still be restrained by tariff barriers, anti-dumping duties and other novel forms of NTBs. Small and/or high-cost producers are concerned about their ability to compete in a less regulated world market.

On agriculture, the gains of increased access to export markets as well as gradually rising and more stable world prices for net exporters of temperate agricultural products, will be relatively concentrated unless countries are able to diversify their production. In contrast, the higher costs of food imports will be more widespread as a large number of least developed and low-income countries are net food importers.

New rules on safeguards and other non-tariff measures will primarily be of interest to larger exporting developing countries, though they have been used against least developed countries. "Voluntary" export restraints have been banned, and the use of countervailing duties should decline with clarification of "allowable subsidies" and the exemption of poorer countries from the ban on export subsidies. On the other hand, safeguards may now be applied selectively and without compensation initially, while the use of anti-dumping duties (ADD) seems likely to grow in both developed and developing countries until they are replaced by international competition policy. For all these forms of selective action against developing country produce, however, the duration will likely fall with the new requirements for reviews (in dumping and countervail cases) or termination (in the case of safeguards).

In contrast, the "new issues" for least developed countries imply changes in access to their own markets, whereas for exporters in more advanced developing countries, especially those with a stronger technological base, they will provide some new opportunities. Here we examine the new rules on services, intellectual property, and investment. For most least developed countries the openings in services will be too narrow to help expand their earnings from the export of labour services. The rules on intellectual property could slow down the diffusion of technology, while the rules on investment measures will narrow the choice of industrial policies.

The third section examines the institutional changes arising from the Uruguay Round, both in terms of the way in which the new World Trade Organization (WTO) will be managed and its relationships with other organizations, as well as some of its functions, namely dispute resolution and the trade policy review mechanism. On balance, many of these changes will help to increase the adherence to international trade rules of both large and small countries. But the possibilities of cross-retaliation and cross-conditionality suggest that developing countries will face greater pressures for compliance.

This is followed by a brief review of a second set of new issues to be addressed by the WTO - the environment, labour and competition policy. The first two raise questions about how far differences in national standards reflect national characteristics, and whether trade remedies should be used to offset differences which affect trade or to enforce relevant international standards. Developing countries are concerned that action against their exports on environmental or labour grounds could seriously devalue the developed countries' market- access commitments, in return for which they themselves have accepted significant new obligations. On competition policy, the challenge is to consider whether international rules attached to the WTO can be used to substitute for anti-dumping duties, and also to complement national efforts to curb anti-competitive practices of the private sector.

Finally, the paper addresses the issue of complementary action - whether in the form of

technical and financial assistance or changes in preferential tariffs. The Uruguay Round agreements in several places recognize the need to help developing countries, and especially least developed countries, adapt to the new international trade rules. But the legal standing of the developed countries' offers of assistance is unclear - in sharp contrast with the binding obligations assumed by developing countries - while there is no guarantee that it will be additional to existing aid efforts. Existing financing mechanisms for dealing with the adjustment are likely to prove inadequate, but the design of alternatives must await more detailed evaluations of the needs of individual countries. Some developed countries are considering modifications in their Generalized System of Preferences (GSP) and other preferential schemes, but these will be insufficient to offset the erosion of least developed countries' preferential margins. Moreover, new conditions attached to preferences could increase uncertainty and lower their use. Instead, developed countries should consider making GSP binding for the least developed and low-income countries.

II. The least developed and low-income countries: some introductory observations

Briefly, there are 47 countries identified by the United Nations as least developed, with a total population of 478 million and an average annual per capita income of $228 in 1992 (OECD, 1994a, table 48). There are a further 20 low-income countries with a total population of 2,748 million (with China accounting for nearly half of the total), and an average annual per capita income of $395.

Least developed countries accounted for 0.5 per cent of world exports in 1992, while the share of low-income countries was 2.9 per cent - or 1.6 per cent and 10.2 per cent of developing country exports respectively. The overall importance of trade in least developed countries has declined in recent years, at least according to official statistics, whereas in many low-income countries it appears to have increased. On average, exports account for about 7 per cent of GDP in least developed countries compared to 27 per cent for all developing countries, while imports account for 14 per cent. The structural adjustment programmes undertaken by some of these countries are partly intended to reverse this decline, though early results suggest that this cannot be accomplished by trade liberalization in the least developed countries alone. Complementary action is needed both on the supply-side to strengthen the industrial base and in their external markets.

Exports are highly concentrated, with primary commodities still predominant; of the top ten exports only one is a manufactured product (garments). In addition to goods exports of some $15 billion, workers remittances provide another $2 billion and labour services $0.5 billion. A key concern is the pronounced decline in commodity prices, leading to an average annual shortfall in commodity earnings over the last ten years of $620 million (UNCTAD, 1994a, p. 11). The decline in export earnings has led to a substantial increase in the arrears on debt servicing, which doubled in the three years to 1992 (ibid., p. 22).

Export markets are quite concentrated with 36 per cent of exports going to the European Union alone, and a further 20 per cent to the United States and Japan, while other developing countries bought 25 per cent. Virtually all least developed and low-income countries are food- aid recipients. Food imports account for more than 15 per cent of total imports in 16 of the 23 least developed countries for which statistics are available and seven of the 16 low-income countries.

The trade status of the low-income countries is somewhat different - both in terms of structure and size. Trade accounts for a higher proportion of GDP, exports are more diversified - with a larger range of manufactures and greater interest in services exports. This interest in trade is underlined by the higher membership of the GATT than amongst the least developed (see annex table A1). Finally, exports are more diffuse, with 50 per cent going to the European Union, United States and Japan, and another 42 per cent to other developing countries.

It is difficult to generalize about the Uruguay Round objectives of such a diverse group

of countries. A special feature of the Round was that developing countries negotiated much more individually and less as a group than in other fora, like UNCTAD. Nonetheless, there were some common position statements. For example, one by Bangladesh on behalf of the least developed countries included demands for: advance, unstaged implementation of tariff and non-tariff concessions; an immediate end to textile and clothing restrictions and exemption from the Final Act's interim safeguard action; special treatment in safeguards more generally; exemption from obligations on investment and initial commitments on services; improvements in GSP schemes, including more favourable rules of origin, exemption from new conditionalities, quotas and safeguards; assistance in the use of GSP and other market openings; and, regular reviews of measures directed at least developed countries (GATT, TNC/W/34 quoted in GATT, 1992a, p. 55). The extent to which these demands were met is addressed below.

III. Special and differential treatment: an overview

In several respects the concept of special and differential treatment (S&D) in trade policy has been much discredited. Certainly many developing countries in the Uruguay Round were not content to take a back-seat while the developed countries negotiated major changes in the rules of the international trading system. A large number were active participants in the negotiations, chairing negotiating committees, drafting proposals, and making offers to open their own markets.

This engagement of developing countries partly reflected a change in attitude towards domestic protection. Countries wanted to gain credit for their unilateral tariff cuts and other trade liberalizing measures, often undertaken in the context of structural adjustment programs. It was also realized that active bargaining was needed to secure the market openings and rule changes of particular interest to their exporters. Preferential tariff schemes were insecure and inadequate, and often left developing countries facing higher average tariffs on their exports to developed country markets than did most developed countries. At the same time, there was a hardening of attitudes in developed countries, with less tolerance for developing countries to shelter behind the limited reciprocity provisions of Part IV of the GATT, growing resort to unilateral trade measures, and regional agreements.

But many smaller least developed and low-income countries played only a minor role. A large number were not even GATT members. Some were preoccupied with issues of declining commodity prices or supply-side constraints that were not on the table in Geneva (with the exception of temperate agricultural products). Many were too small to have much clout or lacked the technical expertise to follow the wide range of issues under discussion.

The increasing differentiation between developing countries is reflected in several parts of the Final Act (the name given to the set of agreements, decisions and declarations concluded in the course of the Uruguay Round).

The ministerial decision on measures in favour of least developed countries recognizes the importance of continuing their preferential access to markets and suggests member countries improve their schemes for products of special interest to the least developed. In addition it suggests early implementation of MFN tariff cuts on their exports. Import relief measures (e.g. anti-dumping duties) and other new trade rules are to be applied to the least developed countries in as flexible and supportive a manner as possible. Finally, they are to be given substantially increased technical assistance for expanding and diversifying their exports of goods and services. In terms of the obligations expected of least developed countries, they have been given an extra year to submit their new tariff and other schedules. Overall, their commitments and concessions are expected to be consistent with their individual development, financial and trade needs - the old GATT Part IV language - to which the wording "or their administrative and institutional capabilities" has been added.

Besides this group of countries, there are several other categories singled out at various points for special treatment, most notably low-income countries (in the rules on export subsidies), small suppliers (for clothing), net food

Table 1

PROVISIONS RELATING TO DEVELOPING COUNTRIES AND LEAST DEVELOPED COUNTRIES

	Recognizing their interests	Require fewer obligations	Longer time-frame	Technical assistance
WTO	b		b	a
Balance of payments		a b		a
Safeguards	a	a		
Anti-dumping duties	a			a
Subsidies/countervailing duties	a	a b[1]	a b[1]	
TRIMs	a b	a	a b	
Import licensing	a b	a	a	
Customs valuation	a	a	a	a
Preshipment inspection	a			a
Technical barriers	a	a	a b	a b
Sanitary/phyto-sanitary	a b		a b	a
Agriculture	a b	a b	a	b[4]
Textiles and clothing	b		b[3]	
Services	a b	a	a b	a b
TRIPs	b		a b	a b
Dispute settlement	a b			a
Trade policy review mechanism		a[2] b		a b

a - developing countries **b** - least developed countries (unless otherwise specified)

Source: GATT (1993).

1 Countries with a GDP per capita of less than $1,000.
2 Smaller traders.
3 Smaller producers granted more rapid expansion of restraints by importing countries.
4 Least developed countries and net food importers.

importers, and economies in transition (various rules).

There are still many references to developing countries as a whole throughout the Final Act - some of which are shown in table 1. The question is what this amounts to, and whether it is an improvement on the past. While there are more references, the greater specificity of S&D - in contrast to the blanket provisions of Part IV - generally means that it is less extensive. In many areas of the new trade rules developing countries, and even the least developed, are assuming substantial new obligations.

Only members of the World Trade Organization (WTO) - i.e. developing countries which are full GATT members and which have accepted all the Uruguay Round agreements - will be able to enjoy the WTO's special treatment, making membership a potentially important issue. But otherwise there are no criteria in the final Act for graduation of the more advanced countries. This suggests that the differentiation between developing and developed country obligations is no longer of great consequence. Yet there has been pressure on China, during the negotiation of its resumed membership, to renounce its developing country status, following the recent decision by Taiwan Province of China to do so.

Graduation is of interest to the least developed and low-income countries for at least two reasons. For them, graduating more advanced

countries would increase the value of the *de minimis* rules for safeguards and countervail cases. These allow exemption of developing country suppliers with less than a 9 per cent total share of imports (see below). On the other hand, there is a danger that as some countries accept stricter trade and investment obligations, there will be increased pressure on other developing countries to conform.

Table 1 shows schematically the extent to which the different parts of the Final Act refer specifically to developing countries and least developed countries, focusing in particular on four types of reference. These are: recognition of their special interests, requiring fewer obligations, granting them a longer time-frame in which to comply with the new rules, and where there is some mention of other countries granting them technical assistance. It gives only a superficial impression, however, as the extent to which the rules differ between the developed countries, on the one hand, and the developing and least developed countries on the other, varies considerably.

For example, the rules on sanitary and phyto-sanitary measures only allow developing countries a longer implementation period in exceptional circumstances, when approved by the relevant WTO Committee, whereas in the case of agriculture a longer time-frame is the general rule for developing countries.

The longer time-frame varies considerably from agreement to agreement. For instance, least developed countries have 11 years (or more) to meet their intellectual property obligations, seven years for the investment measures, and five years for sanitary and phyto-sanitary measures.

Recognition of developing countries' interests in the safeguards provisions involves the exemption of developing countries with less than 3 per cent of imports and collectively less than 9 per cent. The anti-dumping rules also include a *de minimis* exemption but it applies to all countries with less than a 3 per cent import share. In addition, there is a vague requirement that special regard be given to the situation of developing countries and "constructive remedies" be considered as an alternative to anti-dumping measures.

In some cases special treatment is for smaller producers rather than the least developed (as in the case of the textiles and clothing, when importing countries agree to grant them more rapid expansion of restraints), while both poorer (less than $1,000 per capita) and least developed countries are allowed to use export subsidies (but not other specific subsidies) without risk of countervail action.

Finally, some of the provisions in the different Uruguay Round agreements are clearly designed with the interests of the developing countries in mind, even if the latter are not specifically mentioned.

These various points are elaborated in the following sections on market access, new issues and institutional changes.

IV. Market access

A. Overall results

In this section we review the findings of a number of studies which have estimated the likely effects of the Uruguay Round, focusing in particular on the implications for the least developed and poorest countries. It is important to note at the outset that most of the studies are based on tariff offers dating from November 1993 or earlier - rather than the final offers. They tend to look at the direct effects of the tariff cuts, without taking into account erosion of tariff preferences. Some also incorporate the changes in NTBs, but few, if any, evaluate the impact of the rules in the new areas (investment, intellectual property or services). Not all incorporate the agricultural sector or changes in access to markets outside the major developed countries. Many are static, i.e. they exclude any dynamic gains. Finally their base years, assumptions of supply and demand elasticities, counterfactual scenarios, and underlying model structures also vary.

Estimates of global income gains range from $210 billion to $270 billion with developing countries receiving about a third of the total, i.e. some $80 billion or more than present annual aid flows (GATT, 1993). For them, as for the devel-

Table 2

EXAMPLES OF TARIFF CUTS BY DEVELOPED COUNTRIES
(Per cent)

Product	Tariff		
	before Uruguay Round	after Uruguay Round	Reduction
All industrial (excl. petroleum)	6.3	3.9	38
Leather, footwear, travel goods	8.9	7.3	18
Textiles and clothing	15.5	12.1	22
Fish and products	6.1	4.5	26
Electrical machinery	6.6	3.5	47
Minerals	2.3	1.1	52
Metals	3.7	1.5	59
Wood, paper and furniture	3.5	1.1	69

Source: GATT (1994b), table 5.

oped countries, the bulk of the gains result from domestic liberalization, rather than the expansion of exports. Benefits are unevenly distributed between developing countries - with larger, more advanced, exporters of manufactures like China having the lion's share. Exporters of temperate agricultural products and clothing benefit disproportionately. Poorer countries in sub-Saharan Africa, which are dependent on commodity exports (for many of which the impact of the Round will be marginal), recipients of preferences in the European Union, and net food importers, will experience net losses. OECD (1994a) estimates that net annual losses for Africa could total $2.6 billion by the year 2002.

