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**Chapter II**  
**THE MULTILATERAL TRADING SYSTEM AFTER DOHA**



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## THE MULTILATERAL TRADING SYSTEM AFTER DOHA

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### A. Introduction

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As described in detail in Part Two of this *TDR*, the trade performance of developing countries during the past two decades has been uneven. A number of countries, concentrated in East and South-East Asia, have been able to expand and diversify their exports of manufactures and increase their share of world trade. On the other hand, many least developed countries (LDCs) and other commodity-dependent developing countries have lost shares. In manufactures, the successful export performance of some countries does not always involve increasing domestic value added. A number of developing countries continue to depend on the export of undynamic products with low income elasticity and low value added, from both the primary and manufacturing sectors. Many labour-intensive manufactures exported by developing countries are behaving increasingly like commodities, with a risk of market saturation that could lead to a fallacy of composition. At the same time, many middle-income developing countries are finding it difficult to upgrade their productive and technological profile, and they remain dependent on imported parts and components, as well as on design and technology skills.

Although this situation has many causes, the modalities of countries' participation in the multilateral trading system and the policies adopted to tie trade to domestic economic activities are obviously crucial. History suggests that markets alone cannot be relied upon to generate the incentives needed to bring about a more balanced pattern of integration and create a dynamic relationship between trade and growth; developing countries will still need to employ various strategic policies to foster industrialization and technological upgrading.

It is in this context that the new World Trade Organization (WTO) work programme launched at the Fourth Ministerial Meeting of the WTO in Doha will be undertaken, and the outcome of negotiations judged. In an initial assessment of those negotiations, this chapter shows that the new work programme offers opportunities for the developing countries, but that these will have to be given substance from the outset. Failure to do so runs the danger of perpetuating existing biases and imbalances. The next section provides a brief history of development issues in the multilateral trading rules. Section C then looks at what was agreed

in Doha in terms of immediate and future negotiations, new areas of discussion and other matters. The concluding section makes some prelimi-

nary suggestions as to how these negotiations could link up to a wider agenda of rebalancing the trading system.

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## B. Background to Doha: developing countries in the GATT/WTO system

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Participation in the WTO – like the General Agreement on Tariffs and Trade (GATT) before it – has brought developing countries a number of important benefits, but also poses new and difficult challenges. Their willingness to participate has been motivated by the hope of improved and more secure access to markets, particularly in the industrialized countries, and the expectation that the means to enforce acquired rights through the dispute settlement mechanism would more than offset a loss in policy autonomy that follows from their taking on an increasing number of obligations, including market opening and the implementation of rules in new areas.

To some extent, a renewed emphasis on development revives an earlier discussion on the shape of the trading system, cut short by the failure to establish the International Trade Organization (ITO) under the Havana Charter negotiated in 1947–1948. This had included provisions on economic development and reconstruction, as well as on restrictive business practices and intergovernmental commodity agreements, both of which addressed concerns of immediate interest to developing countries. To try to fill the gap, GATT rules, established in parallel with the ITO negotiations, were amended on a number of occasions, notably in the 1954–1955 Review Session (Articles XVIII and XXVIII *bis*), and in 1964 (Part IV)

and 1979 (the “Enabling Clause”), to address development concerns. In one way or another, these provisions conferred “special and differential” (S&D) treatment on developing countries under the rules, and preferential access to developed markets. However, a number of these amendments were expressed in terms of “best endeavours”, or required acceptance by other GATT Contracting Parties. Moreover, while the Enabling Clause stated that industrialized countries did not expect to receive reciprocal commitments from developing countries that were inconsistent with the latter’s individual development, financial and trade needs, it also stated that developing countries were expected to participate more fully in the framework of GATT rights and obligations, as their development and trade situation improved.

The Uruguay Round shifted the emphasis away from S&D treatment. This change resulted not only from the erosion of preferences as a result of agreed most favoured nation (MFN) tariff reductions, but also from the “single undertaking” of the Uruguay Round, which meant endorsing its agreements as a complete package,<sup>1</sup> whereas previously GATT contracting parties could opt out from some agreements. At the same time, concern for the particular difficulties facing developing countries in the trading system shifted from their participation as producers and exporters to their

status as signatories to a legally binding document, which could give rise to implementation problems and associated adjustment costs.

Accordingly, most of the WTO agreements included extended transition periods for the developing countries, and even longer transition periods for the LDCs.<sup>2</sup> There were also additional flexibilities for the LDCs, and special provisions for the net food importing developing countries and countries covered by Annex VII of the Agreement on Subsidies and Countervailing Measures (SCM) (defined as those with a per capita income of less than \$1,000). The General Agreement on Trade in Services (GATS) provided flexibility to all developing countries, not only in the timing of liberalization measures but also in the choice of sectors to be opened up; it also allowed them to attach market access conditions aimed at achieving the objectives of its article IV, by acknowledging the use of performance requirements and other measures as legitimate tools of development policy. In a number of agreements, “best endeavours” provisions were also added requiring developed countries to take special account of the needs of developing countries in their application.

