

INTERNATIONAL AND REGIONAL TRADE LAW: THE LAW OF THE WORLD TRADE ORGANIZATION



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Unit I: The Syntax and Grammar of International Trade Law

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1. Introductory Note

1-1. GENERAL REMARK ON THE TEACHING MATERIALS

The focus of these teaching materials is on primary sources – mainly the relevant legal texts and Appellate Body and panel reports. This is explained by our method to teach WTO law through the careful reading and analysis of cases. Because your reading time is limited, this teaching method entails that we cannot aim at comprehensiveness in the teaching materials, that we cannot note and comment on each development in the law. Rather it is our aim to teach you how to teach yourself the law of international trade. Therefore we will try to guide your reading throughout the materials – more so in the beginning and less in further units. While the mandatory part of the teaching materials tries to cover all important aspects of the WTO and its law, the optional reading will point to further developments in the law and, in addition, shall be an aid to contextualize the issues that are raised in the mandatory reading. In the section “Optional Reading” we therefore include case notes and reproduce or point to significant scholarly contributions.

When preparing for class and when in class it is important that you always have the Primary Sources at hand. The texts of all WTO Agreements can be found on the WTO’s website under http://www.wto.org/english/docs_e/legal_e/legal_e.htm; all WTO panel and Appellate Body reports can be found under http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

With respect to WTO texts from the WTO’s official website we would like to add a note of caution. When reading these texts keep in mind that they represent a certain view put forward by the organization, they are the WTO’s ‘propaganda’ if you want.

If you discover any dead links or mistakes in these teaching materials, and also if you have suggestions for their improvement, please let us know.

1-2. SUPPLEMENTARY READING

For (optional) supplementary reading that will give you a more complete overview of the state of the law we recommend the following treatises:

Peter van den Bossche & Werner Zdouc, The Law and Policy of the World Trade Organization, 2013.

Raj Bhala, Modern GATT Law. A Treatise on the General Agreement on Tariffs and Trade, 2013.

Michael J. Trebilcock, Robert Howse, & Antonia Eliasson, The Regulation of International Trade, 4th ed. 2013.

John H. Jackson, William J. Davey, Alan O. Sykes, International Economic Relations: Cases, Materials, and Text on the National and International Regulation of Transnational Economic Relations, 6th ed. 2013

John H. Jackson, The World Trading System, 2nd ed. 1997.

At the beginning of each unit we will point you to the relevant sections of these books. If you wish you can read them in conjunction with the teaching materials to get a complete overview over the state of the law.

For **Unit I** we suggest the following sections for supplementary reading:

Van den Bossche & Zdouc, Chapter 1, pp. 1-73.

Trebilcock, Howse & Eliason, pp. 1-53.

Jackson, Davey, & Sykes, Chapter 1, pp. 1-64.

Jackson, Chapters 1 and 2, pp. 1-78.

1-3. USEFUL LINKS

You might find the following websites useful to find primary sources and also secondary literature:

www.wto.org

On the official website of the WTO you find *i.a.* the official documents of the WTO, the official documents issued under the GATT 1947, news about the organization and publications of the WTO, including the WTO Analytical Index, an article by article commentary on the agreements.

www.worldtradelaw.net

On this website – which is in part publicly accessible and in part only accessible for subscribers -- you find *i.a.* the case law of the WTO, case commentaries, scholarly articles and a discussion board.

<http://www.law.nyu.edu/library/wtoguide.html>

This WTO and GATT Research Guide of the NYU law library is a good starting point for research on international trade law.

http://www.ali.org/index.cfm?fuseaction=projects.proj_ip&projectid=10

The American Law Institute publishes on this website joint studies by legal experts and economists that analyze WTO Appellate Body and panel reports.

2. The Economics of International Trade

2-1. COMPARATIVE ADVANTAGE

From The Economics A-Z

[HTTP://WWW.ECONOMIST.COM/RESEARCH/ECONOMICS/ALPHABETIC.CFM?TERM=COMPARATIVEADVANTAGE#COMPARATIVEADVANTAGE](http://www.economist.com/research/economics/alphabetic.cfm?term=comparativeadvantage#comparativeadvantage)

Paul Samuelson, one of the 20th century's greatest economists, once remarked that the principle of comparative advantage was the only big idea that **ECONOMICS** had produced that was both true and surprising. It is also one of the oldest theories in economics, usually ascribed to **DAVID RICARDO**. The theory underpins the economic case for **FREE TRADE**. But it is often misunderstood or misrepresented by opponents of free trade. It shows how countries can gain from trading with each other even if one of them is more efficient – it has an **ABSOLUTE ADVANTAGE** – in every sort of economic activity. Comparative advantage is about identifying which activities a country (or firm or individual) is most efficient at doing.

To see how this theory works imagine two countries, Alpha and Omega. Each country has 1,000 workers and can make two goods, computers and cars. Alpha's economy is far more productive than Omega's. To make a car, Alpha needs two workers, compared with Omega's four. To make a computer, Alpha uses 10 workers, compared with Omega's 100. If there is no trade, and in each country half the workers are in each industry, Alpha produces 250 cars and 50 computers and Omega produces 125 cars and 5 computers.

What if the two countries specialise? Although Alpha makes both cars and computers more efficiently than Omega (it has an absolute advantage), it has a bigger edge in computer making. So it now devotes most of its resources to that industry, employing 700 workers to make computers and only 300 to make cars. This raises computer output to 70 and cuts car production to 150. Omega switches entirely to cars, turning out 250.

World output of both goods has risen. Both countries can consume more of both if they trade, but at what **PRICE**? Neither will want to import what it could make more cheaply at home. So Alpha will want at least 5 cars per computer, and Omega will not give up more than 25 cars per computer. Suppose the terms of trade are fixed at 12 cars per computer and 120 cars are exchanged for 10 computers. Then Alpha ends up with 270 cars and 60 computers, and Omega with 130 cars and 10 computers. Both are better off than they would be if they did not trade.

This is true even though Alpha has an absolute advantage in making both computers and cars. The reason is that each country has a different comparative advantage. Alpha's edge is greater in computers than in cars. Omega, although a costlier producer in both industries, is a less expensive maker of cars. If each country specialises in products in which it has a comparative advantage, both will gain from trade.

In essence, the theory of comparative advantage says that it pays countries to trade because they are different. It is impossible for a country to have no comparative advantage in anything. It may be the least efficient at everything, but it will still have a comparative advantage in the industry in which it is relatively least bad.

There is no reason to assume that a country's comparative advantage will be static. If a country does what it has a comparative advantage in and sees its **INCOME** grow as a result, it can afford better education and **INFRASTRUCTURE**. These, in turn, may give it a comparative advantage in other economic activities in future.

2-2. PAUL R. KRUGMAN, *WHAT DO UNDERGRADS NEED TO KNOW ABOUT TRADE?*

83 Am. Econ. Rev. No. 2, 23, 23-26 (1993)

Few of the undergraduates who take an introductory course in economics will go on to graduate study in the field, and indeed most will not even take any higher-level economics courses. So what they learn about economics will be what they get in that first course. It is now more important than ever before that their basic training include a solid grounding in the principles of international trade.

I could justify this assertion by pointing out that international trade is now more important to the U.S. economy than it used to be. But there is another reason, which I think is even more important: the increased *perception* among the general public that international trade is a vital subject. We live in a time in which Americans are obsessed with international competition, in which Lester Thurow's *Head to Head* is the non-fiction best-seller and Michael Crichton's *Rising Sun* tops the fiction list. The news media and the business literature are saturated with discussions of America's role in the world economy.

The problem is that most of what a student is likely to read or hear about international economics is *nonsense*. What I want to argue in this paper is that the most important thing to teach our undergrads about trade is how to detect that nonsense. That is, our primary mission should be to vaccinate the minds of our undergraduates against the misconceptions that are so predominant in what passes for educated discussion about international trade.

I. The Rhetoric of Pop Internationalism

As a starting point, I would like to quote a typical statement about international economics. (Please ignore the numbers for a moment.) Here it is: "We need a new economic paradigm, because today America is part of a truly global economy (1). To maintain its standard of living, America now has to learn to compete in an ever tougher world marketplace (2). That's why high productivity and product quality have become essential. (3). We need to move the American economy into the high-value sectors. (4) that will generate jobs (5) for the future. And the only way we can be competitive in the new global economy is if we forge a new partnership between government and business (6)."

OK, I confess: it's not a real quotation. I made it up as a sort of compendium of popular misconceptions about international trade. But it certainly sounds like the sort of thing one reads or hears all the time- it is very close in content and style to the still-influential manifesto by Ira Magaziner and Robert Reich (1982), or for that matter to the presentation made by Apple Computer's John Sculley at President-elect Clinton's Economic Conference last December. People who say things like this believe themselves to be smart, sophisticated, and forward-looking. They do not know that they are repeating a set of misleading cliches that I will dub "pop internationalism."

It is fairly easy to understand why pop internationalism has so much popular appeal. In effect, it portrays America as being like a corporation that used to have a lot of monopoly power,

and could therefore earn comfortable profits in spite of sloppy business practices, but is now facing an onslaught from new competitors. A lot of companies are in that position these days (though the new competitors are not necessarily foreign), and so the image rings true.

Unfortunately, it's a grossly misleading image, because a national economy bears very little resemblance to a corporation. And the ground-level view of businessmen is [24] deeply uninformative about the inherently general-equilibrium issues of international economics.

So what do undergrads need to know about trade? They need to know that pop internationalism is nonsense- and they need to know *why* it is nonsense.

II. Common Misconceptions

I inserted numbers into my imaginary quotation to mark six currently popular misconceptions that can and should be dispelled in an introductory economics course.

1. — "We need a new paradigm..." Pop internationalism proclaims that everything is different now that the United States is an open economy. Probably the most important single insight that an introductory course can convey about international economics is that it does not change the basics: trade is just another economic activity, subject to the same principles as anything else.

James Ingram's (1983) textbook on international trade contains a lovely parable. He imagines that an entrepreneur starts a new business that uses a secret technology to convert U.S. wheat, lumber, and so on into cheap high-quality consumer goods. The entrepreneur is hailed as an industrial hero; although some of his domestic competitors are hurt, everyone accepts that occasional dislocations are the price of a free-market economy. But then an investigative reporter discovers that what he is really doing is shipping the wheat and lumber to Asia and using the proceeds to buy manufactured goods-whereupon he is denounced as a fraud who is destroying American jobs. The point, of course, is that international trade is an economic activity like any other and can indeed usefully be thought of as a kind of production process that transforms exports into imports.

It might, incidentally, also be a good thing if undergrads got a more realistic quantitative sense than the pop internationalists seem to have of the limited extent to which the United States actually has become a part of a global economy. The fact is that imports and exports are still only about one-eighth of output, and at least two-thirds of our value-added consists of non-tradable goods and services. Moreover, one should have some historical perspective with which to counter the silly claims that our current situation is completely unprecedented: the United States is not now and may never be as open to trade as the United Kingdom has been since the reign of Queen Victoria.

2.-"Competing in the world marketplace": One of the most popular, enduring misconceptions of practical men is that countries are in competition with each other in the same way that companies in the same business are in competition. Ricardo already knew better in 1817. An introductory economics course should drive home to students the point that international trade is not about competition, it is about mutually beneficial exchange. Even more fundamentally, we should be able to teach students that imports, not exports, are the purpose of trade. That is, what a country gains from trade is the ability to import things it wants. Exports

are not an objective in and of themselves: the need to export is a burden that a country must bear because its import suppliers are crass enough to demand payment.

One of the distressing things about the tyranny of pop internationalism is that there has been a kind of Gresham's Law in which bad concepts drive out good. Lester Thurow is a trained economist, who understands comparative advantage. Yet his recent book has been a best-seller largely because it vigorously propounds concepts that unintentionally (one hopes) pander to the *cliches* of pop internationalism: "Niche competition is win-win. Everyone has a place where he or she can excel; no one is going to be driven out of business. Head-to-head competition is win-lose." (Thurow, 1992 p. 30). We should try to instill in undergrads a visceral negative reaction to statements like this.

3.-"Productivity": Students should learn that high productivity is beneficial, not because it helps a country to compete with [25] other countries, but because it lets a country produce and therefore consume more. This would be true in a closed economy; it is no more and no less true in an open economy; but that is not what pop internationalists believe.

I have found it useful to offer students the following thought experiment. First, imagine a world in which productivity rises by 1 percent annually in all countries. What will be the trend in the U.S. standard of living? Students have no trouble agreeing that it will rise by 1 percent per year. Now, however, suppose that while the United States continues to raise its productivity by only 1 percent per year, the rest of the world manages to achieve 3-percent productivity growth. What is the trend in our living standard?

The correct answer is that the trend is still 1 percent, except possibly for some subtle effects via our terms of trade; and as an empirical matter changes in the U.S. terms of trade have had virtually no impact on the trend in our living standards over the past few decades. But very few students reach that conclusion-which is not surprising, since virtually everything they read or hear outside of class conveys the image of international trade as a competitive sport.

An anecdote: when I published an op-ed piece in the *New York Times* last year, I emphasized the importance of rising productivity. The editorial assistant I dealt with insisted that I should "explain" that we need to be productive "to compete in the global economy." He was reluctant to publish the piece unless I added the phrase- he said it was necessary so that readers could understand why productivity is important. We need to try to turn out a generation of students who not only don't need that kind of explanation, but understand why it's wrong.

4.-"High-value sectors": Pop internationalists believe that international competition is a struggle over who gets the "high-value" sectors. "Our country's real income can rise only if (1) its labor and capital increasingly flow toward businesses that add greater value per employee and (2) we maintain a position in these businesses that is superior to that of our international competitors" (Magaziner and Reich, 1982 p. 4).

I think it should be possible to teach students why this is a silly concept. Take, for example, a simple two-good Ricardian model in which one country is more productive in both industries than the other. (I have in mind the one used in Krugman and Maurice Obstfeld [1991 pp. 20- 1].) The more productive country will, of course, have a higher wage rate, and therefore whatever sector that country specializes in will be "high value," that is, will have higher value-added per worker. Does this mean that the country's high living standard is the result of being in the right sector, or that the poorer country would be richer if it tried to emulate the other's pattern of specialization? Of course not.

5.-"Jobs": One thing that both friends and foes of free trade seem to agree on is that the central issue is employment. George Bush declared the objective of his ill-starred trip to Japan to be "jobs, jobs, jobs"; both sides in the debate over the North American Free Trade Agreement try to make their case in terms of job creation. And an astonishing number of free-traders think that the reason protectionism is bad is that it causes depressions.

It should be possible to emphasize to students that the level of employment is a macroeconomic issue, depending in the short run on aggregate demand and depending in the long run on the natural rate of unemployment, with macroeconomic policies like tariffs having little net effect. Trade policy should be debated in terms of its impact on efficiency, not in terms of phony numbers about jobs created or lost.

6.-"A new partnership": The bottom line for many pop internationalists is that since U.S. firms are competing with foreigners instead of each other, the U.S. government should turn from its alleged adversarial position to one of supporting our firms against their foreign rivals. A more sophisticated pop internationalist like Robert Reich (1991) realizes that the interests of U.S. *firms* are not the same as those of U.S. *workers* (you may find it hard to believe that anyone needed to point this out, but among pop internationalists this was viewed as a deep and controversial insight), but still accepts the basic premise that the U.S. government should help our industries compete.

What we should be able to teach our students is that the main competition going on is one of U.S. industries against *each other*, over which sector is going to get the scarce resources of capital, skill, and, yes, labor. Government support of an industry may help that industry compete against foreigners, but it also draws resources away from other domestic industries. That is, the increased importance of international trade does not change the fact the government cannot favor one domestic industry except at the expense of others.

Now there are reasons, such as external economics, why a preference for some industries over others may be justified. But this would be true in a closed economy, too. Students need to understand that the growth of world trade provides no additional support for the proposition that our government should become an active friend to domestic industry.

III. What We Should Teach

By now the thrust of my discussion should be clear. For the bulk of our economics students, our objective should be to equip them to respond intelligently to popular discussion of economic issues. A lot of that discussion will be about international trade, so international trade should be an important part of the curriculum.

What is crucial, however, is to understand that the level of public discussion is extremely primitive. Indeed, it has sunk so low that people who repeat silly clichés often imagine themselves to be sophisticated. That means that our courses need to drive home as clearly as possible the basics. Offer curves and Rybczynski effects are lovely things. What most students need to be prepared for, however, is a world in which TV "experts," best-selling authors, and \$30,000-a-day consultants do not understand budget constraints, let alone comparative advantage.

The last 15 years have been a golden age of innovation in international economics. I must somewhat depressingly conclude, however, that this innovative stuff is not a priority for

today's undergraduates. In the last decade of the 20th century, the essential things to teach students are still the insights of Hume and Ricardo. That is, we need to teach them that trade deficits are self-correcting and that the benefits of trade do not depend on a country having an absolute advantage over its rivals. If we can teach undergrads to wince when they hear someone talk about "competitiveness," we will have done our nation a great service.

REFERENCES

- Crichton, Michael, *Rising Sun*, New York: Knopf, 1992.
Ingram, James, *International Economics*, New York: Wiley, 1983.
Krugman, Paul and Obstfeld, Maurice, *International Economics: Theory and Policy*, New York: Harper Collins, 1991.
Magaziner, Ira and Reich, Robert, *Minding America's Business*, New York: Random House, 1982.
Reich, Robert, *The Work of Nations*, New York: Knopf, 1991.
Thurow, Lester, *Head to Head*, New York: William Morrow, 1992.

3. International Trade Law and the WTO

3-1. STAGES OF ECONOMIC INTEGRATION

**Bela Balassa (1928 – 1991), *The Theory of Economic Integration*, 1961, pp. 1-3
The Concept and Forms of Integration**

In everyday usage the word “integration” denotes the bringing together of parts into a whole. In the economic literature the term “economic integration” does not have such a clear-cut meaning. Some authors include social integration in the concept, others subsume different forms of international cooperation under this heading, and the argument has also been advanced that the mere existence of trade relations between independent national economies is a sign of integration.¹ We propose to define economic integration as a process and as a state of affairs. Regarded as a process, it encompasses measures designed to abolish discrimination between economic units belonging to different national states; viewed as a state of affairs, it can be represented by the absence of various forms of discrimination between national economies.²

[2] In interpreting our definition, distinction should be made between integration and cooperation. The difference is qualitative as well as quantitative. Whereas cooperation includes actions aimed at lessening discrimination, the process of economic integration comprises measures that entail the suppression of some forms of discrimination. For example, international agreements on trade policies belong to the area of international cooperation, while the removal of trade barriers is an act of economic integration. Distinguishing between cooperation and integration, we put the main characteristics of the latter – the abolition of discrimination within an area – into clearer focus and give the concept definite meaning without unnecessarily diluting it by the inclusion of diverse actions in the field of international cooperation.

Economic integration, as defined here, can take several forms that represent varying degrees of integration. These are a free-trade area, a customs union, a common market, an economic union, and complete economic integration. In a free-trade area, tariffs (and quantitative restrictions) between the participating countries are abolished, but each country retains its own tariffs against nonmembers. Establishing a customs union involves, besides the suppression of discrimination in the field of commodity movements within the union, the equalization of tariffs in trade with nonmember countries. A higher form of economic integration is attained in a common market, where not only trade restrictions but also restrictions on factor movements are abolished. An economic union, as distinct from a common market, combines the suppression of restrictions on commodity and factor movements with some degree of harmonization of national economic policies, in order to remove discrimination that was due to disparities in these policies. Finally, total economic integration presupposes the unification of monetary, fiscal, social, and countercyclical policies and requires the setting-up of a supra-national authority whose decisions are binding for the member states.³

¹ For a critical survey of these definitions and references, see Bela Balassa, “Towards a Theory of Economic Integration,” *Kyklos*, No. 1 (1961), pp. 1-5.

² It should be noted that this definition is based on the implicit assumption that discrimination actually affected economic intercourse. The suppression of tariff barriers between Iceland and New Zealand, for example, will not integrate the two economies in the absence of a substantial amount of foreign trade, since without trade relations there was no effective discrimination anyway.

³ Social integration can also be mentioned as a further precondition of total economic integration, Nevertheless, social integration has not been included in our definition, since – although it increases the

Adopting the definition given above, the theory of economic integration will be concerned with the economic effects of integration [3] in its various forms and with problems that arise from divergences in national monetary, fiscal, and other policies. The theory of economic integration can be regarded as a part of international economics, but it also enlarges the field of international trade theory by exploring the impact of a fusion of national markets on growth and examining the need for the coordination of economic policies in a union. Finally, the theory of economic integration should incorporate elements of location theory, too. The integration of adjacent countries amounts to the removal of artificial barriers that obstruct continuous economic activities through national frontiers, and the ensuing relocation of production and regional agglomerative and deglomerative tendencies cannot be adequately discussed without making use of the tools of location analysis.⁴

effectiveness of economic integration – it is not necessary for the lower forms of integration. The removal of trade barriers in a free-trade area, for example, is an act of economic integration even in the absence of developments in the social field.