None of these studies estimates the likely distributional impact *within* countries. The Final Act, however, in the declaration on coherence between the WTO, the IMF and the World Bank recognizes that there are often significant transitional social costs associated with trade liberalization, and these two financing bodies should help mitigate the adjustment. This is an area where further research is needed, before programmes can be designed to compensate poor urban consumers facing higher food prices, or workers displaced by increased competition, or even to help marginalized peoples to participate in the new opportunities created by the Round.

World trade in goods is forecast by the GATT (1993, p. 45) to be some 12 per cent (or roughly $745 billion in 1992 dollars) higher in the year 2005 than if trade continued to grow by the 4.1 per cent annual average recorded in the 1980s. Product areas with the largest projected gain include many of importance to developing countries and especially to poorer countries, notably clothing (60 per cent), textiles (34 per cent), agricultural, forestry and fishery products (29 per cent) and processed foods and beverages (19 per cent) (GATT, 1993, p. 45). Recent estimates by UNCTAD show total dutiable imports into four major markets (the European Union, the United States, Japan and Canada) growing by 4.6 per cent (or $28.5 billion in 1988 dollars), while dutiable imports from developing countries alone would rise by 3.1 per cent (or $7.1 billion) (UNCTAD, 1994b).

On average MFN tariff cuts by developed countries on industrial products (excluding fuel) will be higher at 38 per cent than the third projected earlier in the negotiations. Tariff concessions amongst developed countries are more extensive than those offered to developing countries. The share of imports from all sources paying tariffs in excess of 10 per cent will fall from 15 to 10 per cent; for their imports from developing countries, the share paying these tar-

iffs will only fall from 21 to 15 per cent (GATT, 1993, p. 27). The average tariff on developing country industrial products will fall from 6.8 to 4.3 per cent - and for least developed from 6.8 to 5.1 per cent - while for all sources it will fall from 6.3 to 3.9 per cent (GATT, 1994b, table 9). This largely reflects the lower cuts on products of greatest interest to developing countries (see table 2).

A large number of tariff cuts by developed countries will be bound, covering nearly two-thirds of imports, in the case of developing countries the share is only 26 per cent. Slightly more of developing countries' offers involved bindings with no cuts (covering 28 per cent of their imports) while they made no offers on dutiable product categories accounting for 44 per cent of their imports, compared to 15 per cent in developed countries. Overall the share of developing country industrial product imports which are now bound has risen from 14 per cent to 59 per cent (GATT, 1994b, table 1).

Developed country tariff escalation on industrial products has decreased in general - this is the case for tropical products and natural resource-based products as a whole, and specifically for rubber and wood products and a number of metals manufactures. But it has increased for leather products, jute fabrics and cocoa products (GATT cited in OECD, 1994b), and the results for other agricultural products are considered disappointing (World Bank, 1994a, p. 117). Even where tariff escalation has fallen, other factors may deter developing country exporters from moving downstream (such as the scale economies involved in production and marketing of processed commodities).

Preliminary estimates of the consequences of the MFN cuts for industrial products confirm that the major beneficiaries of the increased trade will be MFN suppliers (i.e. mainly developed countries), but it appears that imports from preferential suppliers will also grow in all categories as trade creation outweighs the negative trade diversion effects (GATT cited in OECD, 1994b, p. 34). The issue is whether preferential margins will be maintained as some studies have assumed (GATT, 1993, p. 42). As the least developed countries already enjoy zero tariffs on many products in major markets, it will be necessary to extend GSP coverage to presently excluded products such as clothing in order to mitigate the trade diversion effects of MFN cuts. More detailed analysis is needed at the country level.

Finally, the share of developed countries' non-fuel industrial imports from developing countries covered by non-tariff measures is also projected to fall substantially. For all developing countries it will fall to 5.2 per cent (compared with a coverage ratio of 29.1 per cent for manufactures before the Uruguay Round), i.e. to 2.2 per cent for South Asia, 3.0 per cent for sub-Saharan Africa, and below 6.5 per cent for all other regions (Yeats cited in OECD, 1994b). The major change is the elimination of "voluntary" export restraints on clothing and other products, which will take up to ten years. During this period it is possible that new barriers will be introduced to replace those being eliminated. As discussed further below, the new rules allow the selective application of safeguards, while the use of anti-dumping duties may increase.

B. Textiles and clothing

The Uruguay Round's provisions on textiles and clothing are probably the most important for developing countries as exporters. For the first time in some thirty years, their largest industrial export earner (with 22 per cent of all developing country industrial exports - and over 20 per cent for as many as 30 developing countries, GATT, 1993, p. 12) will be covered by normal GATT rules. Certainly most of the projected gains for developing countries, and especially poorer countries which tend to be more dependent on clothing than other exports, are associated with the ending of the Multi-Fibre Arrangement (MFA) and the phase-out of the bilateral restraints which have limited the expansion of clothing trade since the beginning of the MFA in the 1970s and even earlier under the so-called Long-Term Arrangement of the 1960s (Page et al., 1991, p. iv). According to GATT estimates, the resulting global export growth will be larger for clothing (60 per cent) and textiles (34 per cent) than any other product category. Others have calculated trade in textiles and clothing may double or even treble if tariffs as well as quotas are removed (ibid., p. 45), but the Round failed to remove tariffs which will remain well above the average (see table 2 and below).

All products will be restored to the normal GATT rules by the end of a three-stage ten-year period - i.e. by the year 2005 - considerably later than many developing countries had expected. Most developed countries[1] were unwilling to shorten this time-frame to take into account the three-year delay in the conclusion of the Round, let alone to consider the seven-year phase-out sought by most developing countries. They also insisted on various rules which will make the liberalization heavily back-loaded - i.e. the bulk will occur at the end of the ten years.

In each stage, a certain share (by volume) of products from all four major product groups (tops and yarns, fabrics, made-ups and clothing) will be integrated into the GATT - i.e. no longer subject to restraints - 16 per cent at the beginning of stage one, then 17 per cent, and 18 per cent at each successive stage, leaving 49 per cent of all products to be reintegrated at the very end of the phase-out. The developed countries insisted that they be able to choose between all textile and clothing categories - even ones not presently facing quotas. As a result, the first items to be integrated into the GATT will be unrestricted items. At the same time, in each stage all individual country restraints will be expanded annually by a certain percentage (16, 25 and 27 per cent respectively) on top of existing bilaterally agreed growth rates. Thus, for example, if Indian tailor-collared shirts to the European Union presently face a quota with a 2.0 per cent growth, this will rise to 2.32 per cent in phase I, 2.9 per cent and 3.68 per cent in each successive phase. Thus suppliers with higher growth rates, often smaller suppliers and poorer countries, will benefit from this percentage formula.

Transitional safeguards will be allowed in cases of serious injury, or threat of serious injury, for products that have not yet been reintegrated into the GATT. And in the longer-term, import restrictions may be imposed under the new safeguard rules for all products, which allow for more punitive action against countries whose exports grow faster ("disproportionately") than others (see below). Action against developing country clothing exporters will also be possible under the GATT's anti-dumping and countervail rules, especially the former which are considered still to be lax (see below). There may also be retaliation against countries which fail to liberalize their imports of textiles and machinery. Finally, several countries are concerned that linking trade to labour standards or human rights more generally, and environmental standards, could lead to new ways of restricting their exports (see below). In the United States, for example, legislation has been introduced in Congress to ban imports using child labour, and major retailers have cancelled orders from firms in Bangladesh alleged to have engaged child workers. Imports of certain types of Indian skirts have been banned because of concerns about their flammability. In other words, the ending of the MFA does not guarantee secure market access, though the Uruguay Round does provide developing countries with a much improved dispute settlement mechanism (see below) allowing them to seek compensation for nullification or impairment of their rights under the Final Act.

The preamble of the agreement on textiles and clothing recalls that special treatment should be given to the least developed countries. This is interpreted quite narrowly to mean that they be treated more favourably in the use of transitional safeguards than other groups also singled out for special treatment, such as small suppliers, outward processors and countries which export wool. But importing countries are not required to treat least developed countries more favourably in all safeguard cases - just in overall terms. Nor are they expected to exempt them completely from such action. Only certain products are exempted - handloom products and handicrafts (if certified as such) traditional products made of jute and other fibres, and pure silk products - some of which are exported by least developed countries (notably jute products from Bangladesh). (But even the jute exemption is limited by the requirement that the products have been commercially traded before 1982 - this excludes recent product innovations promoted by the International Jute Organization, for example).

Small suppliers (accounting for 1.2 per cent or less of a country's MFA restricted imports) will be treated more favourably in that their restraints will be expanded more rapidly than other suppliers - i.e. by 25 per cent annually from the

1 Sweden had already decided unilaterally to end its quotas in 1991.

first year and 27 per cent from the fourth year (in contrast to 16 and 25 per cent respectively for other suppliers); and quota base levels have to be set so that they may develop commercial amounts of exports. Most least developed countries, with the notable exception of Bangladesh, are likely to fall into this category.

Tariffs will remain relatively high - as initial levels are high and cuts by developed countries on these products will be proportionately lower than for other products. They will fall by 21 per cent on average compared to the 34 per cent cut for all developed countries' industrial imports from developing countries (GATT, 1993). The share of textile and clothing products with a tariff greater than 15 per cent will fall from 33 to 27 per cent, while for all industrial products it will fall from 6 to 4 per cent (GATT, 1994b, table 6). Half of all textiles and clothing will still pay tariffs in excess of 10 per cent. For example, in the case of men's and women's knitted cotton shirts (Harmonized Code categories 6105.10 and 6106.10) tariffs will fall from 21.0 to 19.7 per cent in the United States and from 25.0 to 18.0 per cent in Canada. (For some products the United States has made considerably larger cuts - e.g. for most silk products the tariff will be cut sharply to 2.0 per cent or less, with the exception of women's silk shirts and dresses, which will only fall from 7.5 to 6.9 per cent).

Concerns about MFN tariff cuts eroding preferential tariff margins are less relevant in the case of textiles and clothing as many preferential arrangements (such as GSP[2] and Caribcan, the agreement between Canada and the Commonwealth Caribbean countries) exclude these products even for least developed countries. The Caribbean Basin Initiative offers preferential access - in terms of special ceilings for clothing made in the Caribbean of US cloth - and the Lomé Convention provides preferences to ACP clothing which meet tough rules of origin. In both cases this would appear to have contributed to a sharp increase in clothing exports from beneficiaries. But both have also been shown to be vulnerable. The Caribbean countries are concerned about the diversion of production to Mexico under the more secure NAFTA provisions. And the experience of Mauritius shows that competitive ACP suppliers will find their exports curbed. The failure of beneficiary countries to negotiate more secure access under these arrangements suggests that in the long run they may gain from the new GATT rules.

The ending of the MFA, however, will impose losses as well as gains for countries presently constrained by the MFA. Quota rents will disappear as quotas are no longer binding. For developing countries as a whole these losses will be offset by an increased volume of exports, as they replace developed country suppliers and as developed country markets expand. But not all developing countries will share this expansion equally. A critical factor behind the spread of the clothing industry worldwide to countries such as Bangladesh, the Maldives and more recently Viet Nam was the MFA's restraints on traditional exporters like Hong Kong. Other factors also played an important role - notably rising labour costs in some of the more advanced countries and technological changes (improved communications and flexible production systems), as well as changes in less advanced countries' own economic policies.

Nonetheless, it is likely that there will be a major restructuring of the global clothing industry with production expanding in some countries and shrinking in others. By far the major beneficiary of the end of the MFA is projected by many studies to be China (Trela and Whalley, 1990, pp. 27 and 29). Chinese production capacity appears substantial. But the terms of China's resumption of GATT membership are still under negotiation, and some authors suggest they could involve the extension of restraints on Chinese clothing exports beyond the ten-year phase-out of the MFA.[3] In principle, however, if China is able to become a founding member of the WTO, it should enjoy the full benefits of the Uruguay Round, including no further quotas after the year 2005.

---

2 An exception is Australia where the GSP covers all products.

3 See, for example, Lardy (1994) p. 44: "... it is far from certain that China will benefit from ... the phase-out of MFA quotas in the United States. A separately negotiated bilateral agreement will spell out which portions of the GATT, including the MFA phase-out, the United States will apply to China".

More generally, it is important to note that developed countries will be able to maintain import restrictions on countries which are not yet full members of the GATT or the WTO. For instance, Canada will likely continue its unilateral restraints on clothing imports from Cambodia, Laos and Nepal, which, at the time of writing, are still not members of the of the GATT (see annex table A1).

To sum up, the ending of the MFA is a significant advance for developing countries, as it has been a major restraint on the growth of their exports. The impact will be slow to materialize, however, and harassment of exports will still be possible, whether through the use of anti-dumping duties, selective safeguards, or environmental and eventually labour standards. Tariffs will still restrain demand, except for suppliers covered by special trade agreements. There are questions about the viability of producers in some developing countries in a more open world market. The provisions are intended to give small suppliers a head-start in terms of more rapid quota phase-out, but as noted above, this is not extended to all least developed countries. Technical assistance also could help to identify market niches and/or improve efficiency or production and marketing. In addition, developed countries should consider removing tariffs on imports from the least developed countries under their GSP schemes.