Thus the Uruguay Round, while recognizing the importance of development in its preamble, marked a clear move towards a single-tier system of rights and obligations, with transitional measures provided to bring developing countries progressively to the same level of obligations as the developed countries. However, the mixed results of the Uruguay Round to date, in terms of expanded trading opportunities for developing countries, have brought the issue of development back to the international trade debate (Stiglitz, 1998; Helleiner, 2000). In part, and as described in greater detail in previous UNCTAD reports, the problem has been a lack of balance in the liberalization process. Agriculture is a case in point. While tariffs on many traditional primary commodities and agricultural raw materials are either zero or minimal in developed country markets, a number of “sensitive” products such as sugar, cocoa, rice and tobacco continue to face high barriers, and tariff escalation impedes diversification efforts. Subsidies to farmers in the member countries of the Organisation for Economic Co-operation and Development (OECD) further limit export opportunities to developing country producers.

Although, overall, industrial tariffs are now modest, with the trade-weighted average tariff on industrial goods in the developed countries standing at some 3.5 per cent at the end of 2000, this does not take account of the fact that these low averages conceal high tariff peaks and escalation with stages of processing, discussed later in chapter IV of this *TDR*.<sup>3</sup> The WTO Agreement on Textiles and Clothing (ATC) is of particular concern to many developing countries. But an analysis of tariff escalation by industrialized countries in the post-Uruguay Round era shows a substantial loading against imports of many manufactures from developing countries, which makes it more difficult for them to develop downstream processing. The use of non-tariff measures (NTMs), including anti-dumping, special safeguards, technical standards and subsidies, has further restricted opportunities to expand markets for many other labour-intensive manufactures of interest to developing country exporters.

Apart from the expected gains from market access, some believed that taking on new commitments under the Single Undertaking of the Uruguay Round would also bring benefits to developing countries through greater predictability, credibility and transparency of their trade regimes. In particular, it was hoped that this would help attract foreign direct investment (FDI), bringing new technologies and increased productivity, as well as enhancing their international competitiveness. However, as suggested earlier, this link does not appear to be as robust as many expected.<sup>4</sup>

In fact, the burden of implementing the new agreements appears to have been underestimated by all parties. According to a recent World Bank estimate, for example, only a handful of developed countries (Australia, France, Germany, Japan, Spain, Switzerland and the United States) could expect to benefit from full implementation of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) (World Bank, 2001),<sup>5</sup> while developing countries would incur considerable costs in administering intellectual property rights, in addition to the significant costs in terms of patent rights.<sup>6</sup> Finger and Schuler (2000) have estimated that implementation costs of the WTO Agreements on Customs Valuation, TRIPS and the Application of Sanitary and Phytosanitary Measures (SPS) would be, on average,

\$150 million – as much as some countries' annual development budgets. Concerns have also been expressed about the real side adjustments required, and about the adequacy of technical assistance needed to help implementation. Many developing countries have believed that, at a minimum, longer transition periods would be needed.<sup>7</sup>

Another key issue in the implementation debate has concerned the detrimental effect on market access arising from the Agreement on the Implementation of Article VI of the GATT 1994 (the Anti-dumping Agreement). Despite efforts to tighten the rules on the application of anti-dumping procedures and measures, such measures can be relatively easily applied, and they have become a preferred tool of protection used by many developed countries and an increasing number of developing countries. Even if duties are finally not imposed, such procedures often have a dampening effect on trade, prompting importers to seek

alternative sources of supply. Moreover, responding to an investigation can create a huge burden for affected countries. Concerns about the effects of the application of WTO rules on imports have been heightened in recent years by the increased use of standards and related NTMs to limit the export opportunities of developing countries.

In response to the concerns expressed by the developing countries, the WTO General Council established, in early 2000, a special mechanism to deal with implementation issues. Moreover, it was decided that WTO members would exercise due restraint in respect of non-implementation by developing countries of WTO commitments. The implementation debate was conducted in parallel with growing calls by a number of countries for the launch of a new round of negotiations. This was intended to go beyond the built-in agenda on negotiations in agriculture and services, already agreed as part of the Uruguay Round package.

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## C. Doha and the new WTO work programme

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The agenda agreed at the Fourth Ministerial Meeting of the WTO in Doha contains matters for immediate negotiation, matters for future negotiations that are subject to "explicit consensus" among WTO members on modalities – to be decided at the Fifth Ministerial Meeting (scheduled for 2003) – and matters for further examination in relevant WTO bodies. Although the term "negotiating round" is not used, the procedural arrangements are similar to those employed in the Uruguay Round. However, unlike the Uruguay Round where negotiations were beginning afresh, those launched in Doha accommodate an array of issues at very different stages of understanding and negotiation.

### 1. *Immediate negotiations*

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In the first category are included negotiations on agriculture, services, industrial goods, the environment, WTO rules regarding anti-dumping, subsidies and countervailing measures, dispute settlement and regional agreements. The overall conduct of negotiations is being managed by a Trade Negotiations Committee that first met in January 2002. According to the Doha Ministerial Declaration, the negotiations are to be concluded by 1 January 2005, and they are to be covered by a "single undertaking", which means that all mem-

bers commit to all elements of the package to be negotiated and agreed.