⁴ On the interrelationship of location theory and the theory of economic integration, see my “Towards a Theory of Economic Integration,” pp. 6-8.

3-2. INTRODUCTION TO THE WTO

On the following pages you will find excerpts from the WTO publication “Understanding the WTO” (last revised February 2007) which is available on the WTO’s website under http://www.wto.org/english/thewto_e/whatis_e/tif_e/tif_e.htm.

These excerpts shall give you an overview over the organization, its history, institutional structure and the subject matters covered by the WTO Agreements.

When reading these pages you should keep in mind their origin and the institutional bias they might consequently express.

ABBREVIATIONS

Some of the abbreviations and acronyms used in the WTO:

ACP	African, Caribbean and Pacific Group (Lomé Convention and Cotonu Agreement)	ITC	International Trade Centre
AD, A-D	Anti-dumping measures	ITO	International Trade Organization
AFTA	ASEAN Free Trade Area	MEA	Multilateral environmental agreement
AMS	Aggregate measurement of support (agriculture)	MERCOSUR	Southern Common Market
APEC	Asia-Pacific Economic Cooperation	MFA	Multifibre Arrangement (replaced by ATC)
ASEAN	Association of Southeast Asian Nations	MFN	Most-favoured-nation
ATC	Agreement on Textiles and Clothing	MTN	Multilateral trade negotiations
CBD	Convention on Biological Diversity	NAFTA	North American Free Trade Agreement
CCC	(former) Customs Co-operation Council (now WCO)	PSE	Producer subsidy equivalent (agriculture)
CER	[Australia New Zealand] Closer Economic Relations [Trade Agreement] (also ANCERTA)	PSI	Pre-shipment inspection
COMESA	Common Market for Eastern and Southern Africa	S&D, SDT	Special and differential treatment (for developing countries)
CTD	Committee on Trade and Development	SAARC	South Asian Association for Regional Cooperation
CTE	Committee on Trade and Environment	SDR	Special Drawing Rights (IMF)
CVD	Countervailing duty (subsidies)	SELA	Latin American Economic System
DDA	Doha Development Agenda	SPS	Sanitary and phytosanitary measures
DSB	Dispute Settlement Body	TBT	Technical barriers to trade
DSU	Dispute Settlement Understanding	TMB	Textiles Monitoring Body
EC	European Communities	TNC	Trade Negotiations Committee
EFTA	European Free Trade Association	TPRB	Trade Policy Review Body
EU	European Union (officially European Communities in WTO)	TPRM	Trade Policy Review Mechanism
FAO	Food and Agriculture Organization	TRIMs	Trade-related investment measures
GATS	General Agreement on Trade in Services	TRIPS	Trade-related aspects of intellectual property rights
GATT	General Agreement on Tariffs and Trade	UN	United Nations
GSP	Generalized System of Preferences	UNCTAD	UN Conference on Trade and Development
HS	Harmonized Commodity Description and Coding System	UNDP	UN Development Programme
ICITO	Interim Commission for the International Trade Organization	UNEP	UN Environment Programme
ILO	International Labour Organization	UPOV	International Union for the Protection of New Varieties of Plants
IMF	International Monetary Fund	UR	Uruguay Round
		VER	Voluntary export restraint
		VRA	Voluntary restraint agreement
		WCO	World Customs Organization
		WIPO	World Intellectual Property Organization
		WTO	World Trade Organization

For a comprehensive list of abbreviations and glossary of terms used in international trade, see, for example: Walter Goode, *Dictionary of Trade Policy Terms*, 4th edition, WTO/Cambridge University Press, 2003.

This and many other publications on the WTO and trade are available from:

WTO Publications, World Trade Organization, Centre William Rappard, Rue de Lausanne 154, CH-1211 Geneva, Switzerland.
Tel (+41-22) 739 5208/5308. Fax: (+41-22) 739 5792. E-mail: publications@wto.org

The WTO was born out of negotiations;
everything the WTO does is the result of negotiations

1. What is the World Trade Organization?

Simply put: the World Trade Organization (WTO) deals with the rules of trade between nations at a global or near-global level. But there is more to it than that.

Is it a bird, is it a plane?

There are a number of ways of looking at the WTO. It's an organization for liberalizing trade. It's a forum for governments to negotiate trade agreements. It's a place for them to settle trade disputes. It operates a system of trade rules. (But it's not Superman, just in case anyone thought it could solve — or cause — all the world's problems!)

Above all, it's a negotiating forum ... Essentially, the WTO is a place where member governments go, to try to sort out the trade problems they face with each other. The first step is to talk. The WTO was born out of negotiations, and everything the WTO does is the result of negotiations. The bulk of the WTO's current work comes from the 1986–94 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO is currently the host to new negotiations, under the “Doha Development Agenda” launched in 2001.

Where countries have faced trade barriers and wanted them lowered, the negotiations have helped to liberalize trade. But the WTO is not just about liberalizing trade, and in some circumstances its rules support maintaining trade barriers — for example to protect consumers or prevent the spread of disease.

It's a set of rules ... At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations. These documents provide the legal ground-rules for international commerce. They are essentially contracts, binding governments to keep their trade policies within agreed limits. Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives.



... OR IS IT A TABLE?

Participants in a recent radio discussion on the WTO were full of ideas. The WTO should do this, the WTO should do that, they said.

One of them finally interjected: “Wait a minute. The WTO is a table. People sit round the table and negotiate. What do you expect the table to do?”



'Multilateral' trading system ...

... i.e. the system operated by the WTO. Most nations — including almost all the main trading nations — are members of the system. But some are not, so "multilateral" is used to describe the system instead of "global" or "world".

In WTO affairs, "multilateral" also contrasts with actions taken regionally or by other smaller groups of countries. (This is different from the word's use in other areas of international relations where, for example, a "multilateral" security arrangement can be regional.)

The principles

The trading system should be ...

- without discrimination — a country should not discriminate between its trading partners (giving them equally "most-favoured-nation" or MFN status); and it should not discriminate between its own and foreign products, services or nationals (giving them "national treatment");
- freer — barriers coming down through negotiation;
- predictable — foreign companies, investors and governments should be confident that trade barriers (including tariffs and non-tariff barriers) should not be raised arbitrarily; tariff rates and market-opening commitments are "bound" in the WTO;
- more competitive — discouraging "unfair" practices such as export subsidies and dumping products at below cost to gain market share;
- more beneficial for less developed countries — giving them more time to adjust, greater flexibility, and special privileges.

The system's overriding purpose is to help trade flow as freely as possible — so long as there are no undesirable side-effects — because this is important for economic development and well-being. That partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be "transparent" and predictable.

And it helps to settle disputes ... This is a third important side to the WTO's work. Trade relations often involve conflicting interests. Agreements, including those painstakingly negotiated in the WTO system, often need interpreting. The most harmonious way to settle these differences is through some neutral procedure based on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.

Born in 1995, but not so young

The WTO began life on 1 January 1995, but its trading system is half a century older. Since 1948, the General Agreement on Tariffs and Trade (GATT) had provided the rules for the system. (The second WTO ministerial meeting, held in Geneva in May 1998, included a celebration of the 50th anniversary of the system.)

It did not take long for the General Agreement to give birth to an unofficial, de facto international organization, also known informally as GATT. Over the years GATT evolved through several rounds of negotiations.

The last and largest GATT round, was the Uruguay Round which lasted from 1986 to 1994 and led to the WTO's creation. Whereas GATT had mainly dealt with trade in goods, the WTO and its agreements now cover trade in services, and in traded inventions, creations and designs (intellectual property).

2. Principles of the trading system

The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. They deal with: agriculture, textiles and clothing, banking, telecommunications, government purchases, industrial standards and product safety, food sanitation regulations, intellectual property, and much more. But a number of simple, fundamental principles run throughout all of these documents. These principles are the foundation of the multilateral trading system.

A closer look at these principles:

Trade without discrimination

1. Most-favoured-nation (MFN): treating other people equally Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members.

This principle is known as most-favoured-nation (MFN) treatment (*see box*). It is so important that it is the first article of the General Agreement on Tariffs and Trade (GATT), which governs trade in goods. MFN is also a priority in the General Agreement on Trade in Services (GATS) (Article 2) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Article 4), although in each agreement the principle is handled slightly differently. Together, those three agreements cover all three main areas of trade handled by the WTO.

Some exceptions are allowed. For example, countries can set up a free trade agreement that applies only to goods traded within the group — discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. And in services, countries are allowed, in limited circumstances, to discriminate. But the agreements only permit these exceptions under strict conditions. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners — whether rich or poor, weak or strong.

2. National treatment: Treating foreigners and locals equally Imported and locally-produced goods should be treated equally — at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS), although once again the principle is handled slightly differently in each of these.

National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.

Freer trade: gradually, through negotiation

Lowering trade barriers is one of the most obvious means of encouraging trade. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. From time to time other issues such as red tape and exchange rate policies have also been discussed.

Since GATT’s creation in 1947–48 there have been eight rounds of trade negotiations. A ninth round, under the Doha Development Agenda, is now underway. At first these focused on lowering tariffs (customs duties) on imported goods. As a result of the negotiations, by the mid-1990s industrial countries’ tariff rates on industrial goods had fallen steadily to less than 4%

But by the 1980s, the negotiations had expanded to cover non-tariff barriers on goods, and to the new areas such as services and intellectual property.

Opening markets can be beneficial, but it also requires adjustment. The WTO agreements allow countries to introduce changes gradually, through “progressive liberalization”. Developing countries are usually given longer to fulfil their obligations.

Predictability: through binding and transparency

Sometimes, promising not to raise a trade barrier can be as important as lowering one, because the promise gives businesses a clearer view of their future opportunities. With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition — choice and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable.

Why ‘most-favoured’?

This sounds like a contradiction. It suggests special treatment, but in the WTO it actually means non-discrimination — treating virtually everyone equally.

This is what happens. Each member treats all the other members equally as “most-favoured” trading partners. If a country improves the benefits that it gives to one trading partner, it has to give the same “best” treatment to all the other WTO members so that they all remain “most-favoured”.

Most-favoured nation (MFN) status did not always mean equal treatment. The first bilateral MFN treaties set up exclusive clubs among a country’s “most-favoured” trading partners. Under GATT and now the WTO, the MFN club is no longer exclusive. The MFN principle ensures that each country treats its over-140 fellow-members equally.

But there are some exceptions ...

The Uruguay Round increased bindings

Percentages of tariffs bound before and after the 1986–94 talks

	Before	After
Developed countries	78	99
Developing countries	21	73
Transition economies	73	98

(These are tariff lines, so percentages are not weighted according to trade volume or value)

In the WTO, when countries agree to open their markets for goods or services, they “bind” their commitments. For goods, these bindings amount to ceilings on customs tariff rates. Sometimes countries tax imports at rates that are lower than the bound rates. Frequently this is the case in developing countries. In developed countries the rates actually charged and the bound rates tend to be the same.

A country can change its bindings, but only after negotiating with its trading partners, which could mean compensating them for loss of trade. One of the achievements of the Uruguay Round of multilateral trade talks was to increase the amount of trade under binding commitments (*see table*). In agriculture, 100% of products now have bound tariffs. The result of all this: a substantially higher degree of market security for traders and investors.

The system tries to improve predictability and stability in other ways as well. One way is to discourage the use of quotas and other measures used to set limits on quantities of imports — administering quotas can lead to more red-tape and accusations of unfair play. Another is to make countries’ trade rules as clear and public (“transparent”) as possible. Many WTO agreements require governments to disclose their policies and practices publicly within the country or by notifying the WTO. The regular surveillance of national trade policies through the Trade Policy Review Mechanism provides a further means of encouraging transparency both domestically and at the multilateral level.

Promoting fair competition

The WTO is sometimes described as a “free trade” institution, but that is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More accurately, it is a system of rules dedicated to open, fair and undistorted competition.

The rules on non-discrimination — MFN and national treatment — are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies. The issues are complex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.

Many of the other WTO agreements aim to support fair competition: in agriculture, intellectual property, services, for example. The agreement on government procurement (a “plurilateral” agreement because it is signed by only a few WTO members) extends competition rules to purchases by thousands of government entities in many countries. And so on.

Encouraging development and economic reform

The WTO system contributes to development. On the other hand, developing countries need flexibility in the time they take to implement the system’s agreements. And the agreements themselves inherit the earlier provisions of GATT that allow for special assistance and trade concessions for developing countries.

Over three quarters of WTO members are developing countries and countries in transition to market economies. During the seven and a half years of the Uruguay Round, over 60 of these countries implemented trade liberalization programmes autonomously. At the same time, developing countries and transition economies were much more active and influential in the Uruguay Round negotiations than in any previous round, and they are even more so in the current Doha Development Agenda.

At the end of the Uruguay Round, developing countries were prepared to take on most of the obligations that are required of developed countries. But the agreements did give them transition periods to adjust to the more unfamiliar and, perhaps, difficult WTO provisions — particularly so for the poorest, “least-developed” countries. A ministerial decision adopted at the end of the round says better-off countries should accelerate implementing market access commitments on goods exported by the least-developed countries, and it seeks increased technical assistance for them. More recently, developed countries have started to allow duty-free and quota-free imports for almost all products from least-developed countries. On all of this, the WTO and its members are still going through a learning process. The current Doha Development Agenda includes developing countries’ concerns about the difficulties they face in implementing the Uruguay Round agreements.

3. The case for open trade

The economic case for an open trading system based on multilaterally agreed rules is simple enough and rests largely on commercial common sense. But it is also supported by evidence: the experience of world trade and economic growth since the Second World War. Tariffs on industrial products have fallen steeply and now average less than 5% in industrial countries. During the first 25 years after the war, world economic growth averaged about 5% per year, a high rate that was partly the result of lower trade barriers. World trade grew even faster, averaging about 8% during the period.

The data show a definite statistical link between freer trade and economic growth. Economic theory points to strong reasons for the link. All countries, including the poorest, have assets — human, industrial, natural, financial — which they can employ to produce goods and services for their domestic markets or to compete overseas. Economics tells us that we can benefit when these goods and services are traded. Simply put, the principle of “comparative advantage” says that countries prosper first by taking advantage of their assets in order to concentrate on what they can produce best, and then by trading these products for products that other countries produce best.

In other words, liberal trade policies — policies that allow the unrestricted flow of goods and services — sharpen competition, motivate innovation and breed success. They multiply the rewards that result from producing the best products, with the best design, at the best price.

But success in trade is not static. The ability to compete well in particular products can shift from company to company when the market changes or new technologies make cheaper and better products possible. Producers are encouraged to adapt gradually and in a relatively painless way. They can focus on new products, find a new “niche” in their current area or expand into new areas.

Experience shows that competitiveness can also shift between whole countries. A country that may have enjoyed an advantage because of lower labour costs or because it had good supplies of some natural resources, could also become uncompetitive in some goods or services as its economy develops. However, with the stimulus of an open economy, the country can move on to become competitive in some other goods or services. This is normally a gradual process.

TRUE AND NON-TRIVIAL?

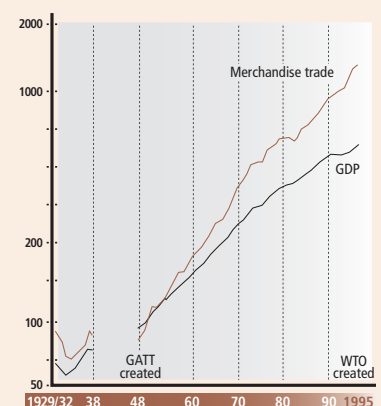
Nobel laureate Paul Samuelson was once challenged by the mathematician Stanislaw Ulam to “name me one proposition in all of the social sciences which is both true and non-trivial.”

Samuelson’s answer? Comparative advantage.

“That it is logically true need not be argued before a mathematician; that it is not trivial is attested by the thousands of important and intelligent men who have never been able to grasp the doctrine for themselves or to believe it after it was explained to them.”

World trade and production have accelerated

Both trade and GDP fell in the late 1920s, before bottoming out in 1932. After World War II, both have risen exponentially, most of the time with trade outpacing GDP. (1950 = 100. Trade and GDP: log scale)



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Nevertheless, the temptation to ward off the challenge of competitive imports is always present. And richer governments are more likely to yield to the siren call of protectionism, for short term political gain — through subsidies, complicated red tape, and hiding behind legitimate policy objectives such as environmental preservation or consumer protection as an excuse to protect producers.

Protection ultimately leads to bloated, inefficient producers supplying consumers with outdated, unattractive products. In the end, factories close and jobs are lost despite the protection and subsidies. If other governments around the world pursue the same policies, markets contract and world economic activity is reduced. One of the objectives that governments bring to WTO negotiations is to prevent such a self-defeating and destructive drift into protectionism.

Comparative advantage

This is arguably the single most powerful insight into economics.

Suppose country A is better than country B at making automobiles, and country B is better than country A at making bread. It is obvious (the academics would say “trivial”) that both would benefit if A specialized in automobiles, B specialized in bread and they traded their products. That is a case of **absolute advantage**.

But what if a country is bad at making everything? Will trade drive all producers out of business? The answer, according to Ricardo, is no. The reason is the principle of **comparative advantage**.

It says, countries A and B still stand to benefit from trading with each other even if A is better than B at making everything. If A is much more superior at making automobiles and only slightly

superior at making bread, then A should still invest resources in what it does best — producing automobiles — and export the product to B. B should still invest in what it does best — making bread — and export that product to A, even if it is not as efficient as A. Both would still benefit from the trade. A country does not have to be best at anything to gain from trade. That is comparative advantage.

The theory dates back to classical economist David Ricardo. It is one of the most widely accepted among economists. It is also one of the most misunderstood among non-economists because it is confused with absolute advantage.

It is often claimed, for example, that some countries have no comparative advantage in anything. That is virtually impossible.

Think about it ...

4. The GATT years: from Havana to Marrakesh

The WTO's creation on 1 January 1995 marked the biggest reform of international trade since after the Second World War. It also brought to reality — in an updated form — the failed attempt in 1948 to create an International Trade Organization.

Much of the history of those 47 years was written in Geneva. But it also traces a journey that spanned the continents, from that hesitant start in 1948 in Havana (Cuba), via Annecy (France), Torquay (UK), Tokyo (Japan), Punta del Este (Uruguay), Montreal (Canada), Brussels (Belgium) and finally to Marrakesh (Morocco) in 1994. During that period, the trading system came under GATT, salvaged from the aborted attempt to create the ITO. GATT helped establish a strong and prosperous multilateral trading system that became more and more liberal through rounds of trade negotiations. But by the 1980s the system needed a thorough overhaul. This led to the Uruguay Round, and ultimately to the WTO.

GATT: 'provisional' for almost half a century

From 1948 to 1994, the General Agreement on Tariffs and Trade (GATT) provided the rules for much of world trade and presided over periods that saw some of the highest growth rates in international commerce. It seemed well-established, but throughout those 47 years, it was a provisional agreement and organization.

The original intention was to create a third institution to handle the trade side of international economic cooperation, joining the two "Bretton Woods" institutions, the World Bank and the International Monetary Fund. Over 50 countries participated in negotiations to create an International Trade Organization (ITO) as a specialized agency of the United Nations. The draft ITO Charter was ambitious. It extended beyond world trade disciplines, to include rules on employment, commodity agreements, restrictive business practices, international investment, and services. The aim was to create the ITO at a UN Conference on Trade and Employment in Havana, Cuba in 1947.

Meanwhile, 15 countries had begun talks in December 1945 to reduce and bind customs tariffs. With the Second World War only recently ended, they wanted to give an early boost to trade liberalization, and to begin to correct the legacy of protectionist measures which remained in place from the early 1930s.

This first round of negotiations resulted in a package of trade rules and 45,000 tariff concessions affecting \$10 billion of trade, about one fifth of the world's total. The group had expanded to 23 by the time the deal was signed on 30 October 1947. The tariff concessions came into effect by 30 June 1948 through a "Protocol of Provisional Application". And so the new General Agreement on Tariffs and Trade was born, with 23 founding members (officially "contracting parties").

The 23 were also part of the larger group negotiating the ITO Charter. One of the provisions of GATT says that they should accept some of the trade rules of the draft. This, they believed, should be done swiftly and "provisionally" in order to protect the value of the tariff concessions they had negotiated. They spelt out how they envisaged the relationship between GATT and the ITO Charter, but they also allowed for the possibility that the ITO might not be created. They were right.