C. *Agriculture*

As in the case of textiles and clothing, the Uruguay Round agreement on agriculture marks the return of agriculture to normal GATT rules, though here too the timetable is protracted. Government intervention in some areas will remain significantly higher than in clothing; negotiations on further liberalization are scheduled to resume in six years. The agreement is also of particular interest to the least developed countries and low-income countries, given the continuing predominance of the agricultural sector in their economies and their total exports, and in many cases, given their dependence on food imports. According to the World Food Programme, virtually all least developed countries are classified as food-deficit countries, while a majority of low-income countries are recipients of food aid. Food imports account for more than 15 per cent of the import bill for more than two-thirds of least developed countries, for which statistics are available and nearly half of the low-income countries (see annex table A2).

The preamble mentions the developed countries' commitment to liberalize their markets for developing countries' agricultural exports, with the fullest liberalization for tropical products and crops replacing narcotics. It also notes a more general commitment to special and differential treatment, and the need to address the possible negative effects for least developed and other countries that are net food importers.

The rules contain commitments on domestic support, export subsidies and market access, which are generally more extensive for developed than developing countries, in that they require cuts that are one third higher and with fewer exceptions, and will be met by developed countries in six years compared to the ten years allowed for developing countries. Least developed countries are exempt from all of these commitments. Their interest is in how far the cuts in northern food surpluses will reduce food aid supplies and raise commercial food prices in the world market. A second interest is the changes in world market conditions for their own agricultural exports. While sharing these two concerns, low-income countries are also interested in the impact of their new obligations and the extent to which the new rules are sensitive to the needs of their farmers.

Domestic support measures will be cut by developed countries by some 20 per cent from their 1986-88 level (as measured by the aggregate measure of support), while for developing countries the cut is 13.3 per cent. Subsidies which account for less than 10 per cent of production costs (5 per cent in developed countries) will be exempted from any cuts, as will certain "green box" assistance. For example, for all countries these include stockholding costs, disaster relief payments and assistance under regional and environmental programs. Additional measures listed for developing countries include subsidies linked to development programs, such as general investment subsidies, input subsidies for low-income producers and subsidies for diversification from narcotics crops (Article 6). In some developing countries, however, this concession may have little impact, given that subsidies are

being cut back under domestic structural adjustment programs.

Export subsidies are to be cut by a larger amount - 36 per cent in value and 21 per cent in volume by developed countries, and 24 and 14 per cent, respectively, by developing countries. Again there are exemptions for developing countries, though here they are restricted to subsidies on marketing costs and internal transport. Also, food aid is excluded, provided it is not tied to commercial exports and meets various international food aid standards.

All import restraining measures must be "tariffied" - except measures taken on balance-of-payments grounds or other general GATT allowable measures. All agricultural tariff lines will be bound, up from 58 per cent in the case of developed countries and 18 per cent in developing countries (OECD, 1994b, table 12). In effect, the binding levels on agriculture will exceed those for industrial products. Tariffs will be cut on average by 37 per cent in developed countries and 24 per cent in developing countries, with a minimum of 15 per cent on all products. There are some exceptions to the general cuts where imports must be guaranteed a minimum 4 per cent share of domestic consumption in 1986-1988, to be increased gradually, by 0.8 per cent annually. Developing countries may restrict imports to a lower share of consumption - i.e. one per cent rising to 4 per cent by the end of 10 years - for any product which is the predominant staple.

The agreement also introduces relatively lax requirements for new restrictions on food exports - namely for countries to notify others and to take into account the implications for food security in importing countries (Article 12). Developing countries are exempt from even these obligations unless they are net exporters of the crop in question.

Special safeguards may be used for certain predesignated sensitive products (Article 5). These will take the form of selective and variable additional duties (on a consignment basis) when import prices fall below a trigger level (the average import value in 1986-1988). Alternatively, additional duties may be applied to imports from all sources when these exceed the import penetration ratio recorded in the previous three years.

There is a so-called "peace" provision (Article 13) in the use of countervailing duties or other legal challenges against agricultural products, for the next nine years, while the new agricultural rules on domestic support and export subsidies are phased in. No action may be taken against subsidies excluded from reduction commitments (such as regional assistance programs, environmental programs, or investment aids). The truce is somewhat weaker for other domestic support measures and especially export subsidies, even if reduction commitments are being honoured. While legal challenges on grounds of nullification of benefits may not be brought against domestic support if this remains below 1992 levels, countervailing duties may be introduced if there is evidence of injury or threat of injury, though countries agree to exercise "due restraint" in initiating investigations.

The possible negative impact of the new rules on least developed and net food importing developing countries is addressed in a separate ministerial decision, which focuses on appropriate policy responses by the developed countries. It has been agreed that the volume and terms of food aid available to these countries will be reviewed, with an increasing share of food aid on grant or concessional terms. Appropriate guidelines to this effect will be worked out. In addition, donors may consider requests for assistance in improving these countries' agricultural productivity and infrastructure. But there is no general commitment to increase aid flows to cover the higher cost of commercial food imports, even though most developed countries stand to reduce government expenditure as a result of cuts in their own agricultural support programs. Instead, developing countries will be expected to turn to the international financial institutions for financial assistance. Whether these will be new or existing facilities (such as the IMF's Contingency and Compensatory Financing Facility), they will likely be conditional on having an adjustment programme in place, and presumably be in the form of loans. The adequacy of these various measures will be monitored by the Committee on Agriculture.

The impact of the new rules on food aid availability and world food prices will be considerably less than if either the United States' zero option or the proposals of the Cairns Group had been adopted. Estimates for complete liberali-

zation of agricultural products by UNCTAD/WIDER (1990), for example, had projected world price increases of 43 per cent for rice, 20 per cent for wheat, 15 per cent for maize, and 12 per cent for sorghum. In contrast, a 20 per cent reduction in producer support prices would lead to lower, but still significant, price increases of 18 per cent, 8 per cent, 5 per cent and 2 per cent, respectively. Africa would still experience welfare losses, but these would be halved from $953 million to $402 million. Most other studies also project increases in world foodgrain prices, though they vary somewhat, and one actually predicts a decline (Goldin and Knudsen, 1990).

The results partly depend on whether developing countries themselves also liberalize their markets, and remove policies which typically have discriminated against their own farmers, allowing domestic prices to rise to world levels and thus stimulating domestic production. It is not clear, however, that there is any obligation for least developed countries to do so. Even if they do reverse their past policies, supplies may be relatively inelastic because of infrastructural bottlenecks and so on. And it is possible that other changes in GATT rules, notably on intellectual property rights, could restrain the diffusion of new agricultural technologies. The long phase-out of agricultural reform in the developed countries provides an opportunity for addressing these problems with assistance from the FAO, IFAD, the WFP, the World Bank, and the IMF. It will require donors to reverse the recent decline in funding development of agricultural production.

It is possible that for some developing countries the welfare costs of higher food prices could be offset by the expansion of agricultural exports. Certainly several analysts suggest that agricultural trade liberalization (if sustained) could create a new engine of growth in many developing countries in the form of agricultural exports (e.g. Goldin and Knudsen, 1990, p. 475). Besides tariff cuts, unfair competition in third markets from developed countries' subsidized exports will diminish, as will the associated instability in world prices. On the other hand, it is still possible that exports will face non-tariff barriers in the form of sanitary and other regulations - these and the issue of access for processed agricultural products are discussed below.

The tariff cuts on tropical products have been amongst the highest for all agricultural products - at 43 per cent compared to the 36 per cent target. They are highest for spices, flowers and plants (52 per cent), followed by tropical beverages (46 per cent) (OECD, 1994b). For Africa as a whole, UNCTAD/WIDER estimated gains of $1.3 billion if world imports of tropical products increase by 10 per cent. But individual countries would still experience welfare losses, notably Egypt ($116.4 million), Senegal ($15.2 million) and Mauritania ($5.6 million), while Bangladesh would lose $22.4 million (UNCTAD/WIDER, 1990, pp. 139 and 183).

The MFN market openings are a mixed blessing - some exporters will find their preferential access eroded, though in general most preferential schemes have been less generous for temperate than for tropical products. Page et al. (1991, p. 22), for example, calculate that the losses in the European Union for the ACP exporters of meat and sugar, will be more than offset by higher exports to other markets, especially the United States. There are also likely to be new opportunities in other developing country markets, though in some cases these will appear slowly. In the Republic of Korea, for example, the tariffs on coffee and tobacco, two important export items for least developed countries, will only fall to 54 per cent from 60 per cent and 71 per cent, respectively. GATT (1994b, table 4) estimates that there will be no cuts on 40 per cent of developing country agricultural imports.

Besides more detailed analysis to determine the costs and benefits of the new agricultural rules to each country, it is also important to consider the internal distributional implications, and appropriate policy responses for developing country Governments and donors.

D. Safeguard action

In the 1980s developing countries' exports faced increasing non-tariff restraints in the form of anti-dumping and countervailing duties, and so-called voluntary export restraints (VERs). While some fell under GATT, rules a large proportion fell into a grey area, in the sense that they did not violate specific rules although they were contrary to the spirit of the GATT. This often meant that countries could not seek redress through the GATT. An objective of the Round

for many developing countries was, therefore, to curb this unilateral protectionist action. They sought to restrict the scope for protectionist interpretation of GATT rules by making the rules more comprehensive and closing loopholes. In return, they were required to make various concessions - in the safeguard rules themselves as well as in access to their own markets for goods, services, technology and investment (as described elsewhere in this paper). The issue addressed here is the extent to which the new provisions in the agreements on subsidies, dumping and safeguards will restrain the use of grey-area measures against developing countries, and what this will mean for least developed and low-income countries.

(1) Voluntary export restraints

All VERs (other than those for textiles and clothing, see above) are to be phased out in four years, though each country is allowed to maintain one restraint until the year 2000. Besides developed country consumers, this will primarily benefit a small number of more advanced developing country exporters of footwear, travel goods, electronics and steel, as well as some developed country producers. This could slow down the diffusion of such industries to less advanced developing countries (as in the case of clothing). But it is possible that new restrictions will be introduced in the form of safeguards or anti-dumping duties.

(2) Safeguards

Among the reasons for the growth of VERs - instead of the use of GATT Article XIX - was their selectivity and the fact that no compensation was required. Both elements are now incorporated in the new WTO rules for safeguards. Selective safeguards (although not described as such in the Final Act) may be used against suppliers whose exports to a market have grown disproportionately compared to total imports in the previous three "representative" years (Article 9b). But they may last only four years and only where there is actual serious injury. In contrast, general safeguards may be applied where the injury is threatened, and extended beyond four years to a maximum of eight years if still found necessary to prevent serious injury, with minimum access equal to average imports in the previous three representative years (though exceptions are possible). In neither case is retaliation allowed in the first three years if imports have increased in absolute terms. Another general rule is that the restrictions, once introduced, must be phased out gradually. Finally, the frequency of safeguard action on any product is inversely related to the length of previous action (Article 14), e.g. an importing country must wait two years before taking a second two-year action. But it is still possible for exporters to be harassed by the use of shorter actions - an importing country may apply restrictions lasting six months each three times in any four and a half year period.

There are certain special provisions for developing countries, but not for least developed countries. Developing countries will be exempt from being sideswiped or even the direct target of safeguard action if they individually account for less than 3 per cent of imports, but collectively these minor suppliers must account for less than 9 per cent of imports (Article 19). On the other hand, developing countries will be able to apply safeguards for longer - up to ten years - and roughly twice as frequently against their own imports (Article 20).

(3) Dumping

Anti-dumping duties (ADD) are predicted by many analysts to become the preferred protectionist tool (see, for example, World Bank, 1994a). In the first instance this will be of most concern to exporters in the more advanced developing and developed countries, which have been the major target of ADD in the past. Nonetheless, there are cases of least developed countries being subjected to such measures, such as Bangladesh, whose cotton shop towel exports to the United States have faced ADD of 2.72 to 42.31 per cent (GATT, 1994a). And as the MFA is phased out, it is possible that ADD may be used to restrict clothing imports.

Many of the new provisions will make it easier for countries to use ADD to protect their domestic producers (Horlick, 1993). There will continue to be use of constructed prices, which have been a source of much contention in the past as the method followed in some countries invariably finds dumping to have occurred and often at extremely high levels (see, e.g., Messerlin, 1990). While the new rules set out to make the determination of dumping more objec-

tive, they still allow the use of arbitrary profit levels, and do not require a minimum period for the allocation of start-up costs, with the result that constructed prices may still be highly inflated.

Another objective is to reduce the scope for creative interpretation of the GATT rules on material injury, and to limit the initiation of cases, by introducing a requirement that applicants must account for at least a quarter of domestic production, as well as the length of investigations. Industrial users and consumer groups may be consulted, but the possibility that they may gain from dumping, does not have to be factored into the calculation of injury (Article 6). Panels reviewing ADD cases may not reject them even if they disagree with an authority's conclusions, unless they find fault with the facts used in the case, or the evaluation to have been biased. Another factor which may lead to the proliferation of ADD is the possibility for one country to ask another to impose ADD on imports from a third country on the grounds that these are damaging its own exports (Article 14). Finally, failure to agree on rules to prevent circumvention (by setting up production in a third country to get around ADD action) means this will be the subject of further negotiations.

Improvements include the requirement for a review and some *de minimis* provisions, both for the first time in GATT law, though they have existed in some countries. The five year "sunset" clause (Article 11) calls for all ADD to be reviewed, after which they may be extended. Canada has already such a system which has led to a large number of ADD terminations, though some still persist after more than ten years.

Smaller developing countries may benefit from the *de minimis* provisions exempting all suppliers with less than 3 per cent of imports provided they do not account for more than 7 per cent of imports between them (Article 5). Producers with a dumping margin of less than 2 per cent will also be exempted. These suppliers will be excluded from any assessment of the cumulative effect of imports on domestic industry. Some analysts suggest that neither provision will make much difference in the majority of cases, because this is close to existing practice in major ADD users. For example, in Canada the threshold for the margin is already at 1.5 per cent. Even in the United States (where the present threshold is only 0.5 per cent) most cases have involved larger margins. But the market share rule may be more important as present practice in the United States and European Union is 1.0 per cent (Horlick, 1994).

There is only a vague reference to the "special situation" of developing countries, with the requirement for "constructive remedies" to be explored before ADD (Article 15) - though there are no suggestions as to what this may involve. Nor are there any extended time limits for developing country producers to supply information on their cost structures (Article 6). Finally, there is no reference to technical assistance, although a report by the GATT secretariat notes that it may be difficult for some countries to comply with the new obligations on the use of ADD (GATT, 1993, p.55).