### (a) *Agriculture*

Negotiations in agriculture began in 2000 under the “built-in agenda” of the Uruguay Round, with the long-term objective of establishing “a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets”. The negotiations are aimed at: “substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support”. There is to be S&D treatment for developing countries in negotiations, and eventual concessions and commitments “as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development”. Non-trade concerns are to be taken into account in the negotiations, as provided for in the Agreement on Agriculture. However, no targets, negotiating modalities or eventual timetables for implementation have been agreed.

To meet the objectives of the developing countries, the negotiations would need to address, as a priority, tariff peaks and escalation, tariff quotas and their administration, and improved transparency, perhaps through the elimination of the use of specific tariffs (although there is a danger that these could be replaced by anti-dumping measures on low-priced imports). Developing countries would also like to see the elimination of the use of special safeguard measures in developed countries or exemption from their application.

The elimination of export subsidies<sup>8</sup> would improve export opportunities for many developing countries while safeguarding the domestic producers in importing countries from artificially low-priced food imports. If export subsidies are to be “phased out” – and there is no timetable in the Doha Declaration for elimination – then sub-

sidies on products of export and import interests to developing countries will need to be prioritized in the subsidy phasing out process. Moreover, the failure to address direct income-support payments in developed countries, many of which were exempt from reductions in the Uruguay Round, would limit any new trading opportunities for developing countries.

Many small developing economies export only one or two agricultural commodities, the earnings from which often account for a sizeable share in their total merchandise export earnings, as is the case for some small island economies exporting sugar and bananas. They are not competitive vis-à-vis larger-scale exporters and are highly dependent upon (non-reciprocal) preferential market access provided by major developed country markets. Their loss of such preferential treatment, along with substantial tariff liberalization (MFN tariff cuts and subsidy reductions in the case of sugar) by the developed country importers, would result in reduced export earnings and investment for these small exporting economies, causing an undesirable macroeconomic shock. It may therefore be necessary to provide them with some form of support to enable their adjustment to more open markets.

Some developing countries have also been arguing for the creation of a special “development box” (box 2.1) that would exempt some measures in support of agricultural producers from reduction commitments. Such a development box might consist of a compilation of all S&D provisions, formulated so as to “enable developing countries to effectively take account of their development needs, including food security and rural development” (WTO, 2001b).

### (b) *Services*

The area of services was a new subject that, along with rules for intellectual property, marked an important break in the changeover from the GATT to the WTO (Das, 1998). As noted earlier, services were part of the Uruguay Round agreements and also part of the negotiations in early 2000.<sup>9</sup> No services sector is excluded, and the “request and offer” approach in the negotiations

**Box 2.1****A POSITIVE DEVELOPMENT AGENDA FOR NEGOTIATIONS ON AGRICULTURE**

- Substantial cuts in bound tariffs, specifically targeting tariff peaks and escalation through the application of a harmonized tariff-cut formula, along with increases in tariff quotas and the elimination of in-quota rates.
- Elimination of the special safeguards measure in developed countries.
- Financial support to developing countries experiencing high adjustment costs due to their loss of preferences.
- Elimination of export subsidies, including through greater reductions of subsidized quantity than of outlay; greater reductions in the first few years (i.e. uploading the reductions) on “prioritized” products; and differing implementation periods among product sectors (e.g. a shorter implementation period for those subsidized products which have large negative effects upon food security of developing countries).
- Making commitments for more limited product aggregates, or even individual products, in order to limit the switching of subsidies from areas where they are not needed. This would have the effect of ratcheting down support over time. Higher reductions might apply to product groups that are linked to export subsidies.
- A “development box”, which might include variable tariff reduction rates; extension of the Uruguay Round aggregate measure of support commitment; special safeguard measures for food security; aggregate measures on support for food security within the *de minimis* level; securing market access for “small” single-commodity exporters.
- Specific and operationally strengthened S&D provisions, with the main focus on real and meaningful increases for developing countries in market access, greater flexibility in meeting reduction commitments on domestic support, levels of tariffs (including rationalizing and rebalancing of tariff bindings, keeping in view food security and livelihoods), greater disciplines on subsidy and support in the industrialized countries, and legally binding commitments on technical and financial assistance.

remains the main method, though other approaches may also be utilized. Because of the progress already made in the negotiations on services, this was a relatively uncontroversial issue at Doha; dates were set for countries’ submissions of initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003. Generally, the negotiating proposals demonstrate the position of WTO members; they aim at achieving extensive liberalization commitments in all sectors, except health (the only sector where there is

no GATS negotiating proposal), by removing existing barriers to trade and expanding the scope of the commitments.

The negotiations on services will, however, have to deal with the conflict between proposals aimed simply at improving market access and the position of many developing countries that wish to maintain or strengthen those provisions of GATS which favour them. Although emphasis has been given to the development aspect as part of

**Box 2.2****A POSITIVE DEVELOPMENT AGENDA FOR NEGOTIATIONS ON SERVICES**

- Strengthening the provisions of Article XIX.2, under which developing countries may attach access conditions to their markets. Such conditions could be negotiated on a sectoral basis, involving elements that are specific to the sector concerned (such as anti-competitive practices by transnational corporations). This approach could be broadened to include other disciplines related to the effective implementation of Articles IV and XIX, such as access to technology, information networks and distribution channels.
- Maintaining adequate policy space under GATS rules; for example, developing countries would like to see a general safeguard mechanism for services, setting out the conditions under which governments can differentiate between foreign and domestically-owned enterprises operating in their territories; this would have implications for any future negotiations on investment.
- A further liberalization of the movement of persons (mode 4) on a sectoral basis, and addressing issues that are impeding market access, including issuance of visas, administrative procedures and lack of transparency, as well as economic needs tests. Sectoral proposals could also identify some aspects of movement of persons, such as seeking commitments for the movement of contractual service suppliers and identifying specific categories of persons relevant to the supply of service in those sectors.
- An independent assessment of the quality of data on trade in services and of the analytical and policy framework for pursuing liberalization in this area.