The trade chiefs

The directors-general of GATT and WTO

- Sir Eric Wyndham White (UK) 1948–68
- Olivier Long (Switzerland) 1968–80
- Arthur Dunkel (Switzerland) 1980–93
- Peter Sutherland (Ireland)
GATT 1993–94; WTO 1995
- Renato Ruggiero (Italy) 1995–1999
- Mike Moore (New Zealand) 1999–2002
- Supachai Panitchpakdi (Thailand)
2002–2005
- Pascal Lamy (France) 2005–

The Havana conference began on 21 November 1947, less than a month after GATT was signed. The ITO Charter was finally agreed in Havana in March 1948, but ratification in some national legislatures proved impossible. The most serious opposition was in the US Congress, even though the US government had been one of the driving forces. In 1950, the United States government announced that it would not seek Congressional ratification of the Havana Charter, and the ITO was effectively dead. So, the GATT became the only multilateral instrument governing international trade from 1948 until the WTO was established in 1995.

For almost half a century, the GATT's basic legal principles remained much as they were in 1948. There were additions in the form of a section on development added in the 1960s and "plurilateral" agreements (i.e. with voluntary membership) in the 1970s, and efforts to reduce tariffs further continued. Much of this was achieved through a series of multilateral negotiations known as "trade rounds" — the biggest leaps forward in international trade liberalization have come through these rounds which were held under GATT's auspices.

In the early years, the GATT trade rounds concentrated on further reducing tariffs. Then, the Kennedy Round in the mid-sixties brought about a GATT Anti-Dumping Agreement and a section on development. The Tokyo Round during the seventies was the first major attempt to tackle trade barriers that do not take the form of tariffs, and to improve the system. The eighth, the Uruguay Round of 1986–94, was the last and most extensive of all. It led to the WTO and a new set of agreements.

The GATT trade rounds

Year	Place/ name	Subjects covered	Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960–1961	Geneva (Dillon Round)	Tariffs	26
1964–1967	Geneva (Kennedy Round)	Tariffs and anti-dumping measures	62
1973–1979	Geneva (Tokyo Round)	Tariffs, non-tariff measures, "framework" agreements	102
1986–1994	Geneva (Uruguay Round)	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc	123

The Tokyo Round 'codes'

- Subsidies and countervailing measures — interpreting Articles 6, 16 and 23 of GATT
- Technical barriers to trade — sometimes called the Standards Code
- Import licensing procedures
- Government procurement
- Customs valuation — interpreting Article 7
- Anti-dumping — interpreting Article 6, replacing the Kennedy Round code
- Bovine Meat Arrangement
- International Dairy Arrangement
- Trade in Civil Aircraft

The Tokyo Round: a first try to reform the system

The Tokyo Round lasted from 1973 to 1979, with 102 countries participating. It continued GATT's efforts to progressively reduce tariffs. The results included an average one-third cut in customs duties in the world's nine major industrial markets, bringing the average tariff on industrial products down to 4.7%. The tariff reductions, phased in over a period of eight years, involved an element of "harmonization" — the higher the tariff, the larger the cut, proportionally.

In other issues, the Tokyo Round had mixed results. It failed to come to grips with the fundamental problems affecting farm trade and also stopped short of providing a modified agreement on "safeguards" (emergency import measures). Nevertheless, a series of agreements on non-tariff barriers did emerge from the negotiations, in some cases interpreting existing GATT rules, in others breaking entirely new ground. In most cases, only a relatively small number of (mainly industrialized) GATT members subscribed to these agreements and arrangements. Because they were not accepted by the full GATT membership, they were often informally called "codes".

They were not multilateral, but they were a beginning. Several codes were eventually amended in the Uruguay Round and turned into multilateral commitments accepted by all WTO members. Only four remained “plurilateral” — those on government procurement, bovine meat, civil aircraft and dairy products. In 1997 WTO members agreed to terminate the bovine meat and dairy agreements, leaving only two.

Did GATT succeed?

GATT was provisional with a limited field of action, but its success over 47 years in promoting and securing the liberalization of much of world trade is incontestable. Continual reductions in tariffs alone helped spur very high rates of world trade growth during the 1950s and 1960s — around 8% a year on average. And the momentum of trade liberalization helped ensure that trade growth consistently out-paced production growth throughout the GATT era, a measure of countries’ increasing ability to trade with each other and to reap the benefits of trade. The rush of new members during the Uruguay Round demonstrated that the multilateral trading system was recognized as an anchor for development and an instrument of economic and trade reform.

But all was not well. As time passed new problems arose. The Tokyo Round in the 1970s was an attempt to tackle some of these but its achievements were limited. This was a sign of difficult times to come.

GATT’s success in reducing tariffs to such a low level, combined with a series of economic recessions in the 1970s and early 1980s, drove governments to devise other forms of protection for sectors facing increased foreign competition. High rates of unemployment and constant factory closures led governments in Western Europe and North America to seek bilateral market-sharing arrangements with competitors and to embark on a subsidies race to maintain their holds on agricultural trade. Both these changes undermined GATT’s credibility and effectiveness.

The problem was not just a deteriorating trade policy environment. By the early 1980s the General Agreement was clearly no longer as relevant to the realities of world trade as it had been in the 1940s. For a start, world trade had become far more complex and important than 40 years before: the globalization of the world economy was underway, trade in services — not covered by GATT rules — was of major interest to more and more countries, and international investment had expanded. The expansion of services trade was also closely tied to further increases in world merchandise trade. In other respects, GATT had been found wanting. For instance, in agriculture, loopholes in the multilateral system were heavily exploited, and efforts at liberalizing agricultural trade met with little success. In the textiles and clothing sector, an exception to GATT’s normal disciplines was negotiated in the 1960s and early 1970s, leading to the Multifibre Arrangement. Even GATT’s institutional structure and its dispute settlement system were causing concern.

These and other factors convinced GATT members that a new effort to reinforce and extend the multilateral system should be attempted. That effort resulted in the Uruguay Round, the Marrakesh Declaration, and the creation of the WTO.

Trade rounds: progress by package

They are often lengthy — the Uruguay Round took seven and a half years — but trade rounds can have an advantage. They offer a package approach to trade negotiations that can sometimes be more fruitful than negotiations on a single issue.

- The size of the package can mean more benefits because participants can seek and secure advantages across a wide range of issues.

- Agreement can be easier to reach, through trade-offs — somewhere in the package there should be something for everyone.

This has political as well as economic implications. A government may want to make a concession, perhaps in one sector, because of the economic benefits. But politically, it could find the concession difficult to defend. A package would contain politically and economically attractive benefits in other sectors that could be used as compensation.

So, reform in politically-sensitive sectors of world trade can be more feasible as part of a global package — a good example is the agreement to reform agricultural trade in the Uruguay Round.

- Developing countries and other less powerful participants have a greater chance of influencing the multilateral system in a trade round than in bilateral relationships with major trading nations.

But the size of a trade round can be both a strength and a weakness. From time to time, the question is asked: wouldn’t it be simpler to concentrate negotiations on a single sector? Recent history is inconclusive. At some stages, the Uruguay Round seemed so cumbersome that it seemed impossible that all participants could agree on every subject. Then the round did end successfully in 1993–94. This was followed by two years of failure to reach agreement in the single-sector talks on maritime transport.

Did this mean that trade rounds were the only route to success? No. In 1997, single-sector talks were concluded successfully in basic telecommunications, information technology equipment and financial services.

The debate continues. Whatever the answer, the reasons are not straightforward. Perhaps success depends on using the right type of negotiation for the particular time and context.

The 1986 agenda

The 15 original Uruguay Round subjects

- Tariffs
- Non-tariff barriers
- Natural resource products
- Textiles and clothing
- Agriculture
- Tropical products
- GATT articles
- Tokyo Round codes
- Anti-dumping
- Subsidies
- Intellectual property
- Investment measures
- Dispute settlement
- The GATT system
- Services

5. The Uruguay Round

It took seven and a half years, almost twice the original schedule. By the end, 123 countries were taking part. It covered almost all trade, from toothbrushes to pleasure boats, from banking to telecommunications, from the genes of wild rice to AIDS treatments. It was quite simply the largest trade negotiation ever, and most probably the largest negotiation of any kind in history.

At times it seemed doomed to fail. But in the end, the Uruguay Round brought about the biggest reform of the world's trading system since GATT was created at the end of the Second World War. And yet, despite its troubled progress, the Uruguay Round did see some early results. Within only two years, participants had agreed on a package of cuts in import duties on tropical products — which are mainly exported by developing countries. They had also revised the rules for settling disputes, with some measures implemented on the spot. And they called for regular reports on GATT members' trade policies, a move considered important for making trade regimes transparent around the world.

The Uruguay Round — Key dates

- Sep 86** Punta del Este: launch
- Dec 88** Montreal: ministerial mid-term review
- Apr 89** Geneva: mid-term review completed
- Dec 90** Brussels: "closing" ministerial meeting ends in deadlock
- Dec 91** Geneva: first draft of Final Act completed
- Nov 92** Washington: US and EC achieve "Blair House" breakthrough on agriculture
- Jul 93** Tokyo: Quad achieve market access breakthrough at G7 summit
- Dec 93** Geneva: most negotiations end (some market access talks remain)
- Apr 94** Marrakesh: agreements signed
- Jan 95** Geneva: WTO created, agreements take effect

A round to end all rounds?

The seeds of the Uruguay Round were sown in November 1982 at a ministerial meeting of GATT members in Geneva. Although the ministers intended to launch a major new negotiation, the conference stalled on agriculture and was widely regarded as a failure. In fact, the work programme that the ministers agreed formed the basis for what was to become the Uruguay Round negotiating agenda.

Nevertheless, it took four more years of exploring, clarifying issues and painstaking consensus-building, before ministers agreed to launch the new round. They did so in September 1986, in Punta del Este, Uruguay. They eventually accepted a negotiating agenda that covered virtually every outstanding trade policy issue. The talks were going to extend the trading system into several new areas, notably trade in services and intellectual property, and to reform trade in the sensitive sectors of agriculture and textiles. All the original GATT articles were up for review. It was the biggest negotiating mandate on trade ever agreed, and the ministers gave themselves four years to complete it.

Two years later, in December 1988, ministers met again in Montreal, Canada, for what was supposed to be an assessment of progress at the round's half-way point. The purpose was to clarify the agenda for the remaining two years, but the talks ended in a deadlock that was not resolved until officials met more quietly in Geneva the following April.

Despite the difficulty, during the Montreal meeting, ministers did agree a package of early results. These included some concessions on market access for tropical products — aimed at assisting developing countries — as well as a streamlined dispute settlement system, and the Trade Policy Review Mechanism which provided for the first comprehensive, systematic and regular reviews of national trade policies and practices of GATT members. The round was supposed to end when ministers met once more in Brussels, in December 1990. But they disagreed on how to reform agricultural trade and decided to extend the talks. The Uruguay Round entered its bleakest period.

Despite the poor political outlook, a considerable amount of technical work continued, leading to the first draft of a final legal agreement. This draft “Final Act” was compiled by the then GATT director-general, Arthur Dunkel, who chaired the negotiations at officials’ level. It was put on the table in Geneva in December 1991. The text fulfilled every part of the Punta del Este mandate, with one exception — it did not contain the participating countries’ lists of commitments for cutting import duties and opening their services markets. The draft became the basis for the final agreement.

Over the following two years, the negotiations lurched between impending failure, to predictions of imminent success. Several deadlines came and went. New points of major conflict emerged to join agriculture: services, market access, anti-dumping rules, and the proposed creation of a new institution. Differences between the United States and European Union became central to hopes for a final, successful conclusion.

In November 1992, the US and EU settled most of their differences on agriculture in a deal known informally as the “Blair House accord”. By July 1993 the “Quad” (US, EU, Japan and Canada) announced significant progress in negotiations on tariffs and related subjects (“market access”). It took until 15 December 1993 for every issue to be finally resolved and for negotiations on market access for goods and services to be concluded (although some final touches were completed in talks on market access a few weeks later). On 15 April 1994, the deal was signed by ministers from most of the 123 participating governments at a meeting in Marrakesh, Morocco.

The delay had some merits. It allowed some negotiations to progress further than would have been possible in 1990: for example some aspects of services and intellectual property, and the creation of the WTO itself. But the task had been immense, and negotiation-fatigue was felt in trade bureaucracies around the world. The difficulty of reaching agreement on a complete package containing almost the entire range of current trade issues led some to conclude that a negotiation on this scale would never again be possible. Yet, the Uruguay Round agreements contain timetables for new negotiations on a number of topics. And by 1996, some countries were openly calling for a new round early in the next century. The response was mixed; but the Marrakesh agreement did already include commitments to reopen negotiations on agriculture and services at the turn of the century. These began in early 2000 and were incorporated into the Doha Development Agenda in late 2001.

What happened to GATT?

The WTO replaced GATT as an international organization, but the General Agreement still exists as the WTO’s umbrella treaty for trade in goods, updated as a result of the Uruguay Round negotiations. Trade lawyers distinguish between GATT 1994, the updated parts of GATT, and GATT 1947, the original agreement which is still the heart of GATT 1994. Confusing? For most of us, it’s enough to refer simply to “GATT”.



The post-Uruguay Round built-in agenda

Many of the Uruguay Round agreements set timetables for future work. Part of this “built-in agenda” started almost immediately. In some areas, it included new or further negotiations. In other areas, it included assessments or reviews of the situation at specified times. Some negotiations were quickly completed, notably in basic telecommunications, financial services. (Member governments also swiftly agreed a deal for freer trade in information technology products, an issue outside the “built-in agenda”.)

The agenda originally built into the Uruguay Round agreements has seen additions and modifications. A number of items are now part of the Doha Agenda, some of them updated.

There were well over 30 items in the original built-in agenda.

This is a selection of highlights:

1996

- Maritime services: market access negotiations to end (30 June 1996, suspended to 2000, now part of Doha Development Agenda)
- Services and environment: deadline for working party report (ministerial conference, December 1996)
- Government procurement of services: negotiations start

1997

- Basic telecoms: negotiations end (15 February)
- Financial services: negotiations end (30 December)
- Intellectual property, creating a multilateral system of notification and registration of geographical indications for wines: negotiations start, now part of Doha Development Agenda

1998

- Textiles and clothing: new phase begins 1 January
- Services (emergency safeguards): results of negotiations on emergency safeguards to take effect (by 1 January 1998, deadline now March 2004)
- Rules of origin: Work programme on harmonization of rules of origin to be completed (20 July 1998)
- Government procurement: further negotiations start, for improving rules and procedures (by end of 1998)
- Dispute settlement: full review of rules and procedures (to start by end of 1998)

1999

- Intellectual property: certain exceptions to patentability and protection of plant varieties: review starts

2000

- Agriculture: negotiations start, now part of Doha Development Agenda
- Services: new round of negotiations start, now part of Doha Development Agenda
- Tariff bindings: review of definition of “principle supplier” having negotiating rights under GATT Art 28 on modifying bindings
- Intellectual property: first of two-yearly reviews of the implementation of the agreement

2002

- Textiles and clothing: new phase begins 1 January

2005

- Textiles and clothing: full integration into GATT and agreement expires 1 January

The WTO is 'rules-based'; its rules are negotiated agreements

1. Overview: a navigational guide

The WTO agreements cover goods, services and intellectual property. They spell out the principles of liberalization, and the permitted exceptions. They include individual countries' commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. They set procedures for settling disputes. They prescribe special treatment for developing countries. They require governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted, and through regular reports by the secretariat on countries' trade policies.

These agreements are often called the WTO's trade rules, and the WTO is often described as "rules-based", a system based on rules. But it's important to remember that the rules are actually agreements that governments negotiated.

This chapter focuses on the Uruguay Round agreements, which are the basis of the present WTO system. Additional work is also now underway in the WTO. This is the result of decisions taken at Ministerial Conferences, in particular the meeting in Doha, November 2001, when new negotiations and other work were launched. (More on the Doha Agenda, later.)

Six-part broad outline

The table of contents of "The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts" is a daunting list of about 60 agreements, annexes, decisions and understandings. In fact, the agreements fall into a simple structure with six main parts: an umbrella agreement (the Agreement Establishing the WTO); agreements for each of the three broad areas of trade that the WTO covers (goods, services and intellectual property); dispute settlement; and reviews of governments' trade policies.

The agreements for the two largest areas — goods and services — share a common three-part outline, even though the detail is sometimes quite different.

- They start with **broad principles**: the General Agreement on Tariffs and trade (GATT) (for goods), and the General Agreement on Trade in Services (GATS) (The third area, Trade-Related Aspects of Intellectual Property Rights (TRIPS), also falls into this category although at present it has no additional parts.)
- Then come **extra agreements and annexes** dealing with the special requirements of specific sectors or issues.
- Finally, there are the detailed and lengthy **schedules (or lists) of commitments** made by individual countries allowing specific foreign products or service-providers access to their markets. For GATT, these take the form of binding commitments on tariffs for goods in general, and combinations of tariffs and quotas for some agricultural goods. For GATS, the commitments state how much access foreign service providers are allowed for specific sectors, and they include lists of types of services where individual countries say they are not applying the "most-favoured-nation" principle of non-discrimination.

The 'additional details'

These agreements and annexes deal with the following specific sectors or issues:

For **goods** (under GATT)

- Agriculture
- Health regulations for farm products (SPS)
- Textiles and clothing
- Product standards (TBT)
- Investment measures
- Anti-dumping measures
- Customs valuation methods
- Preshipment inspection
- Rules of origin
- Import licensing
- Subsidies and counter-measures
- Safeguards

For **services** (the GATS annexes)

- Movement of natural persons
- Air transport
- Financial services
- Shipping
- Telecommunications

Underpinning these are dispute settlement, which is based on the agreements and commitments, and trade policy reviews, an exercise in transparency.

Much of the Uruguay Round dealt with the first two parts: general principles and principles for specific sectors. At the same time, market access negotiations were possible for industrial goods. Once the principles had been worked out, negotiations could proceed on the commitments for sectors such as agriculture and services.

Additional agreements

Another group of agreements not included in the diagram is also important: the two “plurilateral” agreements not signed by all members: civil aircraft and government procurement.

Further changes on the horizon, the Doha Agenda

These agreements are not static; they are renegotiated from time to time and new agreements can be added to the package. Many are now being negotiated under the Doha Development Agenda, launched by WTO trade ministers in Doha, Qatar, in November 2001.

In a nutshell			
The basic structure of the WTO agreements: how the six main areas fit together — the umbrella WTO Agreement, goods, services, intellectual property, disputes and trade policy reviews.			
<i>Umbrella</i>	AGREEMENT ESTABLISHING WTO		
	Goods	Services	Intellectual property
<i>Basic principles</i>	GATT	GATS	TRIPS
<i>Additional details</i>	Other goods agreements and annexes	Services annexes	
<i>Market access commitments</i>	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)	
<i>Dispute settlement</i>	DISPUTE SETTLEMENT		
<i>Transparency</i>	TRADE POLICY REVIEWS		

2. Tariffs: more bindings and closer to zero

The bulkiest results of Uruguay Round are the 22,500 pages listing individual countries' commitments on specific categories of goods and services. These include commitments to cut and "bind" their customs duty rates on imports of goods. In some cases, tariffs are being cut to zero. There is also a significant increase in the number of "bound" tariffs — duty rates that are committed in the WTO and are difficult to raise.



ON THE WEBSITE:

www.wto.org > trade topics > goods > goods schedules

www.wto.org > trade topics > services > services schedules

Tariff cuts

Developed countries' tariff cuts were for the most part phased in over five years from 1 January 1995. The result is a 40% cut in their tariffs on industrial products, from an average of 6.3% to 3.8%. The value of imported industrial products that receive duty-free treatment in developed countries will jump from 20% to 44%.

There will also be fewer products charged high duty rates. The proportion of imports into developed countries from all sources facing tariffs rates of more than 15% will decline from 7% to 5%. The proportion of developing country exports facing tariffs above 15% in industrial countries will fall from 9% to 5%.

The Uruguay Round package has been improved. On 26 March 1997, 40 countries accounting for more than 92% of world trade in information technology products, agreed to eliminate import duties and other charges on these products by 2000 (by 2005 in a handful of cases). As with other tariff commitments, each participating country is applying its commitments equally to exports from all WTO members (i.e. on a most-favoured-nation basis), even from members that did not make commitments.



What is this agreement called? There is no legally binding agreement that sets out the targets for tariff reductions (e.g. by what percentage they were to be cut as a result of the Uruguay Round).

Instead, individual countries listed their commitments in schedules annexed to Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994. This is the legally binding agreement for the reduced tariff rates. Since then, additional commitments were made under the 1997 Information Technology Agreement.

More bindings

Developed countries increased the number of imports whose tariff rates are "bound" (committed and difficult to increase) from 78% of product lines to 99%. For developing countries, the increase was considerable: from 21% to 73%. Economies in transition from central planning increased their bindings from 73% to 98%. This all means a substantially higher degree of market security for traders and investors.