Frustration with the proliferation of ADD cases in many developed countries has led to two developments with implications for the evolution of the international trading system. First, many developing countries, e.g. most recently Thailand and Bangladesh, have set up their own ADD laws and investigations bodies, or are seriously considering to do so. These will have to comply with the new ADD rules. A somewhat controversial issue is whether others should be assisted by the WTO to set up ADD mechanisms. In many countries, following liberalization, domestic producers have experienced substantial increases in competition, some of it allegedly unfair - the result of dumping of products at extremely low prices. Domestic judicial mechanisms need to be in place, it is argued, to prevent such practices damaging local industries. In some countries tariff commissions are able to investigate complaints of dumping. But the new WTO rules seem to require special anti-dumping legislation and a more independent body. For example, in Ghana, where there is no formal ADD or countervail legislation, complaints are handled on an ad hoc basis - special import taxes may be imposed if goods are being sold below domestic levels and damaging local firms. The process lacks transparency and there is no right of appeal (GATT, 1992b, Vol. I., p. 80).

Second, some developed countries are pressing for the substitution of competition policy for ADD, on the grounds that these often penalize foreign firms for pricing practices allowed under

domestic competition law, and can be anti-competitive (in that they restrict import competition and allow domestic firms to raise prices). (Other reasons for having an international competition policy are dealt with below.) Some regional trade agreements (like the European Union and that between Australia and New Zealand) have already extended competition policy and eliminated anti-dumping duties on intra-regional trade, though this has not occurred yet in the NAFTA. Canada's failure to persuade the United States to replace anti-dumping duties with cross-border competition policy in the Canada-US Free Trade Agreement, and then again in the NAFTA, suggests it will not be easy to internationalize competition policy through the WTO. Moreover, questions about the ability of developing countries to enforce competition laws may be used to exclude many from this process, with the possible consequence that ADD will remain but predominantly for use against products from developing countries.

(4) Subsidies

The Round was able to secure agreement to several amendments to the GATT Code on Subsidies which will require in particular the United States, the major user of countervailing measures, to change its laws and practices in this area. But it remains to be seen whether this reduces the incidence of countervailing duties (CVD), as the definition of actionable subsidies has been broadened. In effect international discipline on both subsidies and countervailing measures has been expanded (Horlick and Clarke, 1994) as a result of the new rules in the Agreement as well as the Single Undertaking, which requires their acceptance by all countries. (In December 1992, only 27 countries had accepted or signed the GATT code, of which 14 were developing countries.) This will add another constraint on developing country use of subsidies to promote economic development.

The agreement aims to limit the use of specific subsidies which affect trade. It includes for the first time a definition of a subsidy (as involving a financial contribution by a Government or public body, or income or price support) and conditions which make a subsidy specific. Another innovation is the classification of subsidies into three categories. Using a traffic light analogy these are known as the green, yellow and red categories. Green subsidies generally are to be excluded from countervail action. All general, or non-specific, subsidies are green. In addition there are three types of specific but green subsidies. These are for research and development (R&D), regional development, and expenditures relating to new environmental laws, with qualifications in each case. The ceiling on subsidies in total R&D costs was raised towards the end of the negotiations, reflecting a sea-change in the United States Administration's attitude towards industrial support. While allowing regional development and, to a lesser extent, non-specific subsidies may be seen as favouring developing countries, they are also used by developed countries, which likely will be the major beneficiaries of the R&D and environmental provisions, at least in the short term.

At the other end of the spectrum, red or prohibited subsidies include export subsidies and, for the first time, subsidies dependent on the use of domestic over imported inputs. If the permanent expert group set up under the new rules finds evidence of such subsidies, an importing country will be authorized to take countervailing action without any evidence of injury.

All other specific subsidies fall into the yellow category. Here countervailing action may be taken if an exporter can not prove that it is not causing "serious prejudice" to another country, or if another country is able to show injury to its interests. Serious prejudice will automatically be presumed to exist in certain conditions, such as when the subsidy accounts for more than 5 per cent of a product's value and subsidies cover operating losses. It may also be found to exist, for example, where a country's subsidies have led to an increase in its share in the world market for a primary product above its previous three year average.[4] On the other hand, subsidies must be shown by the importing authorities to be specific - rather than (as in present United States practice) presumed to be so unless exporters prove otherwise (Horlick and Clarke, 1994).

There are extensive rules on investigations, evidence, determination of injury, price undertakings, transparency in the calculation of CVD

4 Agricultural subsidies and products covered by international commodity agreements are exempted, however.

and so on, though the issue of circumvention remains unresolved. A number are similar to the ADD obligations, such as the five-year sunset rule (requiring the United States to review its CVD for the first time), and the notification requirements. In general, cases should be completed more quickly, i.e. in a year or less, instead of the present unlimited process which can take years (Horlick and Clarke, 1994). Generally, these require all subsidies cases to be addressed through WTO rules and diminish the scope for unilateral interpretations, but at the same time they introduce new ambiguities as well as new scope for disciplinary action. For instance, even in the case of green subsidies, action may be allowed if serious adverse effects to another country can be shown. Unless developing countries - and especially the more advanced - are prepared to comply, they could be the target of increased countervailing action.

There are a number of important references to developing countries (notably in Article 27). Special treatment is most extensive for least developed countries and those with an annual income below $1,000 (as determined by the World Bank), in that they may continue to use export subsidies without risk of countervail action, until their exports of a product are considered competitive - defined here to involve a 3.25 per cent share of world trade for two consecutive years - when they must be withdrawn in eight years. Other developing countries must freeze and phase out their export subsidies within eight years (though annual extensions may be possible thereafter), or two years if considered competitive. In all instances, however, a shorter period may be imposed if export subsidies are considered "inconsistent with development needs", and dispute resolution may be requested if another country complains of injury to its interests. In the case of subsidies linked to the use of domestic inputs, these shall be phased out in eight years by least developed countries and five years by all others.

A *de minimis* provision exempts from countervail action all developing country suppliers with subsidies equal to less than 2 per cent of export values or 3 per cent for least developed and low-income countries - both levels are higher than the 1 per cent threshold for developed country producers, and the 0.5 per cent presently used by the United States. There is also an exemption for "negligible" developing country suppliers - defined as having less than 4 per cent of any country's imports (but still higher than the 3 per cent global "competitiveness" threshold) and 9 per cent collectively.

Subsidies related to developing countries' privatization programs shall not be actionable. In cases of serious prejudice directed against developing countries' exports, the onus of proof will lie with the complainant.

Nonetheless, developing countries will be required to undertake major changes, and this could well prevent them from following the trade strategies pursued by many developing countries since the 1960s, in which export subsidies for manufactures played a major part (Helleiner, 1994). Sanctions against interventionist industrial policies which affect trade may deter poorer countries from pursuing the development path of many East Asian economies. It could be argued that many countries are already being forced by domestic adjustment programs to reduce their subsidy programs; nonetheless, the WTO rules limit their options further. To the extent that these are also conditions of Bank/Fund financial support, it reaffirms concerns about the WTO reinforcing the conditionalities of the World Bank and the IMF.

Finally, developing countries may need assistance in meeting the new requirements involved in countervailing action and in the obligations for third countries to provide information needed for determining injury in their markets (Annex 5) (GATT 1993). There may be an opportunity for amending the rules when they come up for review in five years.

E. Technical standards

As tariff and traditional non-tariff barriers have been dismantled, exporters have found other constraints limiting their market access. In particular technical, sanitary and phyto-sanitary standards (SPS) have multiplied and are likely to continue to do so in response to growing concern about the environment. A key objective in the Uruguay Round in both areas was to identify a number of principles to which all countries

would adhere, both in terms of the substance of the standards, and the process for their selection and enforcement.

General objectives common to both agreements include increased transparency in standards selection and enforcement, harmonization with international standards, the use of the least trade-restrictive measure to comply with any standard, and a technical expert group to assist in resolution of disputes. One concern for commodity exporters has been the scope for subnational bodies to introduce their own, often discriminatory standards; this has been associated with increasing environmentalism. The new rules require federal or central Governments to take positive measures to ensure that these other subnational authorities and non-governmental organizations comply with the new international rules.

International standards are to be used as far as possible - in the case of SPS scientific justification or some form of risk assessment is required for standards which go beyond the international norm. Mutual recognition is also encouraged. Developing countries will be allowed to have non-conforming standards for the protection of domestic technologies (Agreement on Technical Barriers to Trade, Article 12).

Both agreements recognize the difficulties of developing countries in meeting standards, and note the need for technical assistance for exporters. Developed countries have agreed to ensure that standards do not become unnecessary obstacles to developing country exports, and they may be given longer to comply with new standards. However, developing countries, and especially the least developed, may find it difficult to comply with one SPS rule, namely that exporting countries be required to prove that their standards (and conformity assessment measures) are equivalent to those in the importing country (Article 14).

Developing countries will be given longer to comply with the commitments in terms of process - i.e. to create their own regulatory body which will publish details of standards in preparation every six months. Technical assistance will be granted for this purpose, with priority being given to requests by the least developed countries. In the case of SPS, which are probably more important for developing country agricultural exporters, the references to technical assistance are more extensive. It may take the form of advice, credits or grants to cover training and equipment to comply with SPS, whether in terms of the processing technologies, research or the creation of the regulatory infrastructure. The possibility of regional cooperation in this area is not mentioned though it could be a way for smaller countries to minimize the associated costs. Finally, it is also important to increase effective participation of the developing countries in the various international standardization bodies (Rege, 1994, p. 109).

F. Other obligations

The Final Act includes a number of other commitments for least developed and low-income countries, as for other all developing countries. Those addressed here concern the use of import restrictions on balance-of-payments grounds, preshipment inspection and import licensing. The main impact appears to be to narrow the types of policies available for use in economic management, and to require certain administrative changes.

The balance-of-payments rules require the use of price-based measures, with quantitative restrictions only in critical situations, and then only one type of restrictive measure may be used on the same product. Any restrictions should be applied across-the-board, without discrimination between products, though exemptions are allowed for essential imports such as foodstuffs, capital goods and industrial inputs.

Countries using preshipment inspection must establish strict timetables. Price verification must follow certain methods, with a strict definition of what may be used as the basis of comparison - for example, the price of similar goods offered for export to other countries may not be used, nor may the cost of production. Disputes may be taken to an independent review panel for binding resolution.

On import licensing, developing countries have two years to comply with the agreement which sets out various standards for transparency, and allocation of licenses between exporters. At the same time, the agreement requires

that developed countries issuing import licenses give special attention to products from developing, and particularly least developed, countries.

V. New issues

A. Services

An important feature of the Uruguay Round was the inclusion for the first time of services - an area accounting for some 20 per cent of world trade. For a while, both at the beginning and towards the end of the negotiations, this sector proved to be a major stumbling block. In the early stages, many developing countries were concerned about being required to open up a domestic sector with important strategic interests (e.g. finance, telecommunications) to increased competition from foreign producers and investors. Over time their concerns diminished as it became clear that liberalization might help to increase the transfer of technology and efficiency in these areas, contributing to overall economic modernisation and integration into new types of international production networks. In addition some developing countries recognized they had an interest in promoting their own service exports. Third, it became clear that the Round would not require major liberalization immediately so much as a standstill and commitment to subsequent negotiations about liberalization.

Towards the end of the Round, a problem arose over the extension of unconditional MFN treatment to all WTO members. Countries prepared to make major commitments were concerned about the possibility of others free-riding. While the major battle on this was between the United States, the European Union and Japan, many service firms in the United States also wanted to use reciprocity to force some of the larger developing countries, like India, to open up their markets.

The rules in the General Agreement on Trade in Services (or GATS) represent a major extension of the multilateral trade regime, though they differ markedly from the GATT and there are several areas of unfinished business. As in the two other new areas tackled in the Uruguay Round (investment and intellectual property), the GATS recognizes the importance of commercial presence and also the scope for cross-sectoral retaliation. It is unique, however, in its references to the movement of people as both consumers and producers of services.

There are a limited number of general principles, similar to parts of the GATT, relating to transparency, domestic regulation, recognition of licenses, economic integration and dispute settlement. Monopolies will be allowed, provided they do not undermine countries' specific commitments, whereas other restrictive business practices may have to be eliminated, if another country considers them to affect their trade interests. No rules have yet been agreed for subsidies, dumping, government procurement or safeguards. While unconditional MFN treatment is a general obligation, it is qualified by an annex allowing for exemptions if one country considers another's offer to be inadequate - already some 70 countries have registered exemptions.

National treatment and market access are not included as general principles. Instead, they will be applied only to sectors and modes of supply listed in each country's schedule. For example, once a country has included delivery of computer services by commercial presence in its schedule, it will no longer be able to limit the number of local subsidiaries of foreign computer service firms - as this would deny them their market access rights. Nor could the country limit the market share of a foreign computer service firm, as this would deny them national treatment. Reservations may be entered, however, allowing for the denial of certain types of national treatment or market access. Similarly, additional commitments may be made for listed categories. No new restrictions may be introduced in scheduled sectors (except on an emergency basis). This standstill may be more important than the liberalization incorporated in the text.

There are some sectors on which the negotiators were unable to reach complete agreement, notably maritime transport, basic telecommunications, financial services and movement of "natural persons" (people as distinct from *juridical* persons, i.e. firms). Government services and air transport were put to one side early on. Instead, various sectoral annexes have been attached to the GATS, recording areas of agreement, and setting out a timetable for subsequent negotiations.

Special and differential treatment is mentioned in various places, but overall it does not appear very substantial. The preamble notes the need to facilitate developing countries' participation in global services trade, their particular need to regulate services to meet national policy objectives, and the special difficulties of the least developed countries. Special treatment is in principle to be given to developing countries by liberalization of their access to northern markets in sectors and modes of supply of particular interest to them, and through improving their access to technology, distribution channels and information networks (Article IV). In addition, developed countries will establish contact points within two years, to make available information about their services markets and their services technologies. Least developed countries are to be given priority in these various efforts, with the additional understanding that they themselves may not be able to make extensive commitments (Article IV). But the agreement notes that the modalities for special treatment of least developed countries in future negotiations still need to be established (Article XIX).