the objectives and principles for negotiations, the comparatively small number of proposals for negotiations in services by developing countries, especially by African countries, reflects not only their difficulties in identifying negotiating objectives, but also the fact that capacity building, rather than access to markets, remains a priority for them in this area. Submissions by developing countries point to an unfinished agenda in addressing such issues as the assessment of trade in services and autonomous liberalization and implementation of GATS Article IV on Increasing Participation of Developing Countries.

To date, few developing countries have made use of the provisions of Article XIX.2 – under which developing countries may attach conditions to the granting of access to their markets – most likely due to imbalances in negotiating strength. However, those provisions could be used for ne-

gotiating such conditions on a sector-by-sector basis, or in other areas, such as anti-competitive practices that are subject to extremely limited disciplines under GATS Article IX, yet can considerably distort trade in many service sectors. The logic of such an approach is that it is difficult to devise across-the-board provisions in favour of developing countries without arriving at the lowest common denominator. On the other hand, in a sectoral context more specific provisions could be negotiated and specific S&D treatment injected in accordance with the development aspects of each service sector (box 2.2).

Another important area for negotiation in services concerns GATS rules (e.g. safeguards, subsidies and government procurement) and disciplines for domestic regulation. Developing countries would like to see a general safeguard mechanism for services, without which their ability or



willingness to make concessions would be limited. The real importance of the negotiations on safeguards depends on their ability to set out the conditions under which governments can differentiate between foreign and domestically-owned enterprises operating in their territories. Such conditions would have implications for any future negotiations on investment.

The constraints on cross-border flows of labour are one of the biggest asymmetries in the international economic system, and a source of continuing frustration for many developing countries. Although developed countries remain opposed to allowing the free movement of all forms of labour under WTO rules, developing countries might push for the further liberalization of movement of persons (mode 4) on a sectoral or subsectoral basis: they might address specific issues that are impeding market access including issuance of visas, administrative procedures and lack of transparency, and economic needs tests. A number of sectoral proposals have identified some aspects of the movement of persons, including seeking commitments concerning the movement of contractual service suppliers, and identifying specific categories of persons relevant to the supply of services in those sectors. The proposals suggest that progress may be achieved in this area.

### (c) *Industrial tariffs*

Overall, MFN-bound industrial tariffs at the end of the implementation of the Uruguay Round will be about 6.5 per cent across all countries and products, while applied rates will be about 4.3 per cent. Support grew for further negotiations in market access for industrial products, essentially tariff negotiations, in the lead-up to Seattle and beyond. This support seems to have been based on the expectation that inclusion of industrial products would permit some cross-sectoral trade-offs with the built-in market access negotiations on agriculture and services. There was also a realization that developing countries have much to gain in some areas where tariffs are particularly high on their exports. On the other hand, some

developing countries are concerned that making further concessions could limit their scope for industrial development programmes.

At Doha, it was agreed to start immediate negotiations on market access for non-agricultural goods, with the aim of reducing or eliminating tariff peaks, high tariffs and tariff escalation as well as non-tariff measures affecting all products and, in particular, products of interest to developing countries. In light of the expressed intention in the Declaration to pay particular attention to the special needs of developing countries in this area of negotiations, it would be particularly desirable at the outset of the process to undertake an immediate and comprehensive assessment of the tariff and non-tariff constraints facing those countries in dynamic products of the kind identified in this *TDR*, with an eye to guiding the negotiations.

The reference to high tariffs in the Declaration raises some particular concerns for developing countries: in general, their bound rates are higher than those of the developed countries, and for some countries there is a large gap between their applied and bound rates.<sup>10</sup> Given this gap and the leeway provided for less than full reciprocity for developing countries under Article XXVIII *bis* of the GATT, not to mention the possibility of an extended transition period, any generalized formula to cut tariffs should allow sufficient policy space for those countries that do not yet feel ready to proceed with liberalization. Another issue of particular concern to developing countries is the possible erosion of tariff preferences such as those granted under the Generalized System of Preferences (GSP). Any negative effects on developing countries from further MFN liberalization may need to be addressed with appropriate support measures. Despite eight previous negotiating rounds, protection is still quite high in sensitive product areas, such as textiles and clothing and transport equipment, where trade is significant and imports are relatively responsive to price changes. Thus one of the key questions to be addressed in the new negotiations is how to eliminate or reduce tariff peaks and escalation, taking into account, in particular, exports where developing countries have greatest potential.