ON THE WEBSITE:

www.wto.org > trade topics > market access



> See also **Doha Agenda negotiations**

Binding' tariffs

The market access schedules are not simply announcements of tariff rates. They represent commitments not to increase tariffs above the listed rates — the rates are "bound". For developed countries, the bound rates are generally the rates actually charged. Most developing countries have bound the rates somewhat higher than the actual rates charged, so the bound rates serve as ceilings.

Countries can break a commitment (i.e. raise a tariff above the bound rate), but only with difficulty. To do so they have to negotiate with the countries most concerned and that could result in compensation for trading partners' loss of trade.

And agriculture ...

Tariffs on all agricultural products are now bound. Almost all import restrictions that did not take the form of tariffs, such as quotas, have been converted to tariffs — a process known as “tariffication”. This has made markets substantially more predictable for agriculture. Previously more than 30% of agricultural produce had faced quotas or import restrictions. The first step in “tariffication” was to replace these restrictions with tariffs that represented about the same level of protection. Then, over six years from 1995–2000, these tariffs were gradually reduced (the reduction period for developing countries ends in 2005). The market access commitments on agriculture also eliminate previous import bans on certain products. In addition, the lists include countries’ commitments to reduce domestic support and export subsidies for agricultural products. (*See section on agriculture.*)

> See also **Doha Agenda** chapter

3. Agriculture: fairer markets for farmers

~~The original GATT did apply to agricultural trade, but it contained loopholes. For example, it allowed countries to use some non-tariff measures such as import quotas, and to subsidize. Agricultural trade became highly distorted, especially with the use of export subsidies which would not normally have been allowed for industrial products. The Uruguay Round produced the first multilateral agreement dedicated to the sector. It was a significant first step towards order, fair competition and a less distorted sector. It was implemented over a six-year period (and is still being implemented by developing countries under their 10-year period), that began in 1995. The Uruguay Round agreement included a commitment to continue the reform through new negotiations. These were launched in 2000, as required by the Agriculture Agreement.~~

> ~~See also **Doha Agenda negotiations**~~

What is ‘distortion’?

This is a key issue. Trade is distorted if prices are higher or lower than normal, and if quantities produced, bought, and sold are also higher or lower than normal — i.e. than the levels that would usually exist in a competitive market.

For example, import barriers and domestic subsidies can make crops more expensive on a country’s internal market. The higher prices can encourage over-production. If the surplus is to be sold on world markets, where prices are lower, then export subsidies are needed. As a result, the subsidizing countries can be producing and exporting considerably more than they normally would.

Governments usually give three reasons for supporting and protecting their farmers, even if this distorts agricultural trade:

- to make sure that enough food is produced to meet the country’s needs
- to shield farmers from the effects of the weather and swings in world prices
- to preserve rural society.

But the policies have often been expensive, and they have created gluts leading to export subsidy wars. Countries with less money for subsidies have suffered.

The debate in the negotiations is whether these objectives can be met without distorting trade.



The priority is to settle disputes, not to pass judgement

1. A unique contribution

Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced. The WTO's procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly-defined rules, with timetables for completing a case. First rulings are made by a panel and endorsed (or rejected) by the WTO's full membership. Appeals based on points of law are possible.

However, the point is not to pass judgement. The priority is to settle disputes, through consultations if possible. By July 2005, only about 130 of the 332 cases had reached the full panel process. Most of the rest have either been notified as settled "out of court" or remain in a prolonged consultation phase — some since 1995.

Principles: equitable, fast, effective, mutually acceptable

Disputes in the WTO are essentially about broken promises. WTO members have agreed that if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally. That means abiding by the agreed procedures, and respecting judgements.

A dispute arises when one country adopts a trade policy measure or takes some action that one or more fellow-WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations. A third group of countries can declare that they have an interest in the case and enjoy some rights.

A procedure for settling disputes existed under the old GATT, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively. The Uruguay Round agreement introduced a more structured



*What is this agreement called?
Understanding on Rules and Procedures
Governing the Settlement of Disputes*

Panels

Panels are like tribunals. But unlike in a normal tribunal, the panellists are usually chosen in consultation with the countries in dispute. Only if the two sides cannot agree does the WTO director-general appoint them.

Panels consist of three (possibly five) experts from different countries who examine the evidence and decide who is right and who is wrong. The panel's report is passed to the Dispute Settlement Body, which can only reject the report by consensus.

Panellists for each case can be chosen from a permanent list of well-qualified candidates, or from elsewhere. They serve in their individual capacities. They cannot receive instructions from any government.



More cases can be good news

If the courts find themselves handling an increasing number of criminal cases, does that mean law and order is breaking down? Not necessarily. Sometimes it means that people have more faith in the courts and the rule of law. They are turning to the courts instead of taking the law into their own hands.

For the most part, that is what is happening in the WTO. No one likes to see countries quarrel. But if there are going to be trade disputes anyway, it is healthier that the cases are handled according to internationally agreed rules. There are strong grounds for arguing that the increasing number of disputes is simply the result of expanding world trade and the stricter rules negotiated in the Uruguay Round; and that the fact that more are coming to the WTO reflects a growing faith in the system.

process with more clearly defined stages in the procedure. It introduced greater discipline for the length of time a case should take to be settled, with flexible deadlines set in various stages of the procedure. The agreement emphasizes that prompt settlement is essential if the WTO is to function effectively. It sets out in considerable detail the procedures and the timetable to be followed in resolving disputes. If a case runs its full course to a first ruling, it should not normally take more than about one year — 15 months if the case is appealed. The agreed time limits are flexible, and if the case is considered urgent (e.g. if perishable goods are involved), it is accelerated as much as possible.

The Uruguay Round agreement also made it impossible for the country losing a case to block the adoption of the ruling. Under the previous GATT procedure, rulings could only be adopted by consensus, meaning that a single objection could block the ruling. Now, rulings are automatically adopted unless there is a consensus to reject a ruling — any country wanting to block a ruling has to persuade all other WTO members (including its adversary in the case) to share its view.

Although much of the procedure does resemble a court or tribunal, the preferred solution is for the countries concerned to discuss their problems and settle the dispute by themselves. The first stage is therefore consultations between the governments concerned, and even when the case has progressed to other stages, consultation and mediation are still always possible.

How are disputes settled?

Settling disputes is the responsibility of the Dispute Settlement Body (the General Council in another guise), which consists of all WTO members. The Dispute Settlement Body has the sole authority to establish “panels” of experts to consider the case, and to accept or reject the panels’ findings or the results of an appeal. It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.

- **First stage: consultation** (up to **60 days**). Before taking any other actions the countries in dispute have to talk to each other to see if they can settle their differences by themselves. If that fails, they can also ask the WTO director-general to mediate or try to help in any other way.
- **Second stage: the panel** (up to **45 days** for a panel to be appointed, plus **6 months** for the panel to conclude). If consultations fail, the complaining country can ask for a panel to be appointed. The country “in the dock” can block the creation of a panel once, but when the Dispute Settlement Body meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel).

Officially, the panel is helping the Dispute Settlement Body make rulings or recommendations. But because the panel’s report can only be rejected by consensus in the Dispute Settlement Body, its conclusions are difficult to overturn. The panel’s findings have to be based on the agreements cited.

The panel’s final report should normally be given to the parties to the dispute within six months. In cases of urgency, including those concerning perishable goods, the deadline is shortened to three months.

The agreement describes in some detail how the panels are to work. The main stages are:

- **Before the first hearing:** each side in the dispute presents its case in writing to the panel.
- **First hearing: the case for the complaining country and defence:** the complaining country (or countries), the responding country, and those that have announced they have an interest in the dispute, make their case at the panel's first hearing.
- **Rebuttals:** the countries involved submit written rebuttals and present oral arguments at the panel's second meeting.
- **Experts:** if one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report.
- **First draft:** the panel submits the descriptive (factual and argument) sections of its report to the two sides, giving them two weeks to comment. This report does not include findings and conclusions.
- **Interim report:** The panel then submits an interim report, including its findings and conclusions, to the two sides, giving them one week to ask for a review.
- **Review:** The period of review must not exceed two weeks. During that time, the panel may hold additional meetings with the two sides.
- **Final report:** A final report is submitted to the two sides and three weeks later, it is circulated to all WTO members. If the panel decides that the disputed trade measure does break a WTO agreement or an obligation, it recommends that the measure be made to conform with WTO rules. The panel may suggest how this could be done.
- **The report becomes a ruling:** The report becomes the Dispute Settlement Body's ruling or recommendation within 60 days unless a consensus rejects it. Both sides can appeal the report (and in some cases both sides do).

Appeals

Either side can appeal a panel's ruling. Sometimes both sides do so. Appeals have to be based on points of law such as legal interpretation — they cannot reexamine existing evidence or examine new issues.

Each appeal is heard by three members of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government.

The appeal can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days.

The Dispute Settlement Body has to accept or reject the appeals report within 30 days — and rejection is only possible by consensus.

How long to settle a dispute?

These approximate periods for each stage of a dispute settlement procedure are target figures — the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate.

60 days	Consultations, mediation, etc
45 days	Panel set up and panellists appointed
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
Total = 1 year	(without appeal)
60–90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
Total = 1y 3m	(with appeal)

The case has been decided: what next?

Go directly to jail. Do not pass Go, do not collect ... Well, not exactly. But the sentiments apply. If a country has done something wrong, it should swiftly correct its fault. And if it continues to break an agreement, it should offer compensation or suffer a suitable penalty that has some bite.

Even once the case has been decided, there is more to do before trade sanctions (the conventional form of penalty) are imposed. The priority at this stage is for the losing “defendant” to bring its policy into line with the ruling or recommendations. The dispute settlement agreement stresses that “prompt compliance with recommendations or rulings of the DSB [Dispute Settlement Body] is essential in order to ensure effective resolution of disputes to the benefit of all Members”.

If the country that is the target of the complaint loses, it must follow the recommendations of the panel report or the appeal report. It must state its intention to do so at a Dispute Settlement Body meeting held within 30 days of the report’s adoption. If complying with the recommendation immediately proves impractical, the member will be given a “reasonable period of time” to do so. If it fails to act within this period, it has to enter into negotiations with the complaining country (or countries) in order to determine mutually-acceptable compensation — for instance, tariff reductions in areas of particular interest to the complaining side.

If after 20 days, no satisfactory compensation is agreed, the complaining side may ask the Dispute Settlement Body for permission to impose limited trade sanctions (“suspend concessions or obligations”) against the other side. The Dispute Settlement Body must grant this authorization within 30 days of the expiry of the “reasonable period of time” unless there is a consensus against the request.

In principle, the sanctions should be imposed in the same sector as the dispute. If this is not practical or if it would not be effective, the sanctions can be imposed in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the action can be taken under another agreement. The objective is to minimize the chances of actions spilling over into unrelated sectors while at the same time allowing the actions to be effective.

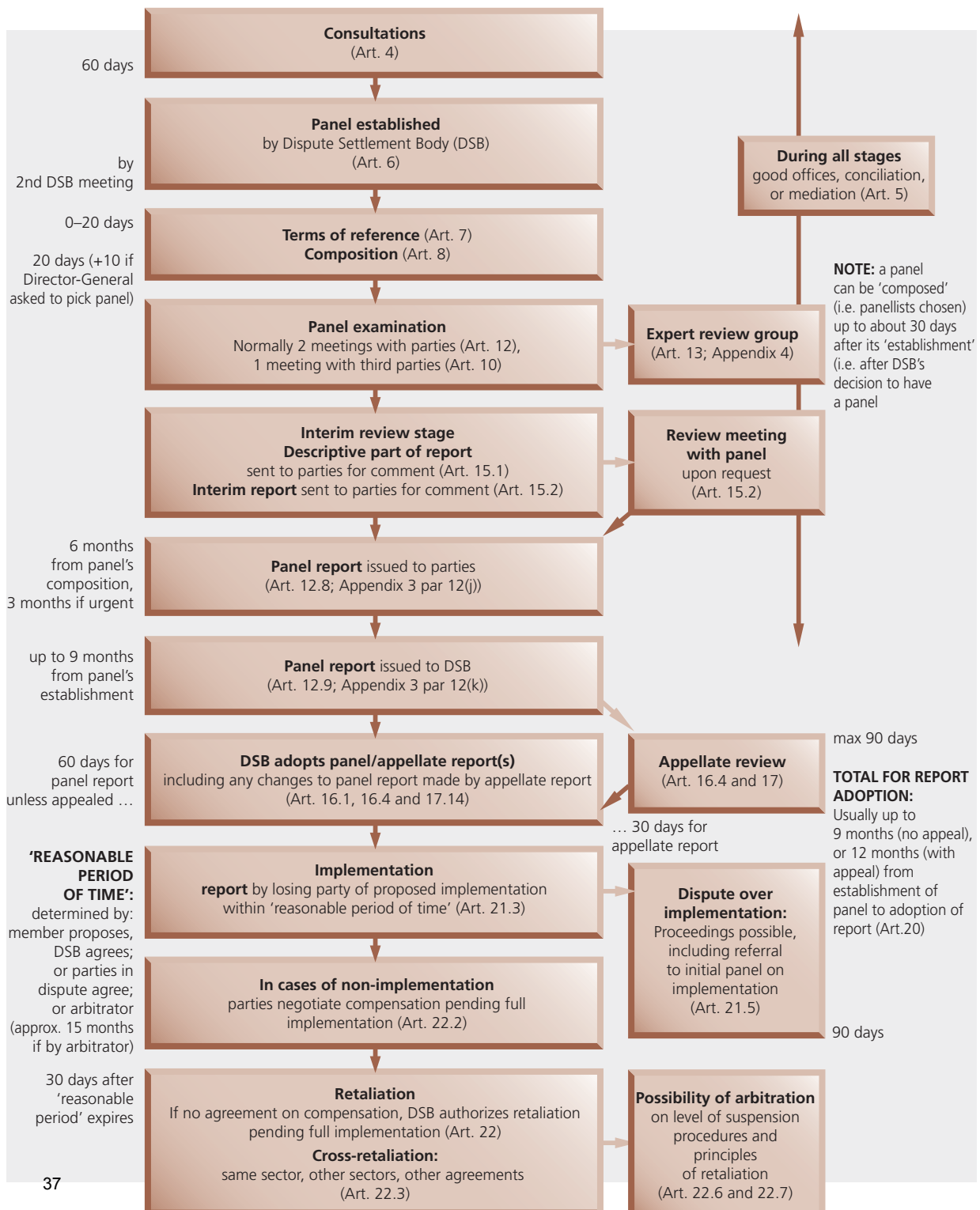
In any case, the Dispute Settlement Body monitors how adopted rulings are implemented. Any outstanding case remains on its agenda until the issue is resolved.

> See also **Doha Agenda negotiations**

2. The panel process

The various stages a dispute can go through in the WTO. At all stages, countries in dispute are encouraged to consult each other in order to settle “out of court”. At all stages, the WTO director-general is available to offer his good offices, to mediate or to help achieve a conciliation.

Note: some specified times are maximums, some are minimums, some binding, some not



The work programme lists 21 subjects. The original deadline of 1 January 2005 was missed. So was the next unofficial target of the end of 2006

At the Fourth Ministerial Conference in Doha, Qatar, in November 2001 WTO member governments agreed to launch new negotiations. They also agreed to work on other issues, in particular the implementation of the present agreements. The entire package is called the **Doha Development Agenda (DDA)**.

The negotiations take place in the **Trade Negotiations Committee** and its subsidiaries, which are usually, either regular councils and committees meeting in “**special sessions**”, or specially-created **negotiating groups**. Other work under the work programme takes place in other WTO councils and committees.

The **Fifth Ministerial Conference in Cancún**, Mexico, in September 2003, was intended as a stock-taking meeting where members would agree on how to complete the rest of the negotiations. But the meeting was soured by discord on agricultural issues, including cotton, and ended in deadlock on the “Singapore issues” (*see below*). Real progress on the Singapore issues and agriculture was not evident until the early hours of 1 August 2004 with a set of decisions in the General Council (sometimes called the July 2004 package). The original **1 January 2005 deadline** was missed. After that, members unofficially aimed to finish the negotiations **by the end of 2006**, again unsuccessfully. Further progress in narrowing members’ differences was made at the Hong Kong Ministerial Conference in December 2005, but some gaps remained unbridgeable and Director-General Pascal Lamy suspended the negotiations in July 2006. Efforts then focused on trying to achieve a breakthrough in early 2007.

There are 19–21 subjects listed in the Doha Declaration, depending on whether to count the “rules” subjects as one or three. Most of them involve negotiations; other work includes actions under “implementation”, analysis and monitoring. This is an unofficial explanation of what the declaration mandates (listed with the declaration’s paragraphs that refer to them):

Implementation-related issues and concerns (par 12)

“Implementation” is short-hand for developing countries’ problems in implementing the current WTO Agreements, i.e. the agreements arising from the Uruguay Round negotiations.

No area of WTO work received more attention or generated more controversy during nearly three years of hard bargaining before the Doha Ministerial Conference. Around 100 issues were raised during that period. The result was a two-pronged approach:

- More than 40 items under 12 headings were settled at or before the Doha conference for immediate delivery.
- The vast majority of the remaining items immediately became the subject of negotiations.

This was spelt out in a separate ministerial decision on implementation, combined with paragraph 12 of the main Doha Declaration.

The implementation decision includes the following (detailed explanations can be seen on the WTO website):

General Agreement on Tariffs and Trade (GATT)

- Balance-of-payments exception: clarifying less stringent conditions in GATT for developing countries if they restrict imports in order to protect their balance-of-payments.
- Market-access commitments: clarifying eligibility to negotiate or be consulted on quota allocation.

ON THE WEBSITE:

www.wto.org

> trade topics > Doha Development Agenda

www.wto.org >

the WTO > General Council

www.wto.org >

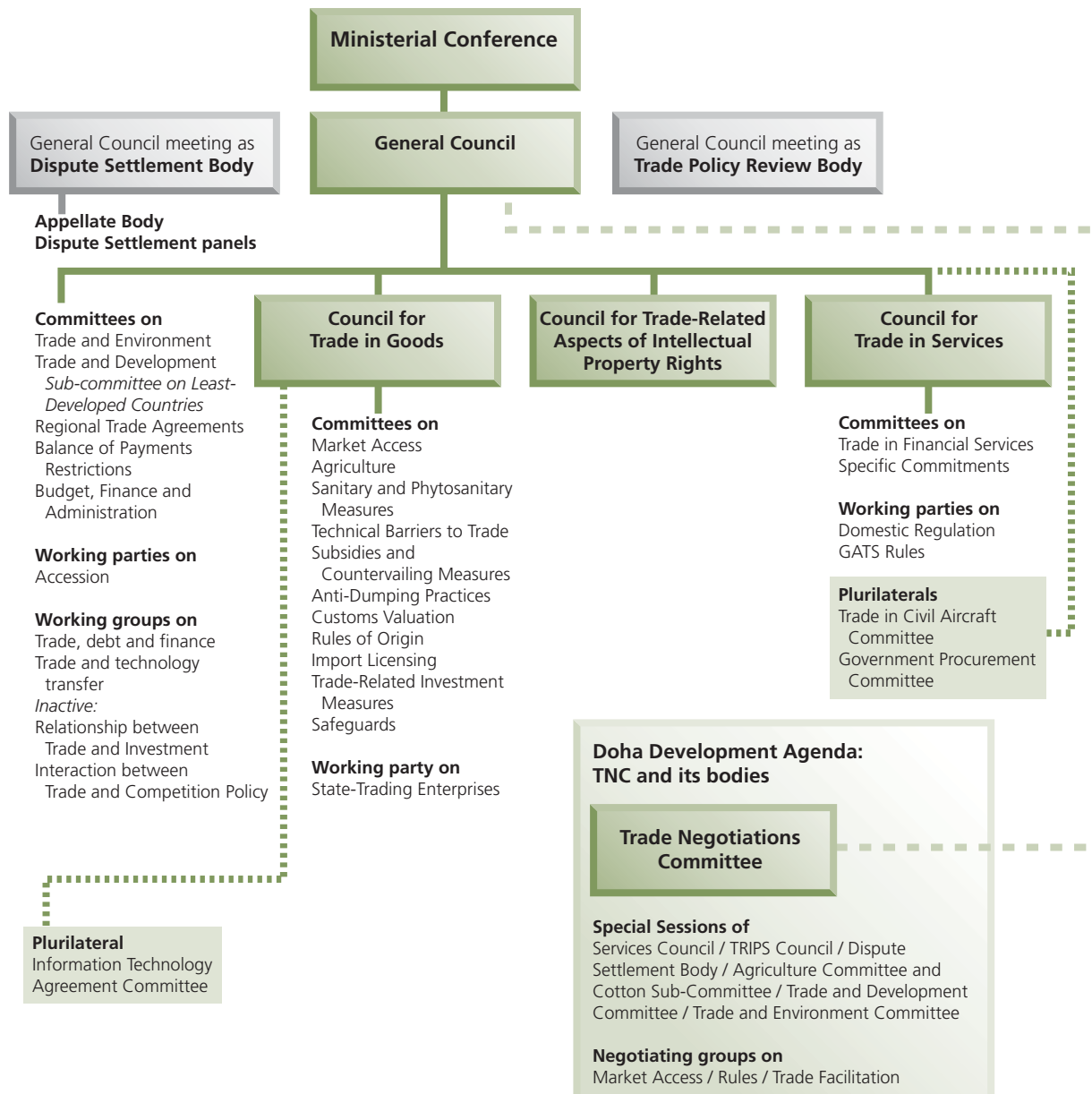
trade topics > Doha Development Agenda

> Trade Negotiations Committee



WTO structure

All WTO members may participate in all councils, committees, etc, except Appellate Body, Dispute Settlement panels, Textiles Monitoring Body, and plurilateral committees.