In the case of regional agreements involving trade in services, developing countries will not have to meet the same standards of coverage and non-discrimination as others (Article V). Restrictions of services on balance-of-payments grounds will be subject to certain requirements, including IMF approval of the assessment of the country's financial situation (Article XII). Developing countries' need to use subsidies will be taken into account in the planned negotiations (Article XV). Developing countries have greater flexibility in establishing contact points with respect to their own policies, and least developed countries have an extra year to submit their schedules. Finally, in the annex on telecommunications there is reference to the need for technical cooperation (rather than a firm commitment to assistance) for all developing countries through regional and international organizations like the International Telecommunications Union. Special consideration shall be given to the development of the sector in the least developed countries, but again this is worded in a very general way.

The agreement has to be evaluated alongside the specific commitments of each country. A predominantly positive-list approach, rather than the use of a negative list (as in the NAFTA) which would have required the listing of all sectors which a country wished to exclude from the GATS commitments on national treatment and market access, was adopted partly on the grounds that it would be administratively easier for countries, in particular developing countries, likely to include fewer sectors or rules in their offers (Hoekman and Sauvé, p. 43). Even so, some developing countries were unable to meet the deadline for presentation of their schedules and the one year delay for least developed countries may prove to be inadequate.

The general consensus among most analysts is that the GATS is a significant first step towards subjecting international trade in the services to multilateral rules, but that there remains a lot for further negotiation. It has been suggested that one consequence of the positive approach, combined with the listing of commitments according to the four separate modes of supply[5], may have been somewhat less extensive offers by developed countries, notably in the area of cross-border movement of service providers (ibid., p. 35). Another result is a serious problem of transparency; it is very hard to interpret how far markets have been opened, while there is no information at all on sectors which are excluded altogether (ibid., p. 34). On the other hand, a listing of all exceptions would have been extremely lengthy, cumbersome and thus difficult to evaluate.

By spring 1994, some 94 countries had listed commitments for 160 service sectors (Heeter, 1994). For example, 58 countries had listed construction, engineering and architectural services, while 57 had done so for computer, data processing and information services, and 51 for value-added telecommunication services. The nature of the commitments varies considerably from country to country. For example, India has agreed no longer to require reciprocity in accounting services, and to bind the ceiling on foreign ownership in many sectors at 51 per cent. In general, it appears that developed countries'

5 These are cross-border supply (as in traditional goods trade), movement of consumers (as in the case of tourism), commercial presence (when a service is supplied by a locally based but foreign-owned firm) and movement of personnel (when a service requires the temporary local presence of a foreign individual).

offers have covered two-thirds of their service sectors, while for developing countries only one-fifth is covered (Hoekman and Sauvé, p. 33).

Somewhat unexpectedly, given their initial objections, developing countries have made more commitments concerning commercial presence (involving foreign investment) than cross-border trade let alone the movement of people. Several (notably in Asia) were reluctant themselves to make concessions in the latter area because of concerns about diminishing national control over domestic labour markets. Nor were they willing to make sufficient concessions in other areas, such as financial services, to persuade developed countries to make major offers involving the movement of people. While some developed countries have agreed to open their markets to people supplying skilled services, this has been restricted largely to two categories: temporary intra-corporate transfers such as company managers and specialist staff, and business visitors, looking for contracts to be carried out in their country of origin. There were fewer offers for a third category - namely contract professionals, looking to deliver services in the importing country - as India and others wanted. Canada, for example, will allow foreign engineers, architects, agrologists, forestry and geomatics[6] specialists (but not computer specialists as India had requested specifically), to perform contracts in Canada for 90 days or less, as needed.[7]

While the GATS commitments are not meant to diminish the powers of immigration officials (see Annex on Natural Persons), they will make it easier for foreign workers to enter other countries - a visa should be granted without any labour market requirements (usually a national firm can only give a contract to a foreigner if no national citizen is available with the same skills). There will still be other hurdles - such as minimum educational qualifications and temporary licensing from the relevant professional body in the importing country - though countries may agree to recognize certificates or licenses issued by other countries.

There are no estimates of the likely impact on migration flows of these changes, but they are likely to be small. The United States has included a global quota of 65,000 people in its schedule. The openings for engineers could provide countries like India with new but still relatively marginal sources of revenue. On the other hand, if the opportunities are greatly expanded for skilled service providers, this could exacerbate problems of brain-drain for some countries. A particular disappointment for some least developed and poorer countries with labour surpluses may have been the absence of any new openings for unskilled service providers (e.g. construction workers).

The unfinished nature of the GATS is illustrated by the extensive list of subjects on which negotiations are scheduled to continue: financial services (to be concluded within 6 months of the WTO entering into force), natural persons (within 6 months), subsidies, safeguards, professional services, government procurement, basic telecommunications (to be concluded by 1996), audiovisual and maritime services (to start within three years), all other sectoral commitments (within five years), elimination of all MFN exemptions in 10 years. Least developed countries may need assistance from the WTO, UNCTAD, the World Bank or some other agencies in determining their strategies for these follow-up negotiations.

B. Intellectual property rights

For least developed and low-income countries there are a number of issues raised by the introduction into the GATT of rules on intellectual property:

- What types of rules should they introduce to conform with the GATT?
- Will the new rules preempt development along the lines followed by the developed countries and the newly industrialized coun-

6 Geomatics is the science of map-making using remote-sensing and other advanced technologies.

7 At one point in the negotiations, Canada reportedly made an offer on computer professionals which it later withdrew partly because the United States, the European Union and Japan failed to follow suit, and also because India, a major potential beneficiary, did not make a significant offer on financial services.

tries (NICs) - i.e. the development of technological capacity by reverse engineering? Or will they be able to take advantage of patents to develop new products and processes?

What assistance will the developed countries provide, and will this offset some of the costs associated with the new rules - both the administrative costs and the difficulties of accessing new technologies?

The new rules substantially strengthen the rights of intellectual property (IP) owners, granting them national and MFN treatment. They increase IP duration, e.g. in the case of patents to a uniform 20 years and in the case of copyrights for records and performers from 20 to 50 years. They extend the scope of IP by limiting product exclusions and outlawing certain practices, many of which have existed in developing countries. For instance, patentees will have exclusive import rights, and local working requirements will be eliminated, though compulsory licensing will be allowed to combat cases of monopolistic pricing and on a number of other grounds (see below). And finally they provide IP owners with access to international trade sanctions for their enforcement.

The only reference in the preamble to developing countries is with respect to the special needs of the least developed countries for flexibility in the implementation of IP laws, to create a sound and viable technological base. Differential treatment, as elaborated in the provisions, primarily involves longer time-frames for least developed and other developing countries, with some additional references to technical assistance and incentives for technology transfer. The eventual aim is for all WTO members to have a common approach to IP, and one which will allow for further strengthening of IP rights over time.

Least developed countries will be allowed an 11 year time-frame for introducing national IP laws with the possibility of further extensions as necessary - compared to five years for other developing countries and one year for developed countries. Other developing countries will be allowed another five years to introduce IP laws in sectors such as pharmaceuticals not previously covered by domestic IP law. However, for pharmaceuticals and agricultural chemicals, all countries will have to provide a system for filing claims within one year of the WTO coming into effect, to ensure early enforcement of patents once the transition period is over. These products will also be eligible for exclusive marketing rights for five years in a developing country, once they have been approved and if they have been the subject of a patent in another country (Article 70).

Two types of compensation will be available for developing countries. Developed countries will provide financial and technical assistance in the creation of legislation and supporting institutional mechanisms for administering and enforcing the new IP laws. Developed countries will also provide incentives to their enterprises and institutions to transfer technology to least developed countries. In both cases, however, the details remain to be specified, for example the amounts and terms of the financial assistance, and whether it is additional to existing aid programmes, as well as the types of incentives. Without this detail it is impossible to determine the extent to which the higher costs of imported technologies will be covered, nor the impact of the incentives.

There are a number of other provisions which, though generally available, seem designed to respond to the particular interests of developing countries. For instance, countries will be allowed to adopt measures necessary to protect public health and nutrition, to promote public interest in sectors of vital importance, and for socio-economic and technological development (Article 8). But this principle is somewhat circumscribed by the requirement that any such measures will have to be consistent with the rest of the agreement. Secondly, various products and methods may be excluded from patentability if necessary for human health or to avoid serious prejudice to the environment (Article 27). Plants, animals and related biotechnologies may also be excluded, though some form of protection for plant varieties must be provided.

There are also various limited exceptions to the rules, or safeguards from the viewpoint of net-importers of IP, though how far they can be taken is also a matter of some debate. For example, compulsory licensing may be used on grounds of protecting the public interest, in extreme emer-

gencies, or in non-commercial public use, or on grounds of unreasonable behaviour by the patentee, for example excessive pricing of protected products or unreasonable licensing terms (Article 31). But even here, there are a number of conditions which must be complied with: production must be "predominantly" for the domestic market (raising questions about the extent to which exports are allowed without the risk of sanction), for limited periods, and IP owners must be given "adequate" remuneration.

While the GATT establishes a basic framework, it appears to provide scope for considerable national variation in the fleshing out of the rules. Certainly there are already important differences in existing national IP regimes among developed countries. Developing countries need to ensure that the rules they adopt trigger local adaptation and improvement of foreign inventions as far as possible (Reichman, 1993, p. 40; Crucible Group, 1994, which also notes the importance of *sui generis* systems, p. 71). But, while different countries may enact different types of protection, it is not clear that this will exempt their exports from charges of patent violation in countries with higher standards of IP.

Some authors have raised concerns about the ambiguity of the agreement leading some countries to take action against countries whose national systems they consider to be inadequate or ineffective; any export infringing a patent in an importing country could be illegal. This raises questions about how far countries really can have IP systems which are *sui generis*. The uncertainty may deter investment in developing countries, and may have to be tested in the WTO dispute settlement process. Developing countries may wish to cooperate with each other on this.

The new rules also place the burden of proof on the defendant in cases involving alleged infringement of process patents (Article 34), although Article 48 requires the defendant's legal costs to be paid by the applicant where a case is shown to have been brought on frivolous grounds. Nonetheless, some form of legal aid fund may be needed to ensure that firms in developing countries are not deterred from using imported technologies.

Finally, developing countries may also benefit from the commitment of all countries to help each other with investigations of anti-competitive practices (Article 40).

Some analysts firmly believe that stricter IP enforcement will lead to the greater diffusion of technology to developing countries, whether by licensing or investment, more funding of local (and, maybe, more appropriate) R&D, and even increased earnings from patented exports. It is even suggested that increasing the number of patents registered locally will extend the information available for local research and development of similar products.

Most least developed countries, however, would likely lack the technological resources needed to mine the patents or develop biotechnological innovations for patenting. A few may lose domestic industries dependent on compulsory licensing or reverse engineering, but it is more likely that they will be affected by the costs of imported technology which are generally predicted to rise as a result of the new international IP regime. Unfortunately, there are no estimates of how much costs could rise, nor whether these will be offset by the higher quality of technologies made available locally, increased investments, or even by increased market access for developing countries in other areas. Another focus of some critics is on the ecological impact, which it is argued could be significant and negative, unless parallel efforts are made to support informal innovation, which is critical for biodiversity as well as for smaller farmers (Crucible Group, 1994).

Certainly the rules on biotechnology and plant varieties could be of particular concern to least developed country exporters of agricultural commodities and to their farmers supplying domestic markets. The other major concern is with drug costs. In both cases the ambiguity of the new rules has led to substantial disparity in the assessment of their impact. This was well illustrated in the case of India where critics of the Uruguay Round argued that farmers would no longer be able to use their retained seeds and that drug costs in the public health care system would rise with the end of compulsory licensing. The Government, on the other hand, noted that it would be able to protect farmers' rights through new legislation, and it could still impose price controls on drugs as well as compulsory licensing for non-commercial public use (*India News*, 1994).

Least developed countries will also find it difficult to cover the costs of administering the rules e.g. of enforcing trademarks, taking action to prevent the export of counterfeit products, and even to take criminal action against counterfeit pirates, as required by the new agreement. These will likely be considerable, and inevitably will detract scarce skilled scientific personnel from technological development work.

Pressures on developing countries to strengthen and extend intellectual property rights will continue in the series of meetings scheduled both within the WTO and outside. The WTO agreement as a whole will be reviewed after two years, and systems for plant variety registration after four years, raising the possibility of rule changes even before developing countries have introduced their own systems. Accession to regional agreements with developed countries will be another pressure point. For instance, the NAFTA has a three-year time-frame for compliance by Mexico rather than the GATT's five years, and requires Mexico to sign onto the international convention of the Union for the Protection of New Varieties of Plants (UPOV) (Annex 1701.3 to the North American Free Trade Agreement). Access to preferential tariff schemes like the GSP and bilateral aid are also being linked to intellectual property enforcement. In the past the United States withdrew GSP on some Indian exports to protest India's weaker laws. More recently it has been suggested that United States aid and additional incentives under the GSP of the European Union be made conditional on developing countries agreeing to go beyond their obligations under the Uruguay Round. Finally, developing countries will be under pressure to amend their IP regimes during international negotiations outside the WTO, such as the 4th International Conference on Plant Genetic Resources to be held in Berlin in 1996.

C. *Investment measures*

The agreement on trade-related investment measures (TRIMs) requires GATT members not to use investment measures which affect other countries' trade rights under Article III (National Treatment) and Article XI (quantity restrictions). An illustrative list appended to the agreement includes trade balancing and local content requirements.

All countries have 90 days from the entry into force of the WTO to present a list of any exceptions to these rules which they wish to maintain. But all exceptions will have to eliminated by developed countries within two years. Developing countries have a five-year phase-out, and least developed countries seven years with extensions possible in both cases. Beyond this period developing countries will be able to maintain WTO-inconsistent measures, if necessary to promote infant industries or to protect the balance of payments. Disagreements will be handled under the new WTO dispute settlement mechanism with the possibility of trade sanctions. The workings of the new rules will be reviewed by the Council for Trade in Goods within five years, and amendments may be recommended for ministerial approval. In particular, the list of banned measures may be extended, and complementary rules on investment and competition policy may be introduced.