*(d) Environment*

The post-Doha work programme includes negotiations on certain trade and environment issues as well as the continuation of the work of the Committee on Trade and Environment (CTE), including identification of any need to clarify relevant WTO rules. Negotiations will start on the relationship between existing WTO rules and specific trade measures set out in multilateral environmental agreements (MEAs), and liberalization of trade in environmental goods and services (EGS). In both cases, defining the scope and clarifying existing provisions will be crucial. Work on the relationship between MEA trade measures and the multilateral trading system includes the Basel Convention and the Protocol on Biosafety of the Convention on Biological Diversity (CBD). In the case of EGS, it will be important to examine to what extent goods and services of potential interest to developing countries – including environmentally preferable products – could benefit from trade liberalization, and how negotiations will affect the development of EGS sectors in developing countries, including their ability to increase their participation in world trade.

The work programme includes two issues of particular concern to the developing countries: the effects of environmental measures on market access, and the interface between TRIPS and the CBD, particularly with respect to traditional knowledge. The CTE will also address the issue of labelling for environmental purposes. The work programme points to the need to ensure the effective participation of developing countries in standards setting, and their access to scientific advice.

Various features of the environmental agenda are reflected in decisions dealing with trade restrictions and distortions (in particular fisheries subsidies), agriculture (non-trade concerns), and relatively unexplored “triple-win” scenarios for sustainable development that may extend to agriculture, forestry, energy and other sectors. At the institutional level, setting the stage for sustainable development was supported by a call for cooperation between the WTO and environmental and development agencies in the lead-up to the World Summit on Sustainable Development. In the negotiations and discussions on trade and environment, full account should be taken of the needs

of developing countries and the principle of common but differentiated responsibilities.

*(e) Other rules*

There was also agreement at Doha to launch negotiations on the rules governing anti-dumping, subsidies and countervailing measures, and regional agreements. These negotiations will also cover disciplines on fisheries subsidies. In response to pressure from developing countries for inclusion of anti-dumping and subsidies in the negotiations, they will be able to introduce specific proposals on these subjects in the context of the implementation exercise (see below).

## 2. Future negotiations

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A second category covered by the Doha Declaration involves matters for possible future negotiations. All these are issues that have been under study in the WTO since its Second Ministerial Meeting in Singapore. They include investment, competition, transparency in government procurement and trade facilitation, on which negotiations could be launched if a consensus were reached on modalities of negotiations during the Fifth WTO Ministerial Conference, scheduled for 2003. The Chairperson of the Ministerial Conference made it clear that non-agreement on modalities would block negotiations. These issues move the WTO negotiations further into domestic policy, and it is reasonable to believe that a successful outcome will be conditional on establishing the development content of these issues from the outset, and ensuring appropriate policy space for national development strategies.

Many developing countries now actively seek to attract FDI in the expectation of capturing associated technology gains and market access, and thus accelerating their own development and integration into the world economy. As discussed in Part Two of this *TDR*, such benefits are not automatic, but rather hinge on the use of various strategic policies. Although the discussions in the Working Group on the Relationship Between Trade and Investment reflected widely differing

views on the linkages between FDI and development, Ministers at Doha agreed that in the period until the Fifth Session in 2003 work would “focus on the clarification of: scope and definition; transparency; non-discrimination; modalities for pre-establishment commitments based on a GATS-type, positive list approach; development provisions; exceptions and balance-of-payments safeguards; consultation and the settlement of disputes between Members”. In doing so, it was accepted that the “special needs ... of developing and least-developed countries should be taken into account as an integral part of any framework, which should enable Members to undertake obligations and commitments commensurate with their individual needs and circumstances” (WTO, 2001b). A main issue here will be the extent to which developing countries will be allowed to continue to impose conditions on inward FDI and to provide support to domestic firms for investment (Morrissey, 2002).

On the interaction between trade and competition policy, the outcome at Doha was to maintain the existing work programme for two years and then to engage in substantive negotiations, using the same formulation as for investment. The Ministerial Declaration at Doha states that in the next two years work is to “focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building” (WTO, 2001b).

For developing countries, there is an urgent need to identify the anti-competitive practices that inhibit the exports of goods and services of developing countries, particularly the LDCs, and impair the industrial dynamism of domestic firms in their own markets. Both theory and evidence suggest that industrial dynamism is consistent with different degrees of reliance on large and small firms, on foreign and domestic producers, and on State and private ownership. The ideal mixture cannot be prescribed independently of an economy’s initial resource endowments, its history of business relations and the pace at which industry develops. Different market structures may require different competition or regulatory approaches, and should also be tailored to each

country’s institutional capability. The difficulties in designing a common framework have been demonstrated even for relatively highly integrated systems (such as the European Union) whose members are at similar levels of economic development.

Moreover, in the context of globalization, the size and organization of markets, the possible impact of firm behaviour, and the desirability and scope of regulatory practices cannot be properly assessed from a purely national perspective. Any eventual agreement on a multilateral framework for competition policy could perhaps take the form of a code of conduct – as for certain other WTO agreements – or agreement on a set of core principles that would not require any complex institutional structure. S&D treatment would have to be fully recognized in such a way as to afford developing countries flexibility and gradualism in any adaptation of their domestic legislation to the overall framework, and to allow for exceptions in sectors where waivers from competition or “opt-out” provisions are deemed necessary for development purposes. Developing country concerns that any new rules may affect the operation of domestic enterprises and may impose heavy costs need to be fully examined.