Key

- Reporting to General Council (or a subsidiary)
- Reporting to Dispute Settlement Body
- Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members
- - - Trade Negotiations Committee reports to General Council

The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

Current WTO members

150 governments, since January 2007, with date of membership (“**g**” = the 51 original GATT members who joined after 1 January 1995; “**n**” = new members joining the WTO through a working party negotiation):

Albania 8 September 2000 (n)
Angola 1 December 1996 (g)
Antigua and Barbuda 1 January 1995
Argentina 1 January 1995
Armenia 5 February 2003 (n)
Australia 1 January 1995
Austria 1 January 1995
Bahrain 1 January 1995
Bangladesh 1 January 1995
Barbados 1 January 1995
Belgium 1 January 1995
Belize 1 January 1995
Benin 22 February 1996 (g)
Bolivia 13 September 1995 (g)
Botswana 31 May 1995 (g)
Brazil 1 January 1995
Brunei Darussalam 1 January 1995
Bulgaria 1 December 1996 (n)
Burkina Faso 3 June 1995 (g)
Burundi 23 July 1995 (g)
Cambodia 13 October 2004 (n)
Cameroon 13 December 1995 (g)
Canada 1 January 1995
Central African Republic 31 May 1995 (g)
Chad 19 October 1996 (g)
Chile 1 January 1995
China 11 December 2001 (n)
Colombia 30 April 1995 (g)
Colombia 30 April 1995 (g)
Congo 27 March 1997 (g)
Costa Rica 1 January 1995
Côte d'Ivoire 1 January 1995
Croatia 30 November 2000 (n)
Cuba 20 April 1995 (g)
Cyprus 30 July 1995 (g)
Czech Republic 1 January 1995
Democratic Republic of the Congo 1 January 1997 (g)
Denmark 1 January 1995
Djibouti 31 May 1995 (g)
Dominica 1 January 1995
Dominican Republic 9 March 1995 (g)
Ecuador 21 January 1996 (n)
Egypt 30 June 1995 (g)
El Salvador 7 May 1995 (g)
Estonia 13 November 1999 (n)
European Communities 1 January 1995
Fiji 14 January 1996 (g)
Finland 1 January 1995
Former Yugoslav Republic of Macedonia 4 April 2003 (n)
France 1 January 1995
Gabon 1 January 1995
Gambia 23 October 1996 (g)
Georgia 14 June 2000 (n)
Germany 1 January 1995
Ghana 1 January 1995
Greece 1 January 1995
Grenada 22 February 1996 (g)
Guatemala 21 July 1995 (g)
Guinea Bissau 31 May 1995 (g)
Guinea 25 October 1995 (g)
Guyana 1 January 1995
Haiti 30 January 1996 (g)
Honduras 1 January 1995
Hong Kong, China 1 January 1995
Hungary 1 January 1995
Iceland 1 January 1995
India 1 January 1995
Indonesia 1 January 1995
Ireland 1 January 1995
Israel 21 April 1995 (g)
Italy 1 January 1995
Jamaica 9 March 1995 (g)
Japan 1 January 1995
Jordan 11 April 2000 (n)
Kenya 1 January 1995
Korea 1 January 1995
Kuwait 1 January 1995
Kyrgyz Republic 20 December 1998 (n)
Latvia 10 February 1999 (n)
Lesotho 31 May 1995 (g)
Liechtenstein 1 September 1995 (g)
Lithuania 31 May 2001 (n)
Luxembourg 1 January 1995
Macao, China 1 January 1995
Madagascar 17 November 1995 (g)
Malawi 31 May 1995 (g)
Malaysia 1 January 1995
Maldives 31 May 1995 (g)
Mali 31 May 1995 (g)
Malta 1 January 1995
Mauritania 31 May 1995 (g)
Mauritius 1 January 1995
Mexico 1 January 1995
Moldova 26 July 2001 (n)
Mongolia 29 January 1997 (n)
Morocco 1 January 1995
Mozambique 26 August 1995 (g)
Myanmar 1 January 1995
Namibia 1 January 1995
Netherlands — including **Netherlands Antilles** 1 January 1995
Nepal 23 April 2004 (n)
New Zealand 1 January 1995
Nicaragua 3 September 1995 (g)
Niger 13 December 1996 (g)
Nigeria 1 January 1995
Norway 1 January 1995
Oman 9 November 2000 (n)
Pakistan 1 January 1995
Panama 6 September 1997 (n)
Papua New Guinea 9 June 1996 (g)
Paraguay 1 January 1995
Peru 1 January 1995
Philippines 1 January 1995
Poland 1 July 1995 (g)
Portugal 1 January 1995
Qatar 13 January 1996 (g)
Romania 1 January 1995
Rwanda 22 May 1996 (g)
Saint Kitts and Nevis 21 February 1996 (n)
Saint Lucia 1 January 1995
Saint Vincent & the Grenadines 1 January 1995
Saudi Arabia 11 December 2005
Senegal 1 January 1995
Sierra Leone 23 July 1995 (g)
Singapore 1 January 1995
Slovak Republic 1 January 1995
Slovenia 30 July 1995 (g)
Solomon Islands 26 July 1996 (g)
South Africa 1 January 1995
Spain 1 January 1995
Sri Lanka 1 January 1995
Suriname 1 January 1995
Swaziland 1 January 1995
Sweden 1 January 1995
Switzerland 1 July 1995 (g)
Chinese Taipei 1 January 2002 (n)
Tanzania 1 January 1995
Thailand 1 January 1995
Togo 31 May 1995 (g)
Trinidad and Tobago 1 March 1995 (g)
Tunisia 29 March 1995 (g)
Turkey 26 March 1995 (g)
Uganda 1 January 1995
United Arab Emirates 10 April 1996 (g)
United Kingdom 1 January 1995
United States 1 January 1995
Uruguay 1 January 1995
Venezuela 1 January 1995
Viet Nam 11 January 2007
Zambia 1 January 1995
Zimbabwe 3 March 1995 (g)

Observers

Afghanistan	Holy See (Vatican)	Serbia
Algeria	Iran	Seychelles
Andorra	Iraq	Sudan
Azerbaijan	Kazakhstan	Tajikistan
Bahamas	Lao People's Democratic Republic	Tonga
Belarus	Lebanese Republic	Ukraine
Bhutan	Libya	Uzbekistan
Bosnia and Herzegovina	Montenegro	Vanuatu
Cape Verde	Russian Federation	Yemen
Equatorial Guinea	Samoa	
Ethiopia	Sao Tome and Principe	

Note: With the exception of the Holy See, observers must start accession negotiations within five years of becoming observers.

3-3. TELOS OF THE WTO

Legal Texts

The International Trade Organization -- which never came into force -- GATT 1947, the WTO and NAFTA all commit, at some level, to free trade. Take a look at the respective formulations of their objectives and compare how they intend to balance the economic, social and political.

Havana Charter Art. 1

RECOGNIZING the determination of the United Nations to create conditions of stability and well-being which are necessary for peaceful and friendly relations among nations,

THE PARTIES to this Charter undertake in the fields of trade and employment to co-operate with one another and with the United Nations

For the Purpose of

REALIZING the aims set forth in the Charter of the United Nations, particularly the attainment of the higher standards of living, full employment and conditions of economic and social progress and development, envisaged in Article 55 of that Charter.

TO THIS END they pledge themselves, individually and collectively, to promote national and international action designed to attain the following objectives:

1. To assure a large and steadily growing volume of real income and effective demand, to increase the production, consumption and exchange of goods, and thus to contribute to a balanced and expanding world economy.
2. To foster and assist industrial and general economic development, particularly of those countries which are still in the early stages of industrial development, and to encourage the international flow of capital for productive investment.
3. To further the enjoyment by all countries, on equal terms, of access to the markets, products and productive facilities which are needed for their economic prosperity and development.
4. To promote on a reciprocal and mutually advantageous basis the reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international commerce.
5. To enable countries, by increasing the opportunities for their trade and economic development, to abstain from measures which would disrupt world commerce, reduce productive employment or retard economic progress.
6. To facilitate through the promotion of mutual understanding, consultation and co-operation the solution of problems relating to international trade in the fields of employment, economic development, commercial policy, business practices and commodity policy.

ACCORDINGLY they hereby establish the INTERNATIONAL TRADE ORGANIZATION

through which they shall co-operate an Members to achieve the purpose and the objectives set forth in this Article.

Preamble GATT 1947

The Governments of the Commonwealth of Australia, the Kingdom of Belgium, the United States of Brazil, Burma, Canada, Ceylon, the Republic of Chile, the Republic of China, the Republic of Cuba, the Czechoslovak Republic, the French Republic, India, Lebanon, the Grand-Duchy of Luxemburg, the Kingdom of the Netherlands, New Zealand, the Kingdom of Norway, Pakistan, Southern Rhodesia, Syria, the Union of South Africa, the United Kingdom of Great Britain and Northern Ireland, and the United States of America:

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce,

Have through their Representatives agreed as follows:

Preamble WTO Agreement

The *Parties* to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,

Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations,

Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,

Determined to preserve the basic principles and to further the objectives underlying this multilateral trading system,

Agree as follows:

NAFTA Preamble

The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, resolved to:

STRENGTHEN the special bonds of friendship and cooperation among their nations;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader international cooperation;

CREATE an expanded and secure market for the goods and services produced in their territories;

REDUCE distortions to trade;

ESTABLISH clear and mutually advantageous rules governing their trade;

ENSURE a predictable commercial framework for business planning and investment;

BUILD on their respective rights and obligations under the General Agreement on Tariffs and Trade and other multilateral and bilateral instruments of cooperation;

ENHANCE the competitiveness of their firms in global markets;

FOSTER creativity and innovation, and promote trade in goods and services that are the subject of intellectual property rights;

CREATE new employment opportunities and improve working conditions and living standards in their respective territories;

UNDERTAKE each of the preceding in a manner consistent with environmental protection and conservation;

PRESERVE their flexibility to safeguard the public welfare;

PROMOTE sustainable development;

STRENGTHEN the development and enforcement of environmental laws and regulations; and

PROTECT, enhance and enforce basic workers' rights;

HAVE AGREED as follows:

Case Law: US–Section 301

United States – Sections 301-310 of the Trade Act of 1974

Editors' Note: This case interests us since it explicitly raises the question as to the overall objectives of the WTO. It involves an alleged conflict between United States statutes on trade remedies and the Dispute Settlement Understanding ("DSU") – part of the interlocking Agreements comprising the WTO, which lays out rules and procedures governing the settlement of trade disputes. When you read this report you should ask yourself why the panel engaged in an examination of the overall objectives of the WTO.

Summary of facts

Excerpt from Dispute Settlement Commentary of Section 301 on the subscriber page of www.worldtradelaw.net.

This dispute concerns U.S. legislation that authorizes certain actions by the United States Trade Representative ("USTR") in response to trade barriers imposed by other countries. While this legislation is known commonly as "Section 301," the entire measure at issue actually spans Sections 301-310 of the Trade Act of 1974 (codified at 19 U.S.C. §2411 *et seq.*).

The operation of the Section 301 provisions is as follows. First, Section 302 authorizes the USTR to initiate investigations of acts, policies or practices of other countries that are "unreasonable or discriminatory" and burden or restrict U.S. commerce. It also requires the USTR to request consultations with the country concerned. Section 303 then requires that if no mutually acceptable resolution is reached within a certain time period, the USTR must request proceedings under the formal dispute settlement procedures of the trade agreement at issue.

In turn, Section 304(a) requires that the USTR make a determination under the trade agreement at issue as to whether U.S. rights are being denied on or before the earlier of "(i) the date that is 30 days after the date on which the dispute settlement procedure is concluded, or (ii) the date that is 18 months after the date on which the investigation is initiated." Moreover, it requires that if the USTR's determination is affirmative (*i.e.*, if the USTR determines that U.S. rights are being denied), the USTR must, at the same time, determine what action it will take under Section 301, which authorizes the USTR to take remedial action, including the suspension or withdrawal of concessions or the imposition of duties or other import restrictions. However, with regard to investigations involving alleged violations of the WTO Agreement, the following rules apply. If the DSB adopts rulings favorable to the United States on a measure that was originally investigated under these Section 301 provisions, then, under Section 304(a), where the responding Member agrees to implement the DSB's ruling within a reasonable time, the USTR can determine that U.S. rights are being denied, but that "satisfactory measures" are being taken that justify the termination of the Section 301 investigation.

Section 306(a) then requires the USTR to "monitor" the implementation of measures undertaken by a foreign government to provide a satisfactory resolution of a matter subject to dispute settlement. Under Section 306(b), if, on the basis of that monitoring, the USTR "considers" that a foreign country is not satisfactorily implementing the measure undertaken to reach a satisfactory resolution, then the USTR is required to reach a determination under Section 304(a) as to what

further action it will take under Section 301(a). In this situation, Section 305(a)(1) requires that, subject to the specific direction by the President of the United States, the USTR must implement the action it determines necessary under Section 304(a) "by no later than ... 30 days after the date on which such determination is made." Section 305(a)(2)(A), however, permits the USTR to delay, by no more than 180 days, any action under Section 301 if the USTR determines "that substantial progress is being made, or that a delay is necessary or desirable to obtain U.S. rights or satisfactory solution with respect to the acts, policies, or practices that are the subject of the action." (Paras. 2.1-2.20)

The European Communities argued that Sections 304(a)(2)(A) and 306(b) are inconsistent with DSU Article 23.2(a), and that Sections 306(b) and 305(a) are inconsistent with DSU Article 23.2(c). Moreover, it claimed that Section 306(b) violates GATT Articles I, II, III, VIII and XI.

Panel Report, WT/DS152/R, 22 December 1999

Panel: Hawes, Johannessen, Weiler

http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds152_e.htm

(...)

VII. Findings

(...)

(a) The dual nature of obligations under Article 23 of the DSU

7.35. Article 23 of the DSU deals, as its title indicates, with the "Strengthening of the Multilateral System". Its overall design is to prevent WTO Members from unilaterally resolving their disputes in respect of WTO rights and obligations. It does so by obligating Members to follow the multilateral rules and procedures of the DSU.

7.36. Article 23.1 provides as follows:

"Strengthening of the Multilateral System

When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, *they shall have recourse to, and abide by*, the rules and procedures of this Understanding" (emphasis added).

7.37. Article 23.2 specifies three elements that need to be respected as part of the multilateral DSU dispute settlement process. It provides as follows:

"In such cases [referred to in Article 23.1, i.e. when Members seek the redress of WTO inconsistencies], Members shall:

- (a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any

objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;

- (b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and
- (c) follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time".

(...)

(c) **"... the ordinary meaning ... in the light of [the treaty's] object and purpose"**

7.71. What are the objects and purposes of the DSU, and the WTO more generally, that are relevant to a construction of Article 23? The most relevant in our view are those which relate to the creation of market conditions conducive to individual economic activity in national and global markets and to the provision of a secure and predictable multilateral trading system.

7.72. Under the doctrine of direct effect, which has been found to exist most notably in the legal order of the EC but also in certain free trade area agreements, obligations addressed to States are construed as creating legally enforceable rights and obligations for individuals. Neither the GATT nor the WTO has so far been interpreted by GATT/WTO institutions as a legal order producing direct effect.⁶⁶¹ Following this approach, the GATT/WTO did *not* create a new legal order the subjects of which comprise both contracting parties or Members and their nationals.

7.73. However, it would be entirely wrong to consider that the position of individuals is of no relevance to the GATT/WTO legal matrix. Many of the benefits to Members which are meant to flow as a result of the acceptance of various disciplines under the GATT/WTO depend on the activity of individual economic operators in the national and global market places. The purpose

⁶⁶¹ We make this statement as a matter of fact, without implying any judgment on the issue. We note that whether there are circumstances where obligations in any of the WTO agreements addressed to Members would create rights for individuals which national courts must protect, remains an open question, in particular in respect of obligations following the exhaustion of DSU procedures in a specific dispute (see Eeckhout, P., *The Domestic Legal Status of the WTO Agreement: Interconnecting Legal Systems*, Common Market Law Review, 1997, p. 11; Berkey, J., *The European Court of Justice and Direct Effect for the GATT: A Question Worth Revisiting*, European Journal of International Law, 1998, p. 626). The fact that WTO institutions have not to date construed any obligations as producing direct effect does not necessarily preclude that in the legal system of any given Member, following internal constitutional principles, some obligations will be found to give rights to individuals. Our statement of fact does not prejudice any decisions by national courts on this issue.

of many of these disciplines, indeed one of the primary objects of the GATT/WTO as a whole, is to produce certain market conditions which would allow this individual activity to flourish.

7.74. The very first Preamble to the WTO Agreement states that Members recognise

"that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services".⁶⁶²

7.75. Providing security and predictability to the multilateral trading system is another central object and purpose of the system which could be instrumental to achieving the broad objectives of the Preamble. Of all WTO disciplines, the DSU is one of the most important instruments to protect the security and predictability of the multilateral trading system and through it that of the market-place and its different operators. DSU provisions must, thus, be interpreted in the light of this object and purpose and in a manner which would most effectively enhance it. In this respect we are referring not only to preambular language but also to positive law provisions in the DSU itself. Article 3.2 of the DSU provides:

"The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements ...".⁶⁶³

7.76. The security and predictability in question are of "the multilateral trading system". The multilateral trading system is, per force, composed not only of States but also, indeed mostly, of individual economic operators. The lack of security and predictability affects mostly these individual operators.

⁶⁶² See also similar language in the second preambles to GATT 1947 and GATS. The TRIPS Agreement addresses even more explicitly the interests of individual operators, obligating WTO Members to protect the intellectual property rights of nationals of all other WTO Members. Creating market conditions so that the activity of economic operators can flourish is also reflected in the object of many WTO agreements, for example, in the non-discrimination principles in GATT, GATS and TRIPS and the market access provisions in both GATT and GATS.

⁶⁶³ The importance of security and predictability as an object and purpose of the WTO has been recognized as well in many panel and Appellate Body reports. See the Appellate Body report on *Japan – Alcoholic Beverages*, op. cit., p. 31 ("WTO rules are reliable, comprehensible and enforceable. WTO rules are not so rigid or so inflexible as not to leave room for reasoned judgements in confronting the endless and ever-changing ebb and flow of real facts in real cases in the real world. They will serve the multilateral trading system best if they are interpreted with that in mind. In that way, we will achieve the 'security and predictability' sought for the multilateral trading system by the Members of the WTO through the establishment of the dispute settlement system"). It has also been referred to under the TRIPS Agreement. In the Appellate Body Report on *India – Patents (US)*, op. cit., it was found, at para. 58, that "India is obliged, by Article 70.8(a), to provide a legal mechanism for the filing of mailbox applications that provides a *sound legal basis* to preserve both the novelty of the inventions and the priority of the applications as of the relevant filing and priority dates" (italics added). See also the WTO Panel Report on *Argentina – Textiles and Apparel (US)*, op. cit., para. 6.29 and the GATT Panel Reports on *United States Manufacturing Clause*, adopted 15/16 May 1984, BISD 31S/74, para. 39; *Japan – Measures on Imports of Leather* ("Japan – Leather"), adopted 15/16 May 1984, BISD 31S/94, para. 55; *EEC – Imports of Newsprint*, adopted November 20 1984, BISD 31S/114, para. 52; *Norway – Restrictions on Imports of Apples and Pears*, adopted 22 June 1989, BISD 36S/306, para. 5.6.

7.77. Trade is conducted most often and increasingly by private operators. It is through improved conditions for these private operators that Members benefit from WTO disciplines. The denial of benefits to a Member which flows from a breach is often indirect and results from the impact of the breach on the market place and the activities of individuals within it. Sections 301-310 themselves recognize this nexus. One of the principal triggers for US action to vindicate US rights under covered agreements is the impact alleged breaches have had on, and the complaint emanating from, individual economic operators.