The rules fall short of the objectives of some developed countries, notably the United States and Japan, which had also sought changes in rules on technology transfer, remittance restrictions, licensing and equity (Puri and Brusick, 1989). The European Union and the Nordic Countries defined the range of measures likely to affect a company's trade patterns more narrowly, excluding the right of establishment and transfer of resources.

It is worth noting that in many respects the rules on TRIMS are considerably less stringent - in terms of limiting government regulation of foreign investment - than the North American Free Trade Agreement. Examples of policies outlawed in the NAFTA (but not in the Uruguay Round) include: requiring foreign investors to transfer technology, to train local staff, to hire local senior managers, to include local directors in their boards, to have a minimum share of locally held equity; restrictions on remittances even on balance of payments grounds; lowering of environmental standards to attract foreign investment; expropriation without compensation (other than in exceptional circumstances).

In contrast, the GATT TRIMs are probably more acceptable to many developing countries, given their much narrower coverage, and the flexibility of the balance of payments and infant industry exceptions, though the latter have been

tightened (as already discussed above). Developing countries will still have other instruments for regulating foreign investment - to the extent that they wish to do so.

It is important, however, to recognize that many other parts of the Uruguay Round deal with private foreign investment - in effect strengthening the rights of foreign investors, for example their intellectual property rights and their right to establish a business to supply services. Altogether these rules may provide increased incentives to foreign firms to locate production in developing countries. But it appears unlikely that they will greatly alter the distribution of flows, let alone reverse the decline in flows to the least developed countries recorded in recent years, notably in sub-Saharan Africa.[8]

The extension of the WTO's rules to include competition policy could make them more balanced from the viewpoint of developing countries. Besides promoting national development objectives, many had argued in the early stages of the Round that TRIMs were intended to correct trade distortions caused by some foreign firms' restrictive business practices (RBPs). Therefore any reduction of national TRIMs should have been accompanied by international rules on RBPs (Puri and Brusick, 1989, p. 206). This line of negotiation was dismissed by the United States and the European Union. But (as outlined below) in the latter stages of the Round support grew for research and discussion in the WTO on the relationship between trade and competition policy, and this may open the door for discussion of RBPs.

VI. The World Trade Organization and institutional changes

The Final Act embodies a number of institutional changes with important implications for the way in which the international trading system is managed and for linkages with other bodies involved in international economic management. In contrast to the uncertain and temporary status of the GATT, the World Trade Organization will be a permanent body designed to oversee the new trade rules and manage their evolution through ongoing negotiations and more regular meetings of trade ministers. In addition, it has been given a mandate to increase coordination with the World Bank and the IMF, as well as other international and non-governmental organizations.

The WTO will hold a ministerial conference at least once every two years. In the interim, a General Council will oversee the general business of the WTO as well as dispute settlement and the review of members' trade policies. In addition, there will be three separate councils for goods, services and intellectual property issues, and various committees for each of the separate agreements - agriculture, anti-dumping, etc. The ministerial conference may create additional committees. The Final Act created committees for budget, finance and administration, balance of payments, and trade and development. A committee on trade and the environment was established at the GATT ministerial meeting in Marrakech in April 1994, but the United States proposal for a committee to look at trade and labour issues was rejected. The Trade and Development Committee is intended to review the various provisions in the Uruguay Round agreements relating to least developed countries, and make recommendations to the General Council as necessary.

A. Voting structure

In principle, all countries will be given equal representation in the WTO with each country having one vote, as in the GATT, whether in the ministerial conference, the General Council or any of these other bodies. As far as possible the WTO will continue the GATT practice of decision-making by consensus - i.e. new rules will be adopted if no country registers an objection. For instance, if a country has not been able to meet

8 In 1991-1992 foreign direct investment (FDI) flows to sub-Saharan Africa as a whole fell by 9 per cent; its share of annual average FDI inflows to developing countries fell from 8 per cent in 1987-1989 to 3 per cent in 1992 (World Bank, 1994b, p. 55). As the Bank notes, "The small size of domestic markets, poor macroeconomic performances and infrastructural facilities, and a lack of well-developed indigenous suppliers' networks continue to hamper the growth of FDI in many sub-Saharan African countries" (p. 58).

its GATT obligations within a certain time-frame and wishes to have this extended, it must have the support of all other member countries. Likewise, amendment to some of the rules (e.g. on decision-making) will require consensus. But in several cases, if a consensus is unobtainable, a majority vote will be accepted (by two-thirds, e.g. for accepting the terms of a country's accession, or three-quarters, e.g. for waiving a country's obligations). In general, the degree of support required for laws to be changed or waivers accepted has been increased, with consensus mandatory in a greater number of instances than in the past and higher majorities required in other cases (Steger, 1994).

In many respects the one-country-one-vote rule is similar to those used in United Nations agencies and quite different from the weighted voting in the IMF or the World Bank, where, as a result, developed countries have had the majority control. The WTO structure has been the subject of criticism by the United States and other large countries, like India, reluctant to concede control over economic policy-making to supranational bodies in this way. In response some have suggested that there should be a smaller body, for example an executive committee with decision-making powers, going beyond the GATT's Consultative Group of 18 set up in 1975. This would include a small number of the largest trading countries as permanent members, and a rotating membership of smaller trading countries representing each region. Similar suggestions were made about ways to modify the GATT in the 1980s (see, for example, GATT, 1985; Camps and Gwin, 1981; Finlayson and Weston, 1990). During this period, larger countries, unable to use their economic weight to change GATT rules, increasingly took unilateral action or initiated bilateral trade deals to persuade other countries to abide by new trade standards which went well beyond the GATT. Many of these standards have now been incorporated in the Final Act.

Nonetheless, there are still pressures for a two-tiered approach to decision-making in the WTO to make it realistic as well as equitable. In the absence of movement in this direction, negotiations may move outside formal channels to smaller groups of large trading countries. This happened at several points in the Uruguay Round, raising concerns for excluded countries, often the smaller developing countries, about the lack of transparency and their inability to represent their interests.

B. Links with international organizations

The reference in Article 5 of the WTO agreement to cooperation with other international organizations is also quite vague, leaving appropriate arrangements still to be worked out. But other parts of Final Act take this subject further.

Most attention has focused on linkages with the World Bank and the IMF - the only two organizations mentioned in the "Declaration on the Contribution of the WTO to Achieving Greater Coherence in Global Economic Policymaking" (attached to the Final Act). This calls upon the chief executive officers of all three organizations to review areas for cooperation - the issue was mentioned at the 1994 Group of Seven summit and will be pursued at the 1995 summit. It could help to minimize conflicting policy advice to developing countries and to persuade developed countries that exchange rate stability is necessary for a stable international trading system. Also, as the declaration notes, the Bank and Fund can help to mitigate the "significant transitional social costs" often involved in trade liberalization and the costs of higher food import costs. What is needed is an evaluation of past Bank and Fund efforts in this area, to review their appropriateness and adequacy in the light of the adjustments expected to follow the Uruguay Round. For example, the terms and conditions of the Fund's Contingency and Compensatory Financing Facility, which is intended to cover increased food import costs, are such that it may not cover some countries' needs.

The declaration explicitly states that increased cooperation between the WTO and the Bretton Woods institutions must avoid the imposition of new conditions or cross-conditionality on countries. For example, a clean trade policy review by the WTO should not become a prerequisite of access to Bank or Fund resources. But there are provisions in the Final Act requiring Fund approval of balance-of-payments needs to justify certain exemptions from general obligations. In some respects developing countries could use arguments about coherence between the three organizations to their own advantage,

for example to argue that tariff cuts proposed by the Bank go well beyond what they have agreed to in the Round.

The WTO's links with other, United Nations, agencies - and whether the WTO should be a United Nations agency, answerable to the General Assembly, rather than joining the more distant Bretton Woods institutions - appear more tentative. But several United Nations agencies, as much as the Bank and the Fund, might help in the transition to the new rules, for example by assisting countries in creating the new institutional machineries needed to implement Uruguay Round commitments. They might coordinate increased technical assistance for least developed countries to diversify and expand their exports. Several of the specialized agencies have the technical expertise to back up WTO work. The evolution of rules on intellectual property will be coordinated with the World Intellectual Property Organization (WIPO) and on telecommunications with the International Telecommunications Union (ITU). WTO work in the new areas of the environment, labour and competition policy could usefully draw on the expertise of the Commission for Sustainable Development and the United Nations Environment Programme, the International Labour Organization and UNCTAD (in particular its work on restrictive business practices and, more recently, on transnational corporations).

C. *Links with non-governmental organizations*

Questions have been raised about the transparency, accessibility and accountability of the WTO to the broader public in member countries, and specifically to producer, consumer, women's or other groups likely to be affected by some of the new trade rules. While the new trade rules are intended to increase transparency in domestic trade policy in individual member countries, e.g. in the setting of anti-dumping duties, the design of the new rules in the WTO, and resolution of disputes over their implementation, appears increasingly inaccessible to national constituents. (Similar complaints about a "democratic deficit" have been raised in connection with the European Union and the NAFTA.) Concerns have grown as trade policy has moved beyond tariffs to several areas of domestic policy, often requiring Governments to reduce their economic intervention; Governments may argue that changes in domestic policies are inevitable given the consensus reached in Geneva. In essence, the concerns reflect a distrust in government accountability as much as in the WTO.

In response some Governments have begun to broaden their consultative process - as in Canada, where environmentalists are represented on the International Trade Advisory Committee. The labour and environmental side-agreements to the NAFTA have some provisions allowing non-governmental organizations (NGOs) to play a role, albeit still minimal, in the management of North American trade. The Agreement establishing the WTO provides for cooperation and consultation with NGOs but the details are still to be elaborated. Several labour, environmental, and labour groups from North and South have called for the WTO to grant them the right to attend, give evidence and even initiate dispute hearings. Some may be involved in the expert review groups consulted by dispute panels. But for the time being they are unable to seek enforcement of WTO obligations independently. For NGOs in least developed and low-income countries, an important issue will be to ensure that they are able to take advantage of any openings in the WTO, so that the NGO input is not dominated by northern organizations. It will also be a challenge to ensure that this process of politicization does not increase uncertainty for exporters.

D. *Single undertaking*

Another major change in the WTO is the single undertaking whereby all countries will have to accept all parts of the Final Act - i.e. all of the new rules. The aim is to avoid the fragmentation of the international trading system as happened after the Tokyo Round, when some GATT rules (which became known as plurilateral codes) were only signed by a handful of members. In effect, the codes have now been multilateralized. While this may make the international trading system easier to administer and analyze, it is also important in a systemic sense, to ensure the GATT does not become a two-tiered system, with more extensive liberalization between like-minded and usually developed countries, leaving others behind, especially smaller and poorer developing

countries. Developing countries will receive strengthened rights - for example, they will now have the right to an injury test in United States countervail cases which was previously limited to signatories of the subsidies code. On the other hand, they must also assume new obligations, as outlined elsewhere.

In fact, it proved impossible to reach multilateral agreement in all areas, with the result that some parts of the Final Act are still plurilateral. These include the agreements on government procurement (a potentially important area for some developing countries), civil aviation, dairy and beef. Parts of the services agreement narrowly avoided becoming plurilateral codes, though this could yet happen (as outlined above). Finally, there is still a hierarchy of trade rules, with regional agreements now covering more than half of world trade and offering preferential treatment to members as compared to non-members.

E. Dispute settlement and cross-retaliation

The Round sought to improve the GATT's dispute settlement mechanisms and thus to restore its credibility. The lengthy process involved in obtaining a panel's report, coupled with the possibility of its adoption being blocked by either party to the dispute, had become a major reason for some countries to take unilateral action and others to negotiate bilateral or regional agreements with faster and more binding dispute resolution rules. Key features of the new WTO rules include:

- a commitment to use the WTO procedures, rather than unilateral action, wherever WTO rules are at issue;
- a faster time-table (with cases to be completed within twelve to fifteen months, see Davey, 1994);
- requiring a consensus to reject (rather than adopt) a panel's report;
- the possibility for a panel to seek advice from an expert review group;
- the creation of a binding appellate review body of experts rather than officials; and
- the possibility of cross-retaliation.

Many of these new rules were introduced on a trial basis before the Round concluded and this may be one factor behind the increasing number of cases brought by larger developing countries in recent years.

A number of the rules refer explicitly to special treatment for developing countries. In principle, developed countries are to show due restraint in bringing cases, demanding compensation or retaliating against least developed countries (Article 24). Panel reports on cases involving developing countries must consider the special and differential provisions in the agreement under review (Article 12). Compensation for developing countries is to take into account the overall economic effect of the action under review not just the trade coverage (Article 21).

Nonetheless, for very small and least developed countries the approach still has its built-in weaknesses, and they may wish to recommend further changes when the rules are reviewed within four years. The time involved is still costly (in terms of professional costs and trade disruption). A legal expert from the WTO's technical cooperation division is available for any developing country needing assistance (Article 27), but it may be more effective for a legal aid fund to be created on which these countries may draw as necessary. The ultimate sanction remains withdrawal of market access. This is hardly a convincing instrument for countries with small markets, like Bangladesh, against large exporters like the United States, unless the sanctions can be strategically focused on key export sectors. There is no concept as yet of collective sanctions (unless more than one country is seeking compensation), or even fines (as in the European Union and NAFTA in certain cases).

The integrated dispute settlement mechanism associated with the single undertaking of the Final Act eliminates the possibility of forum-shopping - i.e. countries dissatisfied with a dispute panel's findings under one WTO agreement, cannot then bring the case under another agreement. It will also prevent inconsistent decisions being taken across agreements (Steger, 1994). On the other hand, it raises for the first time the possibility of cross-retaliation - one of the publicly most debated features of the new rules. If a developed country fails to obtain changes in a developing country's insurance services policies, following a panel's findings that these are incon-

sistent with the latter's new WTO commitments, it can then retaliate against the developing country's clothing exports. In fact the rules require that retaliation be taken first in the same sector (insurance here), second in another sector covered by the same agreement (services), and only if neither option is practicable or effective, can action be taken under another agreement (clothing). Also, it is possible that cross-retaliation may increase the options for developing countries' leverage by providing them with a greater range of sectors in developed countries to target (Davey, 1994; de Silva, 1993).[9]

F. Trade Policy Review Mechanism

Another way in which the Round sought to strengthen the GATT/WTO was through the creation of the Trade Policy Review Mechanism (TPRM). This was initiated without too much controversy halfway through the Round, and to date reports on over 50 countries have been published. The four major trading countries (the United States, the European Union, Japan and Canada) are being reviewed every two years, the next sixteen countries every four years and other countries every six years - though for some least developed countries they may be less frequent.