### 3. *Other matters*

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The Doha Declaration also deals with other issues, some of which are regarded by developing countries as being particularly relevant to their development prospects. This is the case with S&D treatment, which permeates the Doha text, and with a number of matters left for further examination in WTO, including the relationship between trade, debt and finance, transfer of technology, and problems faced by small and vulnerable economies, as well as with implementation issues. The status of these issues in the overall package varies.

#### (a) *Special and differential treatment*

The Doha Declaration halted the erosion of S&D treatment begun in the Uruguay Round. The language of the Work Programme contained in

the Ministerial Declaration and in the Decision on Implementation Issues suggests a desire to strengthen the relevance of S&D treatment in all topics for negotiation, and specific paragraphs in the Declaration reinforce the concept as such. Mandates on the LDCs and the small economies are also included as “horizontal” dimensions of the post-Doha negotiations.

In some provisions of the Doha Declaration, the negotiating mandates provide for specific goals and deadlines on S&D treatment. For example, on agriculture the Doha Declaration provides for the formulation of S&D treatment provisions by March 2003; likewise, the negotiations on market access for non-agricultural products “shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments”. The mandates regarding the “implementation issues” also reflect a strengthening of the S&D treatment, because almost all these issues that were raised by developing countries stem from development needs which are impaired by the implementation of the existing provisions.

The Work Programme of the post-Doha negotiations provides an opportunity to operationalize the current provisions and to ensure desirable outcomes of the negotiations regarding S&D treatment (box 2.3). However, past history should serve as a cautionary reminder that such an opportunity does not automatically lead to an effective implementation of trade measures that compensate for the structural imbalances in the participation of the developing countries in the trading system. Linking S&D treatment to the capacity to overcome supply constraints will therefore be crucial to determining the quality of developing country participation in the trading system.

### *(b) Coherence*

The Preamble of the Doha Ministerial Declaration contains a reference to the issue of the working relations between the WTO and the Bretton Woods institutions in terms of continuation of the joint work “for a greater coherence in global economic policy-making”. No other mandates are included in the text, and no specific

reference is made to the Marrakech Ministerial Declaration on coherence that was adopted in 1994. Since then, there have been no significant changes to the issue of coherence, nor is it a topic that has attracted the attention of the developing countries at the WTO, in spite of its wide implications for their development strategies.

The establishment of a WTO Working Group on Trade, Debt and Finance, resulting from a proposal by a group of developing countries during the preparatory process of the Doha Conference, provides an important new forum to pursue the various issues raised by economic policy coherence in a global setting. Although its objectives and the content of its work will need to be defined by the WTO member countries, it represents an opportunity to enlarge the vision of the WTO on the interface between trade and financial flows, including how the external debt position influences the participation of countries in the trading system. The question of “coherence” with the Bretton Woods institutions will need to feature in this new mechanism.

The agenda of the United Nations Conference on Financing for Development in Monterrey in March 2002 has included trade as one of the resources for generating development. Such an approach indeed provides another opportunity to link trade policies to the other economic policy measures required for the design of coherent development strategies. But it is obvious that the links between trade and other areas of the international economic agenda do not end with debt and financing issues. For instance, the transfer of technology (now explicitly included in the WTO agenda along with the setting up of another new working group) and sustainable environment policies (to be considered at the United Nations Conference on Sustainable Development in Johannesburg in September 2002) cannot be excluded when envisaging such strategies.

The developing countries should approach the issue of coherence by taking into account, and actively participating in, all these new institutional mechanisms. The most effective coherence may be the one envisaged, that of looking in parallel at the trade negotiations and the work on financing for development, since issues such as the supply capacity of the developing countries to take ad-

**Box 2.3****SPECIAL AND DIFFERENTIAL TREATMENT**

As the pressures to extend the trading rules persist, it remains essential to preserve the right of developing countries to take certain measures as part of their overall development strategy. Rather than relying on artificial and arbitrary time frames unrelated to need or performance, special and differential (S&D) treatment should be linked to specific economic and social criteria.

In this context, it would be important for the developing countries to achieve, in particular, the following results in the Doha process:

- Concrete measures that could result in a number of “best endeavours” provisions (for instance, in the implementation of the provisions concerning transfer of technology in the TRIPS and GATS Agreements).
- Appropriate formulas for the negotiations on tariff and non-tariff measures for agricultural and non-agricultural products that effectively take into account the export capacity of the developing and least developed countries; and provisions that preserve the possibility of adopting national development strategies – particularly in the areas of TRIPS and TRIMS.
- In the schedules of commitments on sectoral services, the inclusion of specific S&D treatment considerations that reflect the peculiarities of each sector from the point of view of development needs, in addition to “horizontal” provisions such as emergency safeguards.
- Rules of origin and other new rules applying to regional trade agreements, designed so that trade liberalization among developing countries can be deepened and matched with the objectives of their integration schemes.
- Binding the preferential regimes for market access, recently adopted by some developed countries in favour of the LDCs, in order to secure these regimes and channel more investments in the development of the supply capacity required to fully take advantage of new export opportunities.
- Linking S&D treatment to the so-called “Singapore issues” (trade and investment; trade and competition; government procurement; and trade facilitation), even at the present stage where no formal negotiations are envisaged. In fact, it may be crucial to define the conceptual framework and the scope of the S&D treatment that could be considered in these areas, in anticipation of the eventual launching of negotiations at the Fifth WTO Ministerial Conference.

vantage of the market access opportunities provided by trade liberalization should not be dealt with separately at the WTO and at the Bretton Woods institutions. In this context, the main challenge for the next few years may be for the developing countries to formulate negotiating positions aimed at a system-wide development-oriented agenda on policy coherence.