7.78. It may, thus, be convenient in the GATT/WTO legal order to speak not of the principle of direct effect but of the principle of indirect effect.

7.79. Apart from this name-of-convenience, there is nothing novel or radical in our analysis. We have already seen that it is rooted in the language of the WTO itself. It also represents a GATT/WTO orthodoxy confirmed in a variety of ways over the years including panel and Appellate Body reports as well as the practice of Members.

7.80 Consider, first, the overall obligation of Members concerning their internal legislation. Under traditional public international law a State cannot rely on its domestic law as a justification for non-performance.⁶⁶⁴ Equally, however, under traditional public international law, legislation under which an eventual violation could, or even would, subsequently take place, does not normally in and of itself engage State responsibility. If, say, a State undertakes not to expropriate property of foreign nationals without appropriate compensation, its State responsibility would normally be engaged only at the moment foreign property had actually been expropriated in a given instance. And yet, even in the GATT, prior to the enactment of Article XVI:4 of the WTO Agreement explicitly referring to measures of a general nature, legislation as such independent from its application in specific instances was considered to constitute a violation. This is confirmed by numerous adopted GATT panel reports and is also agreed upon by both parties to this dispute. Why is it, then, that legislation as such was found to be inconsistent with GATT rules? If no specific application is at issue – if, for example, no specific discrimination has yet been made – what is it that constitutes the violation?

7.81 Indirect impact on individuals is, surely, one of the principal reasons. In treaties which concern only the relations between States, State responsibility is incurred only when an actual violation takes place. By contrast, in a treaty the benefits of which depend in part on the activity of individual operators the legislation itself may be construed as a breach, since the mere existence of legislation could have an appreciable "chilling effect" on the economic activities of individuals.

7.82 Thus, Article III:2 of GATT 1947, for example, would not, on its face, seem to prohibit legislation independently from its application to specific products. However, in light of the object and purpose of the GATT, it was read in GATT jurisprudence as a promise by contracting parties not only that they would abstain from actually imposing discriminatory taxes, but also that they would not enact legislation with that effect.

7.83 It is commonplace that domestic law in force imposing discriminatory taxation on imported products would, in and of itself, violate Article III irrespective of proof of actual discrimination in a specific case.⁶⁶⁵ Furthermore, a domestic law which exposed imported products to future discrimination was recognized by some GATT panels to constitute, by itself, a violation of

⁶⁶⁴ See Article 27 of the Vienna Convention.

⁶⁶⁵ A change in the relative competitive opportunities caused by a measure of general application as such, to the detriment of imported products and in favour of domestically produced products, is the decisive criterion.

Article III, even before the law came into force.⁶⁶⁶ Finally, and most tellingly, even where there was no certainty but only a risk under the domestic law that the tax would be discriminatory, certain GATT panels found that the law violated the obligation in Article III.⁶⁶⁷ A similar approach was followed in respect of Article II of GATT 1994 by the WTO panel on *Argentina – Textiles and Apparel (US)* when it found that the very change in system from *ad valorem* to specific duties was a breach of Argentina's *ad valorem* tariff binding even though such change only brought about the potential of the tariff binding being exceeded depending on the price of the imported product.⁶⁶⁸

⁶⁶⁶ In the Panel Report on *US – Superfund* (op. cit., paras. 5.2.1 and 5.2.2) tax legislation as such was found to violate GATT obligations even though the legislation had not yet entered into effect. See also the Panel Report on *US - Malt Beverages* (op. cit., paras. 5.39, 5.57, 5.60 and 5.69) where the legislation imposing the tax discrimination was, for example, not being enforced by the authorities.

⁶⁶⁷ See Panel Report on *US – Tobacco*, op. cit., para. 96:

"The Panel noted that an internal regulation which merely exposed imported products to a risk of discrimination had previously been recognized by a GATT panel to constitute, by itself, a form of discrimination, and therefore less favourable treatment within the meaning of Article III. The Panel agreed with this analysis of risk of discrimination as enunciated by this earlier panel".

A footnote to this paragraph refers to the Panel Report on *EEC - Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal Feed Protein*, adopted 25 January 1990, BISD 37S/86, para. 141, which reads as follows:

"Having made this finding the Panel examined whether a purchase regulation which does not necessarily discriminate against imported products but is capable of doing so is consistent with Article III:4. The Panel noted that the exposure of a particular imported product to a *risk* of discrimination constitutes, by itself, a form of discrimination. The Panel therefore concluded that purchase regulations creating such a risk must be considered to be according less favourable treatment within the meaning of Article III:4. The Panel found for these reasons that the payments to processors of Community oilseeds are inconsistent with Article III:4".

⁶⁶⁸ Op. cit., paras. 6.45-6.47, in particular para. 6.46: "In the present dispute we consider that the competitive relationship of the parties was changed unilaterally by Argentina because its mandatory measure clearly has *the potential to violate its bindings, thus undermining the security and the predictability of the WTO system*" (emphasis added). This was confirmed by the Appellate Body (op. cit., para. 53):

"In the light of this analysis, we may generalize that under the Argentine system, whether the amount of the DIEM [a regime of Minimum Specific Import Duties] is determined by applying 35 per cent, or a rate less than 35 per cent, to the representative international price, there will remain the possibility of a price that is sufficiently low to produce an *ad valorem* equivalent of the DIEM that is greater than 35 per cent. In other words, the structure and design of the Argentine system is such that for any DIEM, no matter what *ad valorem* rate is used as the multiplier of the representative international price, the possibility remains that there is a "break-even" price below which the *ad valorem* equivalent of the customs duty collected is in excess of the bound *ad valorem* rate of 35 per cent".

On that basis, the Appellate Body found that the application of a type of duty different from the type provided for in a Member's Schedule is inconsistent with Article II:1(b), first sentence, of the GATT 1994. In this respect, see also the Panel Report on *United States – Standards for Reformulated and Conventional*

7.84 The rationale in all types of cases has always been the negative effect on economic operators created by such domestic laws. An individual would simply shift his or her trading patterns – buy domestic products, for example, instead of imports – so as to avoid the would-be taxes announced in the legislation or even the mere risk of discriminatory taxation. Such risk or threat, when real, was found to affect the relative competitive opportunities between imported and domestic products because it could, in and of itself, bring about a shift in consumption from imported to domestic products: This shift would be caused by, for example, an increase in the cost of imported products and a negative impact on economic planning and investment to the detriment of those products. This rationale was paraphrased in the *Superfund* case as follows:

"to protect expectations of the contracting parties as to the competitive relationship between their products and those of the other contracting parties. Both articles [GATT Articles III and XI] are not only to protect current trade but also to create the predictability needed to plan future trade".⁶⁶⁹

Doing so, the panel in *Superfund* referred to the reasoning in the *Japanese Measures on Imports of Leather* case. There the panel found that an import quota constituted a violation of Article XI of GATT even though the quota had not been filled. It did so on the following grounds:

"the existence of a quantitative restriction should be presumed to cause nullification or impairment not only because of any effect it had had on the volume of trade but also for other reasons e.g. it would lead to increased transaction costs and would create uncertainties which could affect investment plans".⁶⁷⁰

7.85 In this sense, Article III:2 is not only a promise not to discriminate in a specific case, but is also designed to give certain guarantees to the market place and the operators within it that discriminatory taxes will not be imposed. For the reasons given above, any ambivalence in GATT panel jurisprudence as to whether a risk of discrimination can constitute a violation should, in our view, be resolved in favour of our reading.⁶⁷¹

Gasoline, adopted 20 May 1996, WT/DS2/R, para. 6.10.

⁶⁶⁹ Op. cit., para. 5.2.2.

⁶⁷⁰ Panel Report on *Japan – Leather*, op. cit., para. 55. In this respect, see also Panel Report on *US – Malt Beverages* (op. cit., para. 5.60), where legislation was found to constitute a GATT violation even though it was not being enforced, for the following reason:

"Even if Massachusetts may not currently be using its police powers to enforce this mandatory legislation, *the measure continues to be mandatory legislation which may influence the decisions of economic operators*. Hence, a non-enforcement of a mandatory law in respect of imported products does not ensure that imported beer and wine are not treated less favourably than like domestic products to which the law does not apply" (emphasis added).

⁶⁷¹ As a result, we do not consider that the general statements made in certain GATT panels are correct in respect of all WTO obligations and in all circumstances, for example, the statement in Panel Report on *EEC – Parts and Components* (op. cit., para. 5.25) that "[u]nder the provisions of the [GATT] which Japan claims have been violated by the EEC contracting parties are to avoid certain measures; but these provisions do not establish the obligation to avoid legislation under which the executive authorities may possibly impose such measures" and in Panel Report on *Thai – Cigarettes* (op. cit., para. 84), the statement

7.86. Similarly, Article 23 too has to be interpreted in the light of these principles which encapsulate such a central object and purpose of the WTO. It may have been plausible if one considered a strict Member-Member matrix to insist that the obligations in Article 23 do not apply to legislation that threatens unilateral determinations but does not actually mandate them. It is not, however, plausible to construe Article 23 in this way if one interprets it in the light of the indirect effect such legislation has on individuals and the market-place, the protection of which is one of the principal objects and purposes of the WTO.

7.87 To be sure, in the cases referred to above, whether the risk materialised or not depended on certain market factors such as fluctuating reference prices on which the taxation of the imported product was based by virtue of the domestic legislation. In this case, whether the risk materializes depends on a decision of a government agency. From the perspective of the individual economic operator, however, this makes little difference. Indeed, it may be more difficult to predict the outcome of discretionary government action than to predict market conditions, thereby exacerbating the negative economic impact of the type of domestic law under examination here.

7.88. When a Member imposes unilateral measures in violation of Article 23 in a specific dispute, serious damage is created both to other Members and the market-place. However, in our view, the creation of damage is not confined to actual conduct in specific cases. A law reserving the right for unilateral measures to be taken contrary to DSU rules and procedures, may – as is the case here – constitute an ongoing threat and produce a "chilling effect" causing serious damage in a variety of ways.

7.89. First, there is the damage caused directly to another Member. Members faced with a threat of unilateral action, especially when it emanates from an economically powerful Member, may in effect be forced to give in to the demands imposed by the Member exerting the threat, even before DSU procedures have been activated. To put it differently, merely carrying a big stick is, in many cases, as effective a means to having one's way as actually using the stick. The threat alone of conduct prohibited by the WTO would enable the Member concerned to exert undue leverage on other Members. It would disrupt the very stability and equilibrium which multilateral dispute resolution was meant to foster and consequently establish, namely equal protection of both large and small, powerful and less powerful Members through the consistent application of a set of rules and procedures.⁶⁷²

7.90. Second, there is the damage caused to the market-place itself. The mere fact of having legislation the statutory language of which permits conduct which is WTO prohibited – namely, the imposition of unilateral measures against other Members with which it is locked in a trade dispute – may in and of itself prompt economic operators to change their commercial behaviour in a way that distorts trade. Economic operators may be afraid, say, to continue ongoing trade with, or investment in, the industries or products threatened by unilateral measures. Existing trade may also be distorted because economic operators may feel a need to take out extra insurance to allow for the illegal possibility that the legislation contemplates, thus reducing the relative competitive opportunity of their products on the market. Other operators may be deterred from trading with such a Member altogether, distorting potential trade. The damage thus caused to the market-place may actually increase when national legislation empowers individual economic operators to trigger unilateral State action, as is the case in the US which allows individual petitioners to request the USTR to initiate an investigation under Sections 301-310.

that "legislation merely giving the executive the possibility to act inconsistently with Article III:2 [of GATT] could not, by itself, constitute a violation of that provision". In respect of this ambivalence in GATT jurisprudence, see Chua, A., *Precedent and Principles of WTO Panel Jurisprudence*, Berkeley Journal of International Law, 1998, p. 171, in particular at p. 193.

⁶⁷² In this respect, see the statements made by third parties to this dispute in Section V of our Report.

This in itself is not illegal. But the ability conferred upon economic operators to threaten their foreign competitors with the triggering of a State procedure which includes the possibility of illegal unilateral action is another matter. It may affect their competitive economic relationship and deny certain commercial advantages that foreign competitors would otherwise have. The threat of unilateral action can be as damaging on the market-place as the action itself.

7.91. In conclusion, the risk of discrimination was found in GATT jurisprudence to constitute a violation of Article III of GATT – because of the "chilling effect" it has on economic operators. The risk of a unilateral determination of inconsistency as found in the statutory language of Section 304 itself has an equally apparent "chilling effect" on both Members and the market-place even if it is not quite certain that such a determination would be made. The point is that neither other Members nor, in particular, individuals can be reasonably certain that it will not be made.

Whereas States which are part of the international legal system may expect their treaty partners to assume good faith fulfillment of treaty obligations on their behalf, the same assumption cannot be made as regards individuals.

7.92. It is a circumspect use of the teleological method to choose that interpretation of Article 23 of the DSU that provides this certainty and eliminates the undesired "chilling effects" which run against the object and purpose of the WTO Agreement.

(...)

3-4. GLOBALIZED TRADE AND ITS DISCONTENTS

Free trade and the international trading system are frequently challenged and you will encounter such challenges throughout the course. You should aim at conceptualizing such challenges. The distinction between two types of criticisms will be helpful. Firstly there are challenges to the international trading system which can be situated within free trade theory. Such challenges include e.g. demands for an international competition policy or the claim that developing countries should be permitted to employ trade measures and policies such as tariffs, regulation of foreign investment, permissive intellectual property laws in order to level the economic playing field between developing and industrialized countries. Secondly, there is the ideological critique of liberalized trade which itself takes many different forms. One such challenge is that trade liberalization and the ensuing international competition are destructive of cultural phenomena. E.g. it is argued that small farms are a cultural characteristic of many European countries, however that they would not be competitive and thus could not be maintained if trade in agricultural goods was fully liberalized.

When reading the texts in this section you should ask yourself whether there exists a “domain of free trade” which can be separated from social and political issues. Try to identify the socio-political dimensions of trade and trade regulation and the discontents with globalized trade.

The Nationalist / Populist Challenge

Donald Trump, Speech on International Trade

Monessen, Pennsylvania, June 28, 2016

(...)

So today I'm going to talk about how to make America wealthy again. We have to do it. With 30-miles from Steel City, Pittsburgh played a central role in building our nation. The legacy of Pennsylvania steelworkers lives in the bridges, railways and skyscrapers that make up our great American landscape.

But our workers' loyalty was repaid, you know it better than anybody, with total betrayal. Our politicians have aggressively pursued a policy of globalization, moving our jobs, our wealth and our factories to Mexico and overseas. Globalization has made the financial elite, who donate to politicians, very, very wealthy. I used to be one of them.

I hate to say it, but I used to be one. But it has left millions of our workers with nothing but poverty and heartache. When subsidized foreign steel is dumped into our markets, threatening our factories, the politicians have proven, folks, have proven they do nothing.

For years, they watched on the sidelines as our jobs vanished and our communities were plunged into Depression-level unemployment. Many of these areas have never recovered and never will unless I become president.

Then, they're going to recover fast. Our politicians took away from the people their means of making a living and supporting their families. Skilled craftsmen and tradespeople and factory workers have seen the jobs they love shipped thousands and thousands of miles away.

Many Pennsylvania towns, once thriving and humming, are now in a state of total disrepair. This wave of globalization has wiped out totally, totally, our middle class. It does not have to be this way. We can turn it around and we can turn it around fast.

But if we are going to deliver real change, we're going to have to reject the campaign of fear and intimidation being pursued by powerful corporations, media leaks and political dynasties. The people who rigged the system for their benefit will do anything and say anything to keep things exactly the way they are. ... The inner cities will remain poor. The factories will remain closed. The borders will remain open. The special interests will remain firmly in control.

(...)

I want you to imagine how much better our future can be if we declare independence from the elites who led us from one financial and foreign policy disaster to another. Our friends in Britain recently voted to take back control of their economy, politics and borders. ... Now, it's time for the American people to take back their future. Going to take it back.

(...)

Very sadly, we lost our way when we stopped believing in our country. America became the world's dominant economy by becoming the world's dominant producer. You know that from right here, right in this plant.

The wealth this created was shared broadly, creating the biggest middle-class the world has ever known. But then, America changed its policy from promoting development in America — in, in, in America — to promoting development in other nations. That's what's happening and that's what's happened.

We allowed foreign countries to subsidize their goods, devalue their currencies, violate their agreements and cheat in every way imaginable, and our politicians did nothing about it. Trillions of our dollars and millions of our jobs flowed overseas as a result. I have visited cities and towns across this country where one-third or even half of manufacturing jobs have been wiped out in the last 20 years. Today, we import nearly \$800 billion more in goods than we export. We can't continue to do that. This is not some natural disaster, it's a political and politician-made disaster. Very simple. And it can be corrected and we can correct it fast when we have people with the right thinking. Right up here. It is the consequence... It is the consequence of a leadership class that worships globalism over Americanism. This is a direct affront to our founding fathers, who — America wanted to be strong. They wanted this country to be strong. They wanted to be independent and they wanted it to be free.

Our founding fathers understood trade much better than our current politicians, believe me.

George Washington said that the promotion of domestic manufacturing will be among the first consequences to flow from an energetic government. Alexander Hamilton spoke frequently of the expediency of encouraging manufacturing in, in, in the United States.

And listen to this. The first Republican president, Abraham Lincoln, warned that, quote, “the abandonment of the protective policy by the American government will produce want and ruin among our people.” He understood it much better than our current politicians, that's why he was Abraham Lincoln, I guess.

Our original Constitution did not even have an income tax. Instead, it had tariffs emphasizing taxation of foreign, not domestic, production.

Yet today, 240 years after the Revolution, we've turned things completely upside down. We tax and regulate and restrict our companies to death and then we allow foreign countries that cheat to export their goods to us tax-free. How stupid is this? How could it happen? How stupid is this?

As a result, we have become more dependent on foreign countries than ever before. Ladies and gentlemen, it is time to declare our economic independence once again. That means...

That means voting for Donald Trump.

I'll do it. No doubt about it. Not even a little doubt. It also means reversing two of the worst legacies of the Clinton years. America has lost nearly 1/3 of its manufacturing jobs since 1997. Even as the country has increased its population, think of this, by 50 million people. At the center of this catastrophe are two trade deals pushed by Bill and Hillary Clinton.

First, the North American Free Trade Agreement, or the disaster called NAFTA. Second, China's entry into the World Trade Organization. NAFTA was the worst trade deal in the history — it's

like – the history of this country. And China's entrance into the World Trade Organization has enabled the greatest job theft in the history of our country.

It was Bill Clinton who signed NAFTA. People don't remember. In 1993. And Hillary Clinton who supported it. And the havoc that it wreaked after he left office was unbelievable. It was also Bill Clinton who lobbied for China's disastrous entry into the World Trade Organization, and Hillary Clinton who backed that terrible, terrible agreement.

Then as secretary of state, Hillary Clinton stood by idly while China cheated on its currency, added another trillion dollars to the trade deficit, and stole hundreds of billions of dollars in our intellectual property.

And I have been talking about China for many years. And you know what? Nobody listened. But they are listening now. That, I can tell you.

The city of Pittsburgh and the state of Pennsylvania have lost 1/3 of their manufacturing jobs since the Clintons put China into the WTO. 50,000 factories across America have shut their doors in that time. And this factory, because of your great owners, Gabe and Gloria, it's hanging in. Hanging in. But they just told me, it is not easy.

Almost half of our entire manufacturing trade deficit in goods with the world is the result and it's the result of trade with China. It was also Hillary Clinton, the secretary of state, who shoved us into a job-killing deal with South Korea, as reported by the Economic Policy Institute in May. This deal doubled our trade deficit with South Korea and destroyed nearly 100,000 American jobs.

As Bernie Sanders said, Hillary Clinton voted for virtually every trade agreement that has cost the workers of this country millions, millions of jobs.

Trade reform and the negotiation of great trade deals is the quickest way to bring our jobs back to our country.

To understand why trade reform creates jobs, and it creates a lot of them, we need to understand how all nations grow and prosper. Massive trade deficits subtract directly from our gross domestic product. From 1947 to 2001, a span of over five decades, our inflation-adjusted Gross Domestic Product grew at a rate of 3.5 percent. However, since 2002, the year after we fully opened our markets to Chinese imports, the GDP growth rate has been cut in half.

But is this mean for Americans? Not good. For every 1 percent of GDP growth, we failed to generate in any given year, we failed to create over one million jobs.

What a waste, and what a sad, sad thing.

American's job creation deficit, due to slower growth since 2002, is well over 20 million jobs. And that is just about the number of jobs our country needs right now to put America back to work at decent wages. Wages are very low, because there is no competition. And they are going to go up, because we're going to thrive again as a country.

The Trans-Pacific Partnership is the greatest danger yet. The TPP, as it is known, would be the death blow for American manufacturing. It would give up all of our economic leverage to an international commission that would put the interests of foreign countries above our own. It

would further open our markets to aggressive currency cheaters — cheaters, that's what they are, cheaters.