The reviews (each including a report by the member Government and another by the Secretariat) are primarily an exercise in stock-taking - describing member countries' trade policies and institutions, with limited evaluation of their impact either domestically or on trade partners. To a large extent, the Secretariat has relied on reporting others' evaluations rather than undertaking its own. This process could be taken further if more resources were available. Nonetheless, the reports are an important source of information about markets and mechanisms for influencing policy, and provide the basis for peer pressure for policy change when the reports are discussed by the Trade Policy Review Body. In other words, this is an alternative avenue to the formal dispute settlement process. Future reviews, for instance, could analyze the extent to which countries are living up to their statements of support in the Final Act for the least developed and developing countries more generally. They could also be directed to provide data and analysis on some of the newer issues of trade - such as the environment, or even employment (de Silva, 1993).

VII. Other new issues

In this section we briefly review some of the new issues on the international trade agenda, notably the environment, labour and competition policy.

The environment and labour debates raise some similar issues, notably whether international trade rules should govern the production process. Protagonists in both cases have called for the introduction of countervailing duties to offset any cost advantages which exporters may obtain from violating certain international norms. The argument is that this will help to promote more equitable and sustainable development. Developing countries, however, are concerned that these new pressures may be misguided at best, in that they attempt to impose standards which most could not meet. Or they may be another form of protection, threatening to nullify the market openings they have just obtained in the Uruguay Round, in return for which they accepted significant new obligations.

On competition policy, the differences may be somewhat less pronounced. Some developed countries, such as Canada and the European Union, are keen to see an agreement on competition policy substitute for the present anti-dumping rules. The issue for developing countries is whether international trade rules can be used to control restrictive business practices, and increase the obligations of transnational corporations, building on the work of the United Nations (and others) in both areas.

In all three cases, questions need to be asked about the proper body for norm setting, the relationship with trade and the use of trade as an enforcement mechanism.

9 For example, a country whose clothing exports are found by a WTO panel to be unfairly restricted by another country now may withdraw MFN treatment from the latter's financial service suppliers.

A. Environment

Work on trade and the environment has been prompted partly by concerns about the environmental implications of trade, and partly by the implications for trade of the increasing number of environmental regulations.

There is mounting evidence of the environmental degradation associated with many natural resource-based exports, though there are disagreements on the extent and whether this ranks higher than for other types of economic activity. Another issue is the appropriate mechanism for reducing any negative externalities, e.g. whether through cost internalization or regulation of production standards. Failure to follow the same approach has led some countries to use trade sanctions against imports which do not conform with their domestic environmental legislation. As the US-Mexico tuna-dolphin case illustrated, technical standards governing the production process go well beyond present GATT rules on product standards.

A number of international environmental agreements allow the use of trade sanctions against non-members (often developing countries) or members who do not respect their commitments.[10] In most cases these violate GATT principles of non-discrimination, going well beyond the derogations allowed in GATT Article XX on grounds of human, animal, plant life and health. Guidelines are needed to determine when discrimination and trade measures are justifiable (Rege, 1994).

Multilateral agreement in the GATT is also necessary to curb the increasing frequency of unilateral initiatives, whether by national Governments or subnational and even non-governmental bodies, requiring imports to conform with national standards and even the use of eco-labels. While the main objective may not be to restrain or distort trade, they are likely to do so both in terms of the standards chosen and the process for their enforcement. At a minimum, multilateral discussions are needed to ensure increased transparency, mutual recognition and harmonisation around international standards, and the least trade-restrictive measures, as agreed in the new rules for technical, sanitary and phyto-sanitary standards (see above).

Developing countries, and especially least developed countries which are disproportionately dependent on primary commodity exports, are likely to be particularly affected by new rules in this area. It will be important for the WTO trade and environment committee to take their interests into account. To ensure a broad approach, one suggestion is that the environment committee be merged with the trade and development committee - to form a committee on trade, the environment and development (IISD, 1994). This would need to consider flexible standards, financial assistance, compensation for environmental services, the transfer of technology, and other means of enforcement besides trade sanctions.

B. Labour

Concern with the distributional consequences of trade liberalization have led some labour groups especially in developed countries to focus on the issue of labour standards and trade. It is argued that lower labour standards in developing countries provide the latter with an unfair advantage, which undermines developed country standards and needs to be corrected by some form of trade remedy. Some are also keen to promote labour standards in developing countries to ensure that workers share in the benefits of trade. A third group sees non-enforcement of labour standards as a violation of human rights, which should be penalized by the withdrawal of trade privileges. As in the case of the environment, the challenge for policy-makers in the 1990s is to determine what are appropriate labour standards and what role trade can play in their realization.

If standards are set too high, they could reduce output and employment especially in poorer developing countries. The ICFTU and others have therefore concentrated on a shortlist of the most widely ratified ILO standards - freedom of association, right to organize and collective bar-

10 Examples include the Montreal Protocol on Substances that Deplete the Ozone Layer (1987) and the Basle Convention on the Control of Trans-Boundary Movement of Hazardous Wastes (1989); see Rege (1994).

gaining, health and safety, discrimination, forced labour, minimum age, hours of work and labour inspection. The suggestion is that trade sanctions be used to enforce these norms, recognizing that the ILO itself lacks economic clout. This would require expanding the coverage of the GATT which at present merely allows trade restrictions where prison labour is involved.

Presumably a panel of labour experts, or an ILO body, would determine violation of the standards, and then the WTO would consider whether this had caused injury, before trade action could be taken. However sensitive the standards or the process, as with other trade sanctions, the effects will be uneven, i.e. they are more likely to influence smaller, poorer, more trade dependent countries, than large or less dependent traders (such as China, or even the United States).

There is a wide range of alternative approaches. For instance, fines may be imposed for non-compliance with regional standards (as in the European Union) or national standards (as in the NAFTA for Canada - the United States and Mexico chose to face trade sanctions instead). The Secretary-General of ILO has proposed some form of social labelling - for companies which agree to abide by certain labour norms. Some NGOs in the alternative trade movement have already introduced a "fair trade" label, while others have led consumer boycotts of products involving child labour. These and various other unilateral initiatives to promote labour standards, ranging from the suspension of aid or other financial flows, to withdrawal of preferential tariffs, argue for a multilateral review of the relationship between trade and labour standards, and particularly the implications for developing countries. This is likely to be on the WTO agenda for the post-Uruguay Round period, even though the United States and France were unable to persuade other countries in April 1994 to agree to a committee dedicated to this task.

C. *Competition policy*

While many Governments have begun to deregulate their economies to attract private sector investment, it is recognized that this may also encourage the growth of monopolies and unacceptable business practices. Several countries, therefore, have competition policies to prevent monopolies and restrict cartel-like behaviour. As these measures appear to be undermined by the failure of other countries to have effective antitrust laws or enforcement practices, it has been suggested that a supranational agency coordinate competition law - and even attempt to harmonize and enforce it.

As a Canadian government report notes: "It is, perhaps, inevitable that competition policy would be internationalized in response to the global corporation. Its constant search for a competitive edge, combined with the current gaps in international antitrust enforcement, are perhaps conducive to greater use of restrictive business practices, cartels and collusion on a global scale" (Canadian Bureau of Competition Policy, 1992, p. 7).

Discussions in the WTO should build on work in the OECD, the negotiations within the framework of the United Nations on a code of conduct for transnational corporations, and UNCTAD's guidelines on restrictive business practices. The possibility of dealing with this issue in the WTO has been raised by senior officials of the European Union, with some support from developing countries. Certainly it would help to introduce some balance between the rights and obligations of investors.

Another suggestion is that competition law replace anti-dumping duties, which often penalize foreign firms for pricing practices allowed under domestic competition law, and can be anti-competitive (in that they restrict import competition and allow domestic firms to raise prices). Some regional trade agreements (like the European Union and that between Australia and New Zealand) have already extended competition policy and eliminated anti-dumping duties on intra-regional trade, though this has not occurred yet in the NAFTA.

Canada's failure in bilateral negotiations to persuade the United States to follow this path suggests that it will not be easy to internationalize competition policy through the WTO. Moreover, there are a number of trade experts who question whether this would be an effective means for dealing with global corporation (see, for ex-

ample, Hoekman and Mavroidis, 1994). They argue that many of the GATT's existing provisions could be used to deal with state-sanctioned anti-competitive behaviour or even passive tolerance of restrictive business practices.

VIII. Areas for action and further research

There are three areas in which complementary action should be taken to help the least developed and low-income countries adjust to the Uruguay Round - these are technical assistance, financial assistance and preferential tariffs. All are mentioned in the Final Act, but in most cases the level of commitment is vague. There is no suggestion of sanctions in case the promised help would not materialize - contrasting sharply with the legally binding obligations accepted by the developing countries. Responsibility for monitoring these assistance efforts for the most part lies with individual WTO councils or committees; overall supervision by the Committee on Trade and Development appears to have been limited to special provisions for the least developed countries (Article 7 of the Agreement).

A. Technical assistance

An interesting feature of the Final Act is the large number of references to technical assistance for developing countries, and especially for least developed countries. These are largely intended to address the extensive institutional and administrative requirements of WTO membership rather than the economic costs associated with the new rules. As the Decision on Notification Procedures notes, there are some 20 measures on which developing country and other members will be expected to notify the WTO secretariat of any policy changes. A working group has been set up to recommend within two years ways to consolidate and simplify these obligations. In the meantime the decision notes that developing countries may need assistance in meeting their notification obligations. Other areas where the need for assistance is recognized are shown in table 3.

The level of commitment varies considerably. In some cases it amounts to no more than "sympathetic consideration", in others to "best endeavours", "second level obligations" or agreement to "facilitate". Sometimes the developed countries are "urged" to provide assistance. Only in a few instances are there firm references to "full obligation" (as in some areas of assistance on technical barriers) or "increased assistance", as in the case of the Decision on least developed countries, where it is stated that they "shall be accorded increased technical assistance". On customs valuation, countries "have the right to request, and obtain, technical assistance from the developed countries". For dispute settlement, the offer of assistance appears circumscribed by the reference to "a" legal expert from the WTO, rather than a more open-ended commitment to legal expertise.

The terms also vary - in the case of sanitary measures, for instance, the assistance may take the form of advice, credit, donations or grants. For technical barriers, the terms will vary according to the stage of development of the country involved. The details remain to be flashed out. Particularly unclear is the reference to "incentives" which developed countries have agreed to provide to their companies to promote technology transfer to least developed countries.

In some areas there was no reference in the text to technical assistance, as in the agreement on anti-dumping duties. The GATT Secretariat notes (1993, p. 55) that it may be difficult for some countries to comply with the new obligations on the use of anti-dumping duties without technical assistance.

B. Financial assistance

Despite the references to "increased assistance" few donors have yet considered seriously how they might help aid recipients adjust and even take advantage of the new trade rules through various financial as well as technical programs. A number are still preoccupied by the preparation of domestic legislation necessary to ensure membership in the WTO. Some take the view that the adjustment costs will be marginal and, therefore, that this is not a priority issue. Others feel that they can be addressed through changes in preferential tariffs (see below).

Table 3

URUGUAY ROUND REFERENCES TO TECHNICAL ASSISTANCE

Subject	Type of assistance	Agent
Balance of payments	Preparing documentation for consultations	WTO
Customs valuation	Training personnel, preparing implementation measures, studies of problems of concern to developing countries	Customs Cooperation Council
Dispute settlement	A legal expert for legal advice and assistance	WTO, Technical Cooperation Services
Food imports	Promotion of agricultural productivity and infrastructure	Bilateral aid programmes
Least developed countries	On expansion and diversification of production and exports	Unspecified
Notification procedures	Meeting notification obligations	Council for Trade in Goods and others
Preshipment inspection	General	Bi-, pluri-, or multilateral basis
Sanitary measures	Processing technologies, research, infrastructure, training; investment required for fulfilling sanitary requirements of an importing country; notification	Bilateral or multilateral; WTO
Services	General	WTO
Technical barriers	Preparation of regulations; creation of standardizing bodies and legal framework for meeting obligations of regional or international agreements on conformity assessment; information for producers on conformity assessment procedures; special effort for least developed countries	Developed countries
Telecommunications	Information for strengthening domestic telecommunications sector, cooperation among developing countries: for least developed countries, foreign suppliers to assist in technology transfer and training	Governments and public telecommunications suppliers to develop programmes of ITU, UNDP, IBRD
TRIPs	For least developed countries incentives for promotion of technology transfer, for all developing countries preparation of legislation on protection and enforcement of IPRs; personnel training	Enterprises and institutions from developed countries
TPRM	Compilation of information on trade policies	WTO

Source: GATT documents MTN/TNC/W/122 and MTN/GNG/W/30, 29 November 1993.

The Canadian aid agency has commissioned a study which will look at the impact on major Canadian aid recipients at a country level, to determine how the Canadian aid programme might respond, and what initiatives might be undertaken through international agencies as well as by developing country Governments themselves. This bottom-up approach is needed to complement the modelling exercises presently underway in UNCTAD, the OECD and the World Bank.

In this context a review is needed of the various funding mechanisms available for covering increased import costs, shortfalls in commodity earnings, and diversification. There are three reasons for questioning the capacity of the IMF's Compensatory and Contingency Financing Facility (CCFF) to cover countries' financing needs adequately . First, CCFF drawings require a country to have a highly conditional IMF programme in place. Second, they are limited both in value and in the sense that they do not compensate for a general decline in the purchasing power of exports. Third, they add to a country's short-term debt-servicing burden. It may be preferable to create a special fund in the World Bank, with more flexible terms. In the case of Africa an alternative could be to make resources available to the commodity diversification fund to be attached to the African Development Bank.