**(c) Other Doha decisions**

As part of the package agreed in Doha, Ministers also approved the Decision on Implementation-Related Issues and Concerns.<sup>11</sup> This Decision brings further clarifications and makes a series of recommendations with regard to provisions contained in the GATT 1994, the Agreement on Agriculture,

the SPS Agreement, the ATC, the Agreement on Technical Barriers to Trade (TBT), TRIMS, the Agreement on Rules of Origin, the SCM Agreement and TRIPS. Of particular importance for many developing countries, it was agreed to encourage accelerated liberalization of the textiles and clothing sector, and there was a commitment to exercise restraint on the use of anti-dumping actions in the sector for two years after the full integration of the sector into the WTO. The mandates on the implementation issues contained in the Ministerial Decision have to be considered together with additional “outstanding” implementation issues identified by member States and included in the Doha Work Programme.

During 2001, there was controversy over the implementation of the TRIPS Agreement.<sup>12</sup> The contentious issues and the slow implementation process are, to a large extent, related to the distribution of costs and benefits of this Uruguay Round agreement. The potential conflict between the preservation of intellectual property rights and the interests of developing countries came to a head in 2001 over the issue of access to essential drugs in low-income countries. The separate Ministerial Declaration on the TRIPS Agreement and Public Health acknowledges the right of developing countries to grant compulsory licences to domestic producers of generic drugs, and thus override patent rights, in the event of public health crises and national emergencies.<sup>13</sup> However, compulsory licensing, as laid down in the TRIPS Agreement, prevents countries from importing cheap medicines in such situations. Since this situation may negatively affect many developing countries, and LDCs in particular, the WTO Council for TRIPS was requested to find a solution before the end of 2002. It was also recommended that the transitional period for LDCs with respect to the treatment of pharmaceutical products under the TRIPS Agreement should be extended until 2016.

As already noted, liberalization in textiles and clothing (the “integration of textiles and clothing into the GATT 1994”) has been a key concern of the developing countries in relation to the implementation of the Uruguay Round agreements.

Annex II of the Doha Decision on Implementation-Related Issues and Concerns contains important provisions to encourage faster movement on textile quota liberalization, and agreement by liberalizing countries to exercise restraint in the application of anti-dumping for two years after the full integration of textiles and clothing into the GATT 1994. How these provisions will work in practice remains to be seen.

The Decision on Implementation-Related Issues and Concerns, in effect, sends many issues (almost 20 of the items listed in the Decision) back to different WTO bodies for resolution within fixed, but differing, time frames. Apart from the issues discussed above (in relation to implementation and negotiations), this covers anti-dumping, countervailing duties, SPS, non-actionable subsidies for developing countries, rules of origin and customs valuation. The Decision represents a major achievement for developing countries, in that all the items they proposed for negotiations before the Seattle Conference have been included in the negotiations, many with short time frames for resolution, normally before the end of 2002. Yet another separate decision at Doha was to extend the transition period allowed under the WTO SCM Agreement (i.e. for industrial products) for developing countries to phase out export subsidies from 2003 to the end of 2007.<sup>14</sup>

The Doha Ministerial Declaration also welcomed the accession of a number of new countries to the WTO, notably China (see chapter V)<sup>15</sup> and, recognizing that accession of LDCs remained a priority, it agreed to work to facilitate and accelerate negotiations with acceding LDCs.<sup>16</sup> However, the terms of completed accessions show the following two trends: (i) the newly acceding countries undertook a relatively higher level of commitments and obligations under the WTO Agreements, as well as market access commitments in goods and services, than the original WTO members at comparable levels of development; and (ii) these countries were by and large unable to fully benefit from the S&D treatment provided under the respective WTO agreements for developing country members.<sup>17</sup>

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## D. Conclusions: beyond Doha

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The implementation of the Programme of Work agreed in Doha has begun in a context characterized, as far as developing countries are concerned, by two significant features: on the one hand the growing participation of those countries in international trade, particularly in manufactured goods, and on the other a wide recognition that the results, so far, of the operation of the system fall short of their expectations. The latest, and most telling, expression of this recognition is a recent World Bank study documenting “the unbalanced Uruguay Round outcome”, which confirms that the North has been the big winner (Finger and Nogés, 2001).

Improving access to Northern markets remains the litmus test of whether negotiations are in the interest of developing countries. *TDR 1999* estimated that at least \$700 billion in export earnings could be generated for developing countries if protection for labour-intensive activities in industrialized countries was removed. The Zedillo Report of the United Nations Secretary-General has also made it clear that greatly improved access to the markets of developed countries is a *sine qua non* of a truly development-oriented round of negotiations. And, more recently, Horst Kohler, Managing Director of the International Monetary Fund (IMF), has said that “the true test of the credibility of wealthy nations’ efforts to combat poverty lies in their willingness to open up their markets and phase out trade-distorting subsidies in areas where

developing countries have a comparative advantage – as in agriculture, processed foods, textiles and clothing, and light manufactures” (Kohler, 2002).