They are not playing by the rules. They are cheating. It would make it easier for our trading competitors to ship cheap subsidized goods into United States markets, while allowing foreign countries to continue putting up barriers in front of our exports — which is what they do. It is very hard to export to their countries. They make it very difficult.

We, on the other hand — come on in, everybody. Come on in. Bad leadership.

The TPP would lower tariffs would lower tariffs on foreign cars, while leaving in place the foreign practices that keep American cars from being sold overseas.

That is not all, mark my words. China will enter the TPP through the back door at a later date. They are watching, they are studying. They are not in it now, but are going to be in it. If it is good, they will be there.

By the way, if it is no good, they'll pass. It's the same way, always is.

The agreement would also force American workers to compete directly against workers from Vietnam, one of the lowest wage countries on Earth. Not only will the TPP undermine our economy, but it will undermine our independence.

That's what is happening. The TPP creates a new international commission that makes decisions the American people are no longer given the right to veto. These commissions are great for Hillary's Wall Street funders, who can spend vast amounts of money to influence the people on the commissions and the outcomes.

(...)

But have no doubt that [Clinton] will immediately approve it, if it is put before her. And that is guaranteed. Guaranteed.

She will do this, just as she has betrayed American workers for Wall Street and throughout — throughout her career. Her whole career she has betrayed the American worker. She is trying to put on a good front now, she will betray you again.

Her career and her husband have signed so many disasters and never, ever forget NAFTA. Just never ever forget it, because you know what it's done and I know what it's done. And in touring, I've seen the devastation that it's left behind.

(...)

There's no way to fix TPP. We need bilateral trade deals. We do not need to enter into another massive international agreement that ties us up and binds us down, like TPP does.

A Trump administration will change our failed trade policies, and I mean quickly.

Thank you. Here are seven steps I would pursue right away to bring back our jobs. Number one, I am going to withdraw the United States from the Trans-Pacific Partnership, which has not yet been ratified.

I am going to appoint the toughest and smartest, and I know them all, trade negotiators to fight on behalf of American workers.

I am going to direct the secretary of commerce to identify every violation of trade agreements a foreign country is currently using to harm you, the American worker.

I will then direct all appropriate agencies to use every tool under American and international law to end these abuses. And abuse is the right word.

Number four. I'm going to tell our NAFTA partners that I intend to immediately renegotiate the terms of that agreement to get a better deal by a lot. Not just a little, by a lot for our workers.

And if they don't agree to a renegotiation, which they might not because they are so used to having their own way — not with Trump they won't have their own way.

Then, I will submit under Article 2205 of the NAFTA Agreement that America intends to withdraw from the deal.

Number five. I'm going to instruct my treasury secretary to label China a currency manipulator, which should have been done years ago.

Any country that devalues their currency in order to take unfair advantage of the United States, which is many countries, will be met with sharply. And that includes tariffs and taxes.

Number six, I'm going to instruct the U.S. trade representative to bring trade cases against China, both in this country and at the WTO.

China's unfair subsidy behavior is prohibited by the terms of its entrance to the WTO and I intend to enforce those rules and regulations. And basically, I intend to enforce the agreements from all countries, including China.

Seven, if China does not stop its illegal activities, including its theft of American trade secrets, I will use every lawful — this is very easy. This is so easy. I love saying this. I will use every lawful presidential power to remedy trade disputes, including the application of tariffs consistent with Section 201 and 301 of the Trade Act of 1974, and Section 232 of the Trade Expansion Act of 1962.

And when they say trade expansion, they're talking about other countries, they're not talking about us because there is no expansion. They get the expansion, we get the joblessness. That's the way it works. It's not going to happen anymore.

President Reagan deployed similar trade measures when motorcycle and semiconductor imports threatened U.S. industry. I remember. His tariff on Japanese motorcycles was 45 percent and his tariff to shield America's semiconductor industry was 100 percent, and that had a big impact, folks. A big impact.

Hillary Clinton and her campaign of fear will try to spread the lie that these actions will start a trade war. You already have a trade war, and we're losing badly. Badly.

(...)

A Trump administration will end that war by getting a fair deal for the American people and the American worker. The era of economic surrender will finally be over. It will be over. You're not going to see it anymore. Well, I can't guarantee it, because after me, they'll probably start doing it again. But we will have four and maybe eight great, great productive years and we'll never go back and we'll make sure we never go back.

Thank you. Thank you, very much. Thank you. Thank you very much, everyone. I appreciate it.

A new era of prosperity will finally begin. America will be independent once more. Independent once more. Doesn't that sound great?

Under a Trump presidency, the American worker will finally have a president who will protect them and fight for them.

We will stand up to trade cheating. Cheating. Cheaters, that's what they are. Cheaters. We will stand up to trade cheating anywhere and everywhere it threatens the American job.

We will make America the best place in the world to start a business. We'll hire workers and we'll open factories and we'll get rid of these horrible regulations that make it impossible to do business in this country.

(...)

A Trump administration will also ensure that we start using American steel for American infrastructure. And aluminum.

Just like the American steel from Pennsylvania that built the Empire State Building, that's what we're going to do. It built the Empire State Building. It will be American steel that will fortify America's crumbling bridges — American steel. It will be American steel.

It will be American steel that sends our skyscrapers soaring, soaring into the sky, beautiful sight, more beautiful with American steel. It will be American steel that rebuilds our inner cities. It will be American hand (ph) that remake this country, and it will American energy mined from American resources, that powers this country.

It will be American workers who are hired to do the job. Nobody else — American workers.

We are going to put American steel and aluminum back into the backbone of our country.

This alone will create massive numbers of jobs, high-paying jobs, good jobs, not the jobs we have today, which everybody agrees are bad jobs. We're going to create massive numbers of good jobs.

On trade, on immigration, on foreign policy, we are going to put America first again.

We are going to make America wealthy again.

(...)

It's time to believe in the future. It's time to believe in each other. It's time to believe in America again. This is how we are going to make America great again for all Americans, for all Americans.

We're going to make America great again for everyone, greater than ever before. And I promise you if I become president, we are going to be working again. We are going to have great jobs again. You're going to be so happy. You're going to be proud of your president. You're going to be proud, proud, proud of our country once again.

A Free Trader's "Response"

Editor's Note: Though written a decade prior, the following article serves as a useful response to the speech by Donald Trump, reproduced above. Ask yourself to what extent this "response" undercuts the nationalist / populist challenge. As importantly, ask yourself what it might miss. Where is this globalist response convincing, and where might it take the concerns of globalization's discontents insufficiently seriously?

Daniel Griswold, A Tale of Two Nanos

The American, The Journal of the American Enterprise Institute, January 3, 2007

American.com

A few days before Christmas, my kids and I picked through the dwindling and deeply discounted inventory of CDs at the local Tower Records store, which was about to close its doors for the last time. New technology had put them out of business. Why leave home to spend \$17.99 for a compact disc when you can spend far less to download your favorite songs from iTunes, Apple's online music store, and play it on your Apple iPod Nano?

My two sons, aged 15 and 12, each received a Nano for Christmas. In a small way, my family's purchase of two Nanos helped to put the sales clerks at Tower Records out of a job. As I was admiring the cool design and user-friendly functions on my boys' new Nanos, I noticed an inscription on the back: "Designed by Apple in California. Assembled in China." That's a more clever label—and a more accurate depiction of economic trends—than the "Made in China" we see stamped on so many imported shirts, shoes, toys, and consumer electronics.

To those obsessed with the trade balance as a zero-sum scorecard, another imported, \$200 Nano merely adds to our growing bilateral trade deficit with China and knocks a few more Americans out of jobs. Wouldn't we be better off, they ask, if the whole thing were made and assembled at home by American workers?

The answer is a definite no.

As with other high-tech devices, iPods are assembled in China, but the real guts of the device—the brand name, the design, the engineering, the most sophisticated components—come from the United States and other countries outside of China. Like trade in general, importing iPods from China creates a win-win scenario for people in both countries. Assembling the devices is relatively high-paying work in China, so the Chinese workers and their economy do benefit to some extent. But Americans benefit even more from the deal—even, in the long run, the tattooed and pierced erstwhile clerks from Tower.

Thousands of Apple designers, engineers, and programmers are better off, along with the company's suppliers and everyone who owns Apple stock. And of course, the owners of the 70 million iPods sold since 2001 are reaping far more enjoyment from the devices than the Chinese workers who assembled them. Judging by the delight on their faces a few days ago, my two boys are clearly among the winners.

The example of our two Nanos provides a metaphor for America's trade relationship with China.

Extrapolating from trade numbers through October 2006, Americans bought an estimated \$286 billion worth of goods “Made in China” in the year just ended. More than three-quarters of those goods are consumer products that make our lives better everyday at home and the office—just the kind of stuff that made its way under our Christmas trees this holiday season. When congressional leaders talk about getting tough with China by imposing tariffs on all those imports, it must bring a twisted smile to the cold-hearted Grinch.

A steep tariff on iPod Nanos and other imports from China would only succeed in driving up the cost and price of those imports. It would probably still not make economic sense to have them assembled in the United States, because such relatively low-skilled, labor-intensive work would still be done more cheaply in some other developing country. Higher prices for Nanos would mean fewer sales, fewer opportunities for Apple’s own high-skilled workers, lower returns for its shareholders, and fewer Americans experiencing the pleasure of holding one in their hands.

True to the theory of comparative advantage, our trade with China helps us focus on what we do best—such as designing and engineering high-tech devices—while the Chinese do more of what they do best—producing lower-end parts and products at competitive cost, and combining them with more sophisticated components made elsewhere for final assembly and delivery. As the Nano illustrates, China has become the final link in a global manufacturing supply chain in which the United States continues to play a leading role.

In the short run, our friends at Tower are the big losers in this Christmas tale of two Nanos. But given the dynamic, flexible nature of our global labor market, they will no doubt find jobs somewhere else before too long, most likely better jobs. Perhaps, eventually, they will find jobs in sunny California designing devices that will make Nanos obsolete—and will stuff my sons’ sons’ stockings.

Daniel Griswold is director of the Center for Trade Policy Studies at the Cato Institute and author of the recent study, “Who’s Manipulating Whom? China’s Currency and the U.S. Economy,” available at <http://www.freetrade.org/>. He blogs at [Cato-at-liberty](#).

Trade and Environment

Trade Liberalisation and the Environment: Are There Legitimate Worries

Simon Upton, BRIDGES Monthly Review Year 7 (September-October 2003), Number 7, pp. 5-7

One of the features of the debates leading up to the WTO's Cancun Ministerial meeting was the prominence given by some parties to linkages between trade liberalisation and the environment, particularly as they apply to agriculture. These concerns were made formally a part of the negotiating agenda in Doha. The linkages were given particular prominence as a result of the European Union's decision to embark on a major reform of its Common Agricultural Policy (CAP) and in doing so seek to make its agricultural support policies more trade friendly.

As a result, Europe has invited a more thorough-going debate on the sorts of environmental concerns that might give rise to policy interventions, and the extent to which they might support trade-restrictive measures. This is not the case with other parties to the negotiations. The United States, for instance, has tended to accept without serious challenge that its subsidies are little more than the outcome of blatant pork-barrel politics. No-one pretends that any future reductions might be crafted to garner significant environmental gains. Farm subsidies in the United States will disappear the day politicians feel emboldened to ignore the lobby groups circling around the Capitol.¹ We may be in for some wait.

But Europeans have mounted a more sophisticated defence. They have acknowledged the trade-distorting effects of their billowing subsidies but have equally drawn attention to the environmental consequences of liberalisation and subsidy removal, not all of them positive. And in noting this they invite an altogether more complex response than the United States. It is this argument I should like to expand on.

Classical trade theory suggests that any level of liberalisation – no matter how partial – is advantageous. This flows from the uncontentious claim that comparative advantage will bring benefits to all participants even if not in equal measure. It is not a zero-sum game.² Where the environmental consequences of changed patterns of trade and production are concerned, however, there is no such guarantee. Environmental outcomes are dependent on a huge array of bio-physical and regulatory environments. They may or may not be exacerbated depending on the regulatory environment in countries to which production shifts in response to changing comparative advantage. But even (implausibly) assuming a seamless regulatory climate between economies, physical and social factors can mean quite different outcomes in the face of changing patterns of trade.

The questions that demand sharp focus revolve around what environmental concerns are legitimately the business of trade negotiators and, assuming these concerns are held in good faith, how might they be addressed?

In the first place those who advance these concerns need to be very precise about what is worrying them. That's because for some, the greening of subsidies and the maintenance of protective barriers *is* merely a useful means of making publicly acceptable what amounts, in fact, to a capitulation to vested interests. Listening to the way some European politicians seek to assure their farming constituents of their loyalties doesn't give one huge confidence that this is all driven by an unimpeachable desire to save the planet.

Even at the level of the European Commission, where Commissioners struggle manfully to hold the line against some stiff, vested, national producer interests, the case has not been adequately made. Pascal Lamy, for instance, has recently explained the European position on agriculture in *Le Monde* in these terms:

“The European Union has made a political choice to support agriculture because it cannot just be regarded as an economic activity like any other. It fills many other roles than simply that of production. It contributes to the protection of the environment, food safety, animal welfare, etc.”³

It is the “etc.” that worries me as much as anything. Because the failure to specify the problem leaves us in a warm – and potentially limitless – zone of comfort that defies tough-minded analysis. Is agriculture so different? The chemical industry impinges equally on environmental protection, food safety and animal welfare not to mention a vast array of human welfare-related issues. In a world in which people wish to speak increasingly of sustainable development, it is surely hard to draw such tidy distinctions between the impacts of different types of economic activity?

I can identify three sorts of legitimate environmental concerns. Properly described we can then decide whether and how those concerns might be addressed.

Environmental Impacts in the Liberalising Country

This concern often focuses on cultural and heritage values imprinted on the rural landscape. These are real worries in many cases. They are also exclusively the domestic concern of the country in which they are found. At least conceptually, they should pose no problems for negotiators; to the extent that they involve the provision of public goods that would not otherwise be provided, they can be transparently purchased from taxes. Needless to say, the boundary between landscape values and the desirability of having real, live, close-to-nature artisans not just tilling those Brueghelian fields but living in those exquisite villages is not easy to draw. But social subsidies can be equally transparent. To some extent the mooted CAP reforms– scheduled only to bite some years from now – mark a step in this direction.⁴ The key reform to the CAP will be the expanded ‘decoupling’ of support to EU farmers from production and moving this support to non-production related activities.

[6]

Of one thing we can be certain: this concern cannot credibly be extended to fields as far as the eye can see broken only by silos, large tractors, irrigators and factory farms. Neither, at least on economic grounds, can the argument that similar agricultural products from countries abroad should be kept out because they would compete unfairly. If the objective is to maintain landscapes and the people who inhabit them, that can be achieved while still delivering, through liberalisation, lower prices to consumers in the same country – consumers who are, after all, paying the taxes that purchase the public goods. The annual welfare gains to Western Europe from full liberalisation are estimated to exceed €15 billion.⁵

Impacts in Countries Benefiting from Liberalisation

The concern here, again a real one, is that the opening of markets will lead to significant new production beyond the liberalizing country’s borders with negative environmental impacts. The fear is that whatever environmental damage may be mitigated at home as a result of reduced production in response to lowered subsidies and/or tariffs, will simply be transferred to another

country, and particularly to developing countries that may not be able to support such rigorous environmental standards. The net result may not be a simple transfer of harm but an overall increase in environmental damage at the global level. While the concern is a real one, it does not follow that subsidies should be maintained on the basis that this represents some lesser of two evils. The local responses by producers in a developing country represent tradeoffs which they have jealously guarded the right to make – see Principle 2 of the *Rio Declaration*.⁶ No developing country is going to limit its freedom to develop as developed countries have before them. Developed world living standards are built on the conversion (for which read, destruction) of natural resources into intellectual and human resources. This ‘substitution of natural capital with human capital’ (as economists characterise it) is a trade-off that every country regards as its own sovereign choice.

But that does not leave developed countries without the means to respond. A co-ordinated refocusing of technical and development assistance aimed at alleviating such problems could go a long way to helping both development and the environment. Here’s a real world example involving cotton subsidies.

OECD member subsidies to cotton farmers lower world prices by some 25 percent. A reduction in cotton subsidies would certainly mean improved market access for a number of developing countries. But what would it mean for the environment?

One country with significant cotton interests is Uzbekistan. Improved world prices for Uzbek cotton as a consequence of reductions in cotton subsidies would certainly have positive implications for poverty reduction and economic growth in this central Asian economy. However, the increased output is likely to have negative implications for water use and the Aral Sea in Uzbekistan. The water supply of Uzbek cotton farmers is already a dwindling resource. Currently, more than 40 percent of the water taken from the severely stressed Aral Sea to irrigate the cotton fields evaporates before it even reaches those fields because Uzbek farmers use open channels, not closed pipes, for irrigation. Further pressure on the Aral Sea water resource would have significant negative spill-overs to other parts of the Uzbek economy. What can be done about this?

If countries concerned about the environmental impact of liberalisation beyond their shores are really worried about these sorts of consequences, they can look to technical and development assistance to plug the gaps. So if improved market access for Uzbek cotton as a consequence of subsidy reductions threatened local environmental harm, developed country policy-makers should be able to fund flanking measures to mitigate them (such as enhanced technical assistance for improved irrigation techniques).⁷

Global Environmental Impacts from Liberalisation and Subsidy Removal

Finally, there may be concerns that the economic welfare gains from subsidy removal will accentuate a variety of non-local environmental externalities as a result of higher consumption.⁸ Greenhouse gas emissions come to mind. Again, this is a valid concern (although I must confess I haven’t heard it argued by a government). But the solution for such problems lies, by definition, with the negotiation of multi-lateral environmental agreements. Whatever our difficulties in elaborating them, it would be hard to argue that maintaining subsidies was a legitimate alternative.

I have elaborated these three possible concerns because it seems to me that, in varying degrees, they are legitimate and should be raised. Of course, before proposing expensive solutions or negotiating new multilateral environmental agreements (MEAs), one would first want to take into

account the very significant environmental benefits that are likely to flow from the elimination of agricultural subsidies. I say this with some feeling coming from a country, New Zealand, which allowed production-based subsidies to become an engine for the destruction of primeval temperate rain forests on a large scale. The consequences for soil, water and biodiversity were alarming. The complete removal of those subsidies has seen huge areas of land undergo changes to less destructive uses than grazing, and in some cases begin the process of reversion to native forest. The on-going degradation of water quality has been arrested.

That is not to say that there are no remaining environmental problems. Those sectors that have prospered and expanded from a newly self-sustaining economic base, are imposing new pressures. They are in turn the subject of new regulatory interventions and, in some cases, some very limited payment of public moneys to secure particular public goods. It is true that such payments press close to the boundary of subsidies. But it should be possible to distinguish on the one hand between payments that do confer a private benefit while securing a significant public benefit (i.e. something that is characterised by non-rival consumption and non-excludability) and, on the other hand, payments which largely confer only private benefits. This will be a matter of degree, but surely not one that defies differentiation.

The removal of subsidies in New Zealand was not an easy business. In fact it was incredibly painful. That was in part because New Zealand (well down the OECD league table) wasn't rich enough to pay for a soft landing. But then again, it was only because it wasn't very rich that it acted in the first place. Which of course is not the case with either the United States or Europe. These two economic colossi are stupendously wealthy. And agricultural support payments are minor when set alongside their other budgetary concerns. So one should not hope for subsidy reform as a result of economic necessity. In reality, electoral necessities point the other way.

Making the Demands Defensible

What then can those concerned about the environmental consequences of subsidies demand in the context of the present negotiations? For my part I would advocate a large injection of candour into the debate. This cuts both ways. As Konrad von Moltke has noted, those who support the abolition of subsidies as a strategy for environmental improvement have to acknowledge that, within the current negotiating structure, they are in effect seeking to add "yet another layer of uncertainty to what is already a frighteningly complex system of environmental management."⁹

On the other hand, those who defend subsidies, or worry about the unintended environmental consequences of their removal, should be placed on notice that these arguments will be rigorously searched for unworthy motives. Here I find myself in something of a dilemma. On the one hand, there is something almost attractive about the disarmingly frank way in which the United States manages to pour money into rural vote retention schemes. There's no secret about why they do it. We can merely rail at the consequences.

But it would be too simple to leave it there. There are environmental consequences of subsidy removal. Those countries which have raised them – bravely in my view – must be challenged to make their arguments defensible. This will be the real test for those charged with seeing through the transformation of the CAP.