C. *Preferential tariffs*

A number of countries (notably the European Union, the United States and Canada) are undertaking major reviews of their preferential tariff schemes coincidentally with the end of the Uruguay Round - rather than as a result of any commitments therein. Nonetheless, these have to be evaluated alongside the results of the Round; some changes may compensate for the narrowing of preferential margins, or the failure of MFN cuts to be more generous. Others may exacerbate the losses.

A common goal is to increase the GSP usage by developing countries, which is typically quite low. Increased distribution of GSP benefits is to be achieved partly by reducing the GSP usage of the more advanced countries, as well as scheme simplification, larger tariff cuts, broader product coverage and more generous rules of origin. No donor, however, is considering making GSP binding - not even for the least developed countries - although such a strategy would help to increase the predictability and thus usage of preferences.

For instance, the United States has proposed to reduce the country and product graduation levels by 30 per cent - the per capita income threshold would fall from the present $11,400 to the World Bank's high-income threshold, i.e. $7,900 in 1993, while the competitive need limit would fall from $108 million in 1993 to $75 million, with an additional $5 million to be added automatically each year. The European Union is proposing graduation at a product level of any country with a substantial share (15 per cent to 25 per cent) of all GSP imports with no exceptions even for least developed countries. In addition, more advanced countries would permanently lose GSP for more sensitive products, and, after three years, receive complete graduation. (An interesting twist is that the European Union would give priority in graduation to those advanced countries which did not themselves open their markets sufficiently to products from least developed countries.) The United States and Canada are undertaking special reviews of their GSP product coverage to include products of particular interest to least developed countries, although neither is prepared for reasons of political sensitivity to consider clothing and footwear.

These various efforts may be negated by increased conditionality of GSP in both the United States and the European Union, in particular the linking of preferences to labour, environment and intellectual property rights.[11] As a result, it is not clear that developed countries are prepared to compensate the least developed and low-income countries for the erosion of their preferential margins and other losses resulting from the Uruguay Round.

IX. Conclusions

The Uruguay Round should increase global investment, trade and income resulting from the cuts and bindings of tariffs and, especially, non-tariff barriers, as well as the new rules for services and investment. Business certainty will be

enhanced by greater transparency and speed in the handling of trade remedy cases in both developed and developing countries, and of trade disputes in the WTO. But these gains will be unevenly distributed.

Of particular concern for least developed and low-income countries are the predicted rises in food and technology costs, particularly as their commodity export prices will continue to decline. Their exporters of processed products will still face harassment and uncertainty - they were not able to secure an end to tariff escalation, nor immediate removal of clothing restraints, nor complete exemption from safeguards. Their capacity to develop domestic industries capable of responding to the new trade opportunities will be weakened by their new obligations. External support in the form of tariff preferences in major markets will also be eroded by the Uruguay Round cuts. Finally, they lack the administrative and institutional infrastructure needed to manage the new trade rules.

Some of these problems have been recognized. The redefinition of special and differential treatment in the Round's Final Act includes special emphasis on the least developed countries. This mostly provides them with a longer time-frame in which to meet the same obligations as developed countries. An important task of the Trade and Development Committee (with the assistance of research by UNCTAD and others) should be to consider their capacity to meet these deadlines, or whether further extensions are appropriate. The Committee should also review the impact of the new trade remedy rules on least developed and low-income countries, in particular the adequacy of the exemptions for small suppliers from anti-dumping, countervail and safeguard action, with a view to proposing amendments, such as higher thresholds.

Another important function of the Committee will be to monitor whether the various types of help promised by developed countries (in the form of financial or technical assistance and preferential tariffs) are delivered and whether they are adequate. Shortcomings on either score could lead developing countries, and particularly the least developed, to reconsider their own commitments, and certainly to resist further new obligations. Developing countries need to take advantage of the opportunities in the ongoing post-Uruguay Round negotiations to press for changes of particular interest to them (e.g. on labour-intensive services and restrictive business practices).

References

CAMPS, Miriam, and Catherine GWIN (1991), *Collective Management: The Reform of Global Economic Organizations* (New York: McGraw-Hill).

Canada, Government of (1994), *General Agreement on Trade in Services. Schedule of Specific Commitments*, 15 April.

Canadian Bureau of Competition Policy (1992), *Discussion Paper on the Linkages between Competition and Trade Policy*, June.

Crucible Group, The (1994), *People, Plants and Patents. The Impact of Intellectual Property on Trade, Plant Biodiversity, and Rural Society* (Ottawa: International Development Research Centre).

DAVEY, William (1994), "The GATT Dispute Settlement System: Proposals for Reform in the Uruguay Round", paper presented at the Conference on the Future of the Trading System, Centre for Trade Policy and Law, Ottawa.

de SILVA, Leelananda (1993), *A Curate's Egg. An Assessment of the Multilateral Trade Organisation* (London: Christian Aid), October.

European Commission (1994), "Pour mieux intégrer les pays en développement dans le commerce mondial. Le rôle du SPG pendant la décennie 1995-2004" (Communication de la Commission au Conseil et au Parlement Européen), 1 June.

FINLAYSON, Jock, and Ann WESTON (1990), *The GATT, Middle Powers and the Uruguay Round* (Ottawa: North-South Institute).

GATT (1985), *Trade Policies for a Better Future: Proposals for Action* (Leutwiler Report) (Geneva).

GATT (1992a), *Trade Policy Review: Bangladesh* (Geneva).

GATT (1992b), *Trade Policy Review: Ghana* (Geneva).

GATT (1993), *An Analysis of the Proposed Uruguay Round Agreement, with Particular Emphasis on Aspects of Interest to Developing Countries* (Geneva), 29 November.

GATT (1994a), *Trade Policy Review: United States* (Geneva).

GATT (1994b), *Uruguay Round Final Act* (Geneva).

GOLDIN, Ian, and Odin KNUDSEN (1990), "The Implications of Agricultural Trade Liberalization for Developing Countries", in I. Goldin and O. Knudsen (eds.), *Agricultural Trade Liberalization. Implications for Developing Countries* (Paris: OECD).

GOLDIN, Ian, Odin KNUDSEN, and Dominique van der MENSBRUGGHE (1993), *Trade Liberalization: Global Economic Implications* (Paris: OECD De-

velopment Centre and the World Bank).

HEETER, Jr., Charles (1994), "What Services Achieved in the Uruguay Round", paper presented at the Ninth Annual Conference on Canada and International Trade, Centre for Trade Policy and Law, Ottawa, May.

HELLEINER, Gerald, K. (1994), "Introduction" in G.K. Helleiner (ed.), *Trade and Industrialization in Turbulent Times* (London and New York: Routledge).

HOEKMAN, Bernard M., and P. C. MAVROIDIS (1994), "Competition, Competition Policy and the GATT", *World Economy*, Vol. 17, No. 2 (March).

HOEKMAN, Bernard M., and Pierre SAUVÉ (1994), "Liberalizing Trade in Services", *World Bank Discussion Paper* No. 243 (Washington D.C.).

HORLICK, Gary (1993), "How the GATT Became Protectionist. An Analysis of the Uruguay Round Draft Final Antidumping Code", *Journal of World Trade*, Vol. 27 (October).

HORLICK, Gary, and Peggy CLARKE (1994), "The 1994 WTO Subsidies Agreement", paper presented at the Ninth Annual Conference on Canada and International Trade, Centre for Trade Policy and Law, Ottawa, May.

India News (1994), Washington D.C. (1 January).

International Institute for Sustainable Development (IISD)(1994), *Trade and Sustainable Development Principles* (Winnipeg).

LARDY, Nicholas (1994), *China in the World Economy*, (Washington D.C.: Institute for International Economics).

LEE, David (1994), "Services: The Continuing Agenda", paper presented at the Ninth Annual Conference on Canada and International Trade, Centre for Trade Policy and Law, Ottawa, May.

MESSERLIN, Patrick (1990), "Anti-dumping", in J.J. Schott (ed.), *Completing the Uruguay Round - A Results-Oriented Approach to the GATT Trade Negotiations* (Washington D.C.: Institute of International Economics).

OECD (1994a), *Development Co-operation, 1993 Report* (Paris).

OECD (1994b), *A Preliminary Assessment of the Impact of the Uruguay Round on Developing Countries* (Paris), May.

PAGE, Sheila, et al. (1991), *The GATT Uruguay Round: Effects on Developing Countries*, (London: Overseas Development Institute).

PURI, Hardeep, and Philippe BRUSICK (1989), "Trade-Related Investment Measures: Issues for Developing Countries in the Uruguay Round", in UNCTAD, *Uruguay Round. Papers on Selected Issues* (New York: United Nations).

REGE, Vinod (1994), "GATT Law and Environment-Related Issues Affecting the Trade of Developing Countries", *Journal of World Trade*, Vol. 28, No. 3 (June), pp. 95-170.

REICHMAN, J. H. (1993), Implications of the Draft TRIPS Agreement for Developing Countries as Competitors in an Integrated World Market", *UNCTAD Discussion Paper*, No. 73 (Geneva), November.

REPETTO, Robert (1994), *Trade and Sustainable Development* (Geneva: United Nations Environment Programme).

SHAW, Nevin, and Aaron COSBEY (1994), *GATT, the WTO and Sustainable Development. Positioning the Work Program on Trade and Environment* (Winnipeg: International Institute for Sustainable Development).

STEGER, Debra (1994), "The Significance of the World Trade Organization for the Future of the Trading System", paper presented at the Annual Meeting of the American Society of International Law.

TRELA, Irene, and John WHALLEY (1990), "Unravelling the Threads of the MFA", in C. Hamilton (ed.), *Textiles Trade and the Developing Countries. Eliminating the Multi-Fibre Agreement in the 1990s* (Washington D.C.: The World Bank).

UNCTAD/WIDER (1990), *Agricultural Trade in the Uruguay Round: Implications for Developing Countries* (New York: United Nations).

UNCTAD (1994a), *The Least Developed Countries 1993-1994 Report* (New York: United Nations Publication, Sales No.: E.94.II.D.4).

UNCTAD (1994b), *Trade and Development Report, 1994* (New York and Geneva: United Nations Publication, Sales No.: E.94.II.D.26).

UNCTAD (1994c), *The Outcome of the Uruguay Round. Supporting Papers to the Trade and Development Report, 1994* (New York and Geneva: United Na-

Annex tables

Table A 1

GATT MEMBERSHIP STATUS

Least developed countries

Afghanistan		N		Madagascar	M		
Burkina Faso	M			Malawi	M		
Bangladesh	M			Maldives	M		
Benin	M			Mali	M		
Bhutan		N		Mauritania	M		
Botswana	M			Mozambique	M		
Burundi	M			Myanmar	M		
Cambodia		N	D	Nepal		N	A
Cape Verde		N	D	Niger	M		
Central Arfrican Republic	M			Rwanda	M		
Chad	M			Samoa		N	
Comoros		N	D	Sao Tome		N	
Djibouti		N	D	Sierra Leone	M		
Equatorial Guinea		N	D	Solomon Islands		N	
Ethiopia		N		Somalia		N	
Gambia	M			Sudan		N	
Guinea		N	D	Tanzania, United Republic of	M		
Guinea Bissau	M			Togo	M		
Haiti	M			Tuvalu		N	D
Kiribati		N	D	Uganda	M		
Lao People's Democratic Republic		N		Vanuatu		N	
Lesotho	M			Yemen		N	D
Liberia		N		Zaire	M		
				Zambia	M		

Low-income countries

Angola	M			Kenya	M		
Bolivia	M			Niacaragua	M		
China		N	A	Nigeria	M		
Cote D'Ivoire	M			Pakistan	M		
Egypt	M			Philippines	M		
Ghana	M			Senegal	M		
Guyana	M			Sri Lanka	M		
Honduras	M			Tadjikistan		N	
India	M			Viet Nam		N	
Indonesia	M			Zimbabwe	M		

M is a member
N is not a member
A is applying for membership
D is a de facto member. Under Art XXV:5c these countries can become members by a simple declaration to the GATT Director-General to that effect.

Source: GATT (1994b).

Table A 2

FOOD-DEFICIT COUNTRIES

Least developed countries

	Food aid recipient	*Share of food imports in total imports (per cent)*		*Food aid recipient*	*Share of food imports in total imports (per cent)*
Afghanistan	*		Madagascar	*	11
Burkina Faso	*	25	Malawi	*	8
Bangladesh	*	16	Maldives	*	
Benin	*	25	Mali	*	20
Bhutan			Mauritania	*	23
Botswana	*		Mozambique	*	
Burundi	*	18	Myanmar		8
Cambodia	*		Nepal	*	9
Cape Verde	*		Niger	*	17
Central African Republic	*	19	Rwanda	*	
Chad	*	18	Samoa		
Comoros	*		Sao Tome	*	
Djibouti	*		Sierra Leone	*	21
Equatorial Guinea	*		Solomon Islands		
Ethiopia	*	15	Somalia	*	20
Gambia	*		Sudan	*	19
Guinea	*		Tanzania, United Republic of	*	6
Guinea-Bissau	*	35	Togo	*	22
Haiti	*		Tuvalu		
Kiribati			Uganda	*	8
Lao People's Democratic Republic	*	33	Vanuatu		
Lesotho	*		Yemen	*	
Liberia	*		Zaire	*	
			Zambia	*	8

Low-income countries

Angola	*		Kenya	*	6
Bolivia	*	11	Niacaragua	*	23
China	*	5	Nigeria		18
Cote D'Ivoire	*	19	Pakistan	*	15
Egypt	*	29	Philippines	*	8
Ghana	*	10	Senegal	*	29
Guyana			Sri Lanka	*	16
Honduras	*	11	Tadjikistan		
India	*	5	Viet Nam		
Indonesia	*	6	Zimbabwe	*	3

Source: World Food Programme, *1992 Food Aid Review*; and World Bank, *World Development Report 1994*.

Printed at United Nations, Geneva
GE.95-50781–March 1995–6,290

UNCTAD/GID/G24/6
(Volume VI)

United Nations publication
Sales No. E.95.II.D.7

ISBN 92-1-112375-5
ISSN 1020-329X