The fact that strong voices are now raising these issues gives grounds for optimism. However, in today’s interdependent world economy, the discussion of market access should be accompanied by consideration of other modalities which help shape developing-country participation in the trading system: in particular, and as discussed in detail in Part Two of this *TDR*, implementation of the Work Programme must go hand in hand with addressing the danger of excessive competition in traditional labour-intensive manufactures and of FDI linked to international production chains; the downward trend in commodity prices and the danger that a fallacy of composition might extend to other less traditional exports; and the growing gap between trade flows and domestic value added, including the difficulties of upgrading that this implies. A basic challenge is to connect negotiations to these realities. This means making a balanced assessment of what developing countries have gained and lost from the Uruguay Round agreements, how they expect their position in the trading system to evolve – particularly with respect to market access in areas of greatest interest to them – and what policy options they consider necessary to retain (or regain) to ensure that their fuller participation in the trading system is consistent with their wider development goals.

But progress will also require some new thinking on the nature and scope of the negotiations. The point has been made that these need to be “rebalanced” in the sense that developing countries should get greater market access without their policy space being curtailed.

The modalities for such a rebalancing remain to be determined. For some, only strong opt-out clauses can provide the room for developing countries to participate effectively in the trading system (Rodrik, 2001). This, however, clearly runs the danger of undermining multilateral rules and providing developing countries with too little leverage in negotiations. For others, including some strong advocates of free trade, a scaling back of the reach of the WTO to refocus on core trade issues would be desirable (Panagariya, 2000). As suggested in this *TDR*, making special and differential treat-

ment a consistent component of the rules-based system provides, along with stronger regional arrangements, the potential to rebalance the system in the interests of developing countries.

Trade negotiations are, of course, only one facet of rebalancing the trading system to the benefit of developing countries: faster growth in the industrial countries will be needed in support of greater access to their markets; improved access to technologies will be required in middle-income developing countries both to improve their own growth prospects and to free up markets in labour-intensive activities; and access to adequate short-term financing will be needed to help countries manage external shocks and disturbances without damaging trade prospects. All these issues point to the importance of policy coherence in the functioning of the trading system. ■

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## Notes

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- 1 With the exception of the Agreements on Government Procurement and Civil Aircraft.
- 2 All told, there are now some 155 such provisions in the WTO agreements (WTO, 2001a).
- 3 A number of complex technical questions to be resolved in relation to tariff negotiations are reviewed in Laird (1999).
- 4 See this *TDR*, chapter IV, and references therein.
- 5 For a similar analysis, see also McCalman (2001: 161–186).
- 6 For an overview of recent developments and best practices with regard to technology transfer, see the background information prepared for the *UNCTAD Expert Meeting on International Arrangements for Transfer of Technology: Access to Technology and Capacity-building*, Geneva, 27–29 June 2001 ([www.unctad.org/en/special](http://www.unctad.org/en/special)).
- 7 This should serve as a reminder that, whatever the outcome of the new WTO work programme, it is important that there be a realistic assessment of the time it will take to implement any new commitments, the cost of their implementation, the training and technical support required and some decision on the funding of implementation.
- 8 These were already reduced by 36 per cent in the Uruguay Round (14 per cent for developing countries).
- 9 The first stage of negotiations on services was completed at the stocktaking of the meeting in March 2001 of the Council on Trade in Services, which resulted in adoption of the Guidelines and Procedures for the Negotiations on Trade in Services.
- 10 To some degree, the problem of high trade barriers may be overstated because of the growing impor-



- tance of regional trade agreements and preferences, including those between developing countries as well as between developed countries and economies at different stages of development. Examples are: ASEAN Free Trade Area (AFTA), Asia-Pacific Economic Cooperation (APEC) grouping, Central American Common Market (CACM), Canada-Chile Free Trade Agreement, Caribbean Community (CARICOM), Common Market for Eastern and Southern Africa (COMESA), Southern Common Market (MERCOSUR), North American Free Trade Agreement (NAFTA) and Southern African Development Community (SADC).
- 11 WTO, WT/MIN(01)/17, 20 November 2001.
- 12 For a list of all the recent TRIPS-related legislative actions undertaken in 2001, see WTO (2001c).
- 13 WTO, WT/MIN(01)/DEC/2, 20 November 2001.
- 14 WTO, G/SCM/39, 20 November 2001.
- 15 WTO, WT/MIN(01)/DEC/1, 20 November 2001, para. 9.
- 16 WTO, WT/MIN(01)/DEC/1, 20 November 2001, para. 42.
- 17 Two further decisions at Doha which were of importance to the dynamics of the Ministerial meeting were: (i) agreement on the waiver to allow the European Union to extend until the end of 2007 unilateral preferences under the Cotonou Agreement for African, Caribbean and Pacific countries – the “EU-ACP Partnership Agreement” (WTO, WT/MIN(01)/15, 14 November 2001); and (ii) the decision on the EU transitional regime for banana imports (WTO, WT/MIN(01)/16, 14 November 2001).