In the final analysis, let's be blunt, agricultural subsidies as we have come to know them are largely the result of a failure or an unwillingness to confront tricky social and economic dislocations. The resulting distortions have made the potential dislocations even bigger – like huge potential capital losses in land values if the rules of the game change. These dislocations are

quantifiable. People can be bought out or compensated. If doing it in a way that purchases some clearly recognisable public good makes that easier, so be it. But nothing can justify keeping everyone poorer – off-shore producers and domestic consumers – by preserving the status quo. Doing so in the name of the environment would be the final straw.

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ENDNOTES

1 That said, conservation-related arguments were a minor feature of President Bush's justification for the Farm Bill.

2 See in particular: V Vitalis (2003) The Development Impact of Developed-World Policies on Developing Countries: The Case of Trade, chapter in *The Effect of Rich Countries' Policies on Poor Countries*, forthcoming

3 Le Monde (2003) 5 September

4 For an outline of the EU's reform package see: http://europa.eu.int/comm/agriculture/mtr/index_en.htm

5 J. Beghin, D. Roland-Holst, and D. van der Mensbrugge (2002), *Global Agricultural Trade and the Doha Round, What are the Implications for North and South?* Paper presented to the OECD/World Bank Global Forum on Agriculture, May 23-24, Paris. 6 According to Principle 2 of the Rio Declaration, "States have [...] the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

7 See also Vitalis (ibid) for further details.

8 For more detail on this and other aspects of the environment and the agriculture sector see OECD (2001) *Improving the Environmental Performance of Agriculture: Policy Options and Market Approaches*, OECD, Paris

9 K. von Moltke (2003) *Negotiating Subsidy Reduction in the World Trade Organisation*, IISD September.

Trade and Human Rights

UN ECOSOC, The Realization of Economic, Social and Cultural Rights: Globalization and its impact on the Full Enjoyment of Human Rights. Preliminary Report submitted by J. Oloka-Onyango and Deepika Udagama, in accordance with Sub-Commission resolution 1999/8, E/CN.4/Sub.2/2000/13 (15 June 2000)

(...)

A. The case of the World Trade Organization (WTO)

13. Despite being a relatively young international organization - having come into existence only in 1994 - the World Trade Organization (WTO) has attracted considerable intellectual and media attention. Following the Seattle protests at the meeting of world trade ministers, no other organization has been more closely associated with the phenomenon of globalization. Central to the ethos and practice of WTO is a set of principles that have provided the basic foundation for most contemporary developments associated with globalization. Among those principles we can cite free trade, open markets and tariff reductions. At the same time, the creation of WTO represented a veritable revolution not only in the scope of issues that were given attention under the trade regime created after Marrakech, but also with regard to the ramifications of failure to conform to that regime through its binding dispute-settlement mechanisms. (27)

14. The General Agreement on Tariffs and Trade (GATT), which the WTO succeeded, was provisional and only applied to goods, with the focus of the Agreement for most of its existence largely being border measures. (28) Among the new issues that came aboard following the Uruguay Round of talks in 1994 were services, (29) intellectual property rights (IPRs), (30) government procurement, (31) and investment measures. (32) In bringing these issues within the purview of the international trade-enforcement regime, not only did WTO assume tremendous powers, but it also raised several new issues vis-à-vis the relationship between the organization and individual States, (33) the broad questions of human rights, and the North/South geopolitical divide. For example, many developing countries take the demand to open their markets as a clear manifestation of Northern double standards, since the latter have consistently failed to open their own. In the trite observation of former World Bank Chief Economist Joseph Stiglitz, such exhortations often ring hollow:

"As developing countries take steps to open their economies and expand their exports, they find themselves confronting significant trade barriers - leaving them, in effect, with neither aid nor trade. They quickly run up against dumping duties (when no economist would say they are really engaged in dumping), or they face protected or restricted markets in their areas of natural comparative advantage, such as agriculture or textiles." (34)

The truth is in fact much more acute. Indeed, the assumptions on which the rules of WTO are based are grossly unfair and even prejudiced. Those rules also reflect an agenda that serves only to promote dominant corporatist interests that already monopolize the arena of international trade. (35) The rules assume an equality of bargaining power between all the countries that engage in trade. They are also designed on the basis of a premise that ignores the fact that the greater

percentage of global trade is controlled by powerful multinational enterprises. Within such a context, the notion of free trade on which the rules are constructed is a fallacy.

15. WTO has been described as the " practical manifestation of globalization in its trade and commercial aspects". (36) A closer examination of the organization will reveal that while trade and commerce are indeed its principle focus, the organization has extended its purview to encompass additional areas beyond what could justifiably be described as within its mandate. Furthermore, even its purely trade and commerce activities have serious human rights implications. This is compounded by the fact that the founding instruments of WTO make scant (indeed only oblique) reference to the principles of human rights. (37) The net result is that for certain sectors of humanity - particularly the developing countries of the South - the WTO is a veritable nightmare. (38) The fact that women were largely excluded from the WTO decision-making structures, and that the rules evolved by WTO are largely gender-insensitive, means that women as a group stand to gain little from this organization. (39)

16. As is the case with other international institutions that deal with the international economy, WTO is afflicted by both processual and substantive problems. Superficially, WTO can be described as a democratic institution; because it adopts the principle of one member, one vote, its decisions are ostensibly based on consensus, and together these allow for more equitable outcomes. (40) Such superficial equality nevertheless masks a serious inequality in both the appearance and the reality of power in the institution. According to a recent International Federation of Human Rights (FIDH) report:

" whether one considers the dispute settlement procedures, the mechanisms for implementing agreements or the areas selected for negotiations, one comes to realize that the WTO structure is heavily tilted in favour of developed countries, such that developing countries are, de facto, kept away from decision-making mechanisms and from policy-making; similarly, their own specific problems are not sufficiently taken into account." (41)

In the deliberations and negotiations over further goals of trade liberalization, WTO has demonstrated a particular opacity in the face of the demand for transparency. At Seattle, despite warnings from developing country representatives (and the chants of protesters outside the conference hall), (42) representatives from the Northern countries persisted in developing a position in a process that excluded the majority of delegates. Unsurprisingly, the talks ended in deadlock and frustration. (43) The pattern continues, and is compounded by the fact that because of a lack of resources and personnel with the requisite expertise, developing countries are forever condemned to a marginal negotiating position within the WTO framework. (44)

17. Among the several issues that have caused concern for many developing countries is the attempt to forge a link between issues concerning trade, human rights, labour standards and the environment - particularly when they are couched in the terms of conditionality. The Havana Declaration of the Group of 77 that followed the South Summit held from 10 to 14 April 2000 was unequivocal in this respect, stating that it rejected " all attempts to use these issues for resisting market access or aid and technology flows to developing countries". (45) The tying of trade to human rights in the fashion in which it has so far been done is problematic for a number of reasons. In the first instance, it too easily succumbs to the charge by developing countries of neo-colonialism. (46) Secondly, the commitment of Northern countries to a genuinely democratic and human rights-sensitive international regime is rendered suspect both by an extremely superficial rendering of the meaning of human rights, (47) and by the numerous double standards that are daily observed in the relations between countries of the North and those of the South.

Thus, "human rights" conditionality when applied in contexts such as trade depends on a range of largely subjective elements extrapolated from the much broader human rights regime. (48) In other words, human rights are merely used as an opportunistic fulcrum to achieve the objective of liberalized markets. For example, why is there almost always never any linkage between the demands being made and the observation and respect for economic, social and cultural rights? The short answer is because many of the measures being pursued actually undermine the progressive realization of this category of rights. However, even when the linkage is made to civil and political rights, it is fraught with inconsistencies and national subjective interests predominate.

18. Many of the measures adopted by WTO have implications well beyond the question of international trade. Among the most controversial of those that WTO has thrown into the debate relates to the issue of patenting, especially of plant varieties and life forms. (49) According to Vandana Shiva:

"The granting of patents covering all genetically engineered varieties of a species, irrespective of the genes concerned or how they were transferred, puts in the hands of a single inventor the possibility to control what we grow on our farms and in our gardens. At a stroke of a pen the research of countless farmers and scientists has potentially been negated in a single, legal act of economic highjack." (50)

The implications of such a measure are serious for the issue of food security, and its consequent relationship to the right to food. Furthermore, it represents outright piracy and appropriation of nature's bounty which has been designated for the whole of humanity and not for a privileged and technologically advanced few. (51)

19. At a minimum, the WTO needs to reform its processual mechanisms of deliberation so as to be more inclusive, and to allow for discordant (especially civil society) voices to be heard. More fundamentally, however, it needs to review its approach to the substantive issue that it is supposed to tackle: the question of free trade. Again Prof. Stiglitz provides the most lucid examination of what would comprise a genuine regime of trade liberalization:

"But trade liberalization must be balanced in its agenda, process and outcomes, and it must reflect the concerns of the developing world. It must take in not only those sectors in which developed countries have a comparative advantage, like financial services, but also those in which developing countries have a special interest, like agriculture and construction services. It must not only include intellectual property protections of interest to the developed countries, but also address issues of current or potential concern for developing countries, such as property rights for knowledge embedded in traditional medicines, or the pricing of pharmaceuticals in developing country markets." (52)

It is the above which WTO failed to do at Seattle, and has since failed to do in its aftermath. Following the Seattle Ministerial conference, the impression created by the WTO leadership, as well as by the countries of the North which had been the prime movers of the basic elements in the new WTO trade regime, was that there would be attempts made at reform. However, as one observer has pointed out, deliberations and pronouncements by the organization since Seattle do not appear to indicate much of a change of heart. (53) Thus, the problems of WTO are much larger than simply its approach to the substantive elements of its mandate. As in the case of OECD and MAI, WTO must radically review its mechanisms of operation, the role and place of both developing country participation and that of non-State actors such as NGOs, and its

relationship to the United Nations system as a whole. In other words, what is required is nothing less than a radical review of the whole system of trade liberalization and a critical consideration of the extent to which it is genuinely equitable and geared towards shared benefits for rich and poor countries alike. WTO must take on board the many suggestions that have been made with respect to improving access and transparency at the organization, not only for the purposes of improving internal democracy, but also for the good of constructing a more equitable and genuinely beneficial international trading system. (54)

(...)

27. See Yash Tandon, Globalization and Africa's Options, International South Group Network, Harare, 1999, at p. 11.

28. See, Jackson, op. cit., at note 3, pp. 824-825.

29. The General Agreement on Trade in Services (GATS), 15 April 1994. Reprinted in International Legal Materials, vol. 33, at p. 67.

30. The Agreement on Trade Related Intellectual Property Rights (TRIPS), 15 April 1994, Annex 1C to the Marrakech Agreement. Reprinted in International Legal Materials, vol. 33, at p. 81.

31. The Agreement on Government Procurement (AGP).

32. The Agreement on Trade Related Investment Measures (TRIMS), 15 April 1994 in Law and Practice of the World Trade Organization, Treaties Booklet 1, Release 95-1, at 161 (Joseph F. Denin, ed.), 1995.

33. See Jackson op. cit., at note 3, p. 825.

34. Joseph F. Stiglitz, "Trade and the Developing World: A New Agenda", Current History (November 1999), at p. 387.

35. See Barry Coates, "Why Free Trade is A Myth", The Independent, London, 10 October 1999.

36. Ahmed Mohiddin, "Partnership: A new buzz-word or realistic relationship?" Development, vol. 41, No. 4 (1997) at p. 7.

37. As Robert Howse and Makau Mutua have pointed out, the preamble to the WTO Agreement only refers to the raising of "standards of living" and not explicitly to human rights. See, Robert Howse and Makau Mutua, Trading in Human Rights: The Human Rights Obligations of the World Trade Organization, ICHRRD (April 2000), at p. 13.

38. For a good analysis, see Yash Tandon, "The World Trade Organization and Africa's Marginalization", Australian Journal of International Affairs, vol. 53, No. 1 (1999), at pp. 83-94.

39. Myriam Vander Stichelle, Trade Policy, the WTO and Gender (Information Paper of the Informal Working Group on Gender and Trade, November 1998), esp. pp. 16-20.

40. Gerry Helleiner and Ademola Oyejide, "Global Economic Governance, Global Negotiations and the Developing Countries", in UNDP, Globalization with a Human Face: Background Papers to the Human Development Report 1999, at p. 112.

41. Anne-Christine Hubbard and Marie Guirand, The WTO and Human Rights; FIDH Position Paper (November 1999); accessed on 14 May 2000.

42. The Organization for African Unity (OAU) issued a statement that mainly condemned the processual aspects of the meeting, using words such as a "lack of transparency" and the "marginalization" of African countries: "We are particularly concerned over the stated intentions to produce a ministerial text at any cost including at the cost of procedures designed to secure participation and consensus". See, "Africa Rejects WTO Deal" (AFP), reported in the The New Vision, Kampala, 4 December 1999, at p. 31.

43. "WTO Talks End in Failure" (AFP), reported in The New Vision, Kampala, 6 December 1999, at p. 61.

44. As Baker Wairama points out, a country like Uganda has only a single trade representative at the WTO headquarters in Geneva compared to an average of seven from each OECD country, supported by a coterie

of aides. Baker G. Wairama, "Impact of the World Trade Organization (WTO) on Uganda", paper presented to a Uganda Law Society conference on International Trade Law and Uganda: Closing the Gaps, Kampala, April 2000, at p. 4.

45. Havana Declaration of the G-77 South Summit, 14 April 2000 (accessed on 6 May 2000 at: <http://www.g77.org/>).

46. This was implicit in a veiled attack made by World Bank President James Wolfenson on the conditionality strategies applied by the Fund. See, Stephany Griffith-Jones and José Antonio-Ocampo, The Poorest Countries and the Emerging International Financial Infrastructure, Almqvist and Wiksell International, Stockholm, 1999, at p. 56.

47. At Seattle, Secretary-General Kofi Annan issued the same message to the trade ministers, stating:

" globalization must not be used as a scapegoat for domestic policy failures. The industrialized world must not try to solve its own problems at the expense of the poor. It seldom makes sense to use trade restrictions to tackle problems whose origins lie not in international policy. By aggravating poverty and obstructing development, such restrictions often make the problems they are trying to solve even worse."

Kofi Annan, "Globalization - No Excuse for Domestic Failures", The East African, 6-12 December 1999, at p. 12.

48. One such area is the issue of labour rights which the International Confederation of Free Trade Unions (ICFTU) and the American Confederation of Labour - Congress of Industrial Organization (AFL-CIO) are pushing to have included in WTO. However, as Walden Bello has argued, such a strategy is deeply flawed for a number of reasons:

"First, by pursuing this objective through the WTO the IFCTU is conferring legitimacy on an international economic system which - at every other turn -squeezes and exploits workers. Second, it disregards the fact that many of the WTO agreements prohibit or restrict the power of national governments to implement policies which would improve the conditions for the mass of workers, especially those in the agricultural sector who comprise 59 per cent of the workforce in the Third World. Finally, and critically, it completely ignores the decisive role of footloose capital in keeping wages low and pitting worker against worker."

Nicola Bullard, "It's time for 'uncivil' society to act", Focus on Trade, No. 47 (March 2000, accessed at: <http://www.focusweb.org/>).

49. See Krysti Justine Guest, "Exploitation Under Erasure: Economic, Social and Cultural Rights Engage Economic Globalization", Adelaide Law Review, vol. 19, No. 1 (1997), at p. 81.

50. Vandana Shiva, "Intellectual Property Rights and Bioethics", paper presented at El Taller: International Conference and General Assembly on "The New Millennium: Globalization and its Challenges", Tunis, 12-16 November 1998 (on file with author).

51. There are numerous other problems associated with the issue of intellectual property in WTO, including the potential impact on agriculture and health services. See the report by Dagi Kimani, "Intellectual Property Bill Faces Opposition", The East African, 29 May-4 June 2000, at p. 7.

52. Stiglitz, op. cit. at note 34, p. 387.

53. International Centre for Trade and Sustainable Development (ICSTD), "Quad Offers Weak Starting Point for Confidence-building Package", in Bridges: Between Trade and Sustainable Development, Year 4, No. 3 (April 2000), at p. 2.

54. See, Andrew L. Strauss, "From GATTzilla to the Green Giant: Winning the Environmental Battle for the Soul of the World Trade Organization", University of Pennsylvania Journal of International Economic Law, vol. 19, No. 3 (1998), p. 729.

(...)

For a thorough exploration of the relationship between the WTO and Human Rights see the exchange on this matter between Ernst-Ulrich Petersmann, Robert Howse and Philip Alston which is reproduced in the Optional Reading section of this unit.

Gender Issues and International Trade

<http://www.cid.harvard.edu/cidtrade/site/gender.html>

Center for International Development at Harvard University

Over the past few decades there has been increasing attention paid to the gender dimensions of poverty and development. More recently - essentially the last five to 10 years - academics, NGOs and international organizations have begun to pay close attention to the gender dimensions of international trade regimes, liberalization, and the impact of trade regulations and WTO decisions.

More often than not, consideration of the gender dimensions of trade and other development issues means focusing on the impact on women. As Amartya Sen, Martha Nussbaum and others have emphasized, women tend to be disproportionately poor and disadvantaged in developing countries.[1] In addition, their ownership, control, and access to economic resources, assets and markets are often limited by social norms. Moreover, they also tend to work in specific sectors of the economy - e.g., textiles, the informal sector, and agriculture. Many of the trade issues discussed by the WTO today, therefore, have differential gender impacts through the sectors of the economy they affect. Indeed, some have referred to some countries' export-led growth successes as female-led, as most of the workers in export-processing zones tend to be female.

For instance, existing research indicates that "...on average, greater trade openness is associated with increases in women's share of paid employment." [3] However, authors are quick to emphasize that women's share of unpaid work in the home and elsewhere may remain unchanged, and that they may still experience discrimination in the workplace and in hiring. [4] Other authors are concerned that reduced social service expenditure due to reduced tariff revenues may place increased care-giving and other social burdens on women. [5]

Given that trade regulations can impact the economy at both a macro- and micro-level, there are many possible avenues through which their effects might be felt, most of which are only beginning to be studied. The study of the gender impact of trade is still in its infancy, not least because statistics are often not collected by gender. [6]

A principal objection is that for women in general "...improved social indicators do not automatically open the doors of power and improve participation and representation. Development interventions also often have narrow perspectives; even interventions that may have had positive outcomes for some women in terms of economic empowerment have neither translated into collective gains nor into sustained political power." [7] Practically speaking, gender analysis also increases the analytical burden for policymakers, by adding to the data that needs to be collected, the questions that need to be asked, and the nature of the research performed. From a trade perspective, this can provide useful insights. The World Bank has found that greater gender equality can promote growth by increasing female productivity, which in turn increases the productive capacity of the economy as a whole. [8]

The WTO is increasingly becoming a source of interest for those interested in the gender dimensions of trade. One women's group notes that of 159 trade policy experts on the WTO roster of dispute, a body which settles many disagreements, only 12 were women. [9] Slowly, however,

gender issues are making their way on to the WTO's agenda, as evidenced by a recent seminar on "Women as Economic Players in Sustainable Development" at the WTO's public symposium in June 2003. [10] Activist groups such as the International Gender and Trade Network (IGTN) are also carefully considering how gender issues should be addressed at the WTO, or 'mainstreamed' The IGTN, for instance, does 8] not support the establishment of a women's committee at the WTO, for fear that it would allow women's issue to be separated from rather than integrated into most discussions, or used as a public relations tool and little more.[11]

Still, there exists the normative question of whether gender issues should be explicitly on the WTO's agenda. Insofar as the goal of trade liberalization is the raising of living standards for all, then it follows that gender impacts be evaluated explicitly, just as the impacts of trade measures on rural versus urban and poor versus rich populations often are.

However, women's rights as codified in the Universal Declaration of Human Rights and other UN bodies and declarations have on occasion met with fierce resistance from member countries. If some countries object to specific gender or women's agendas under the UN's mission, they may well object more to the WTO taking on gender issues if they view it primarily as an organization to address economic rather than social issues. Yet, in UN members - and by implication, WTO members - made the declared in at the Fourth UN World Conference on Women in Beijing that they would "ensure that national policies related to international and regional trade agreements do not have an adverse impact on women's new and traditional economic activities." [12] Time will tell whether and how they choose to live up to this commitment.

Links

[The Association for Women's Rights in Development \(AWID\)](#)

[Development Alternatives with Women in a New Era \(DAWN\)](#)

[European Women's Lobby](#)

[International Gender and Trade Network](#)

[United Nations Development Fund for Women \(UNIFEM\)](#)

[World Bank GenderNet](#)

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[1] For some brief commentary by Amartya Sen on aspects of the study of women and development, refer to Kapur, Akash, "Humane Development," The Atlantic Monthly, 15 December 1999 [online: web] URL: <http://www.theatlantic.com/unbound/interviews/ba991215.htm>.

[2]"Gender and Trade: A Conceptual Note," UNCTAD, 15 July 2003 [online: web] URL: www.unctad.org.

[3] Grown, Caren, Diane Elson, and Nilufer Cagatay. "Introduction." [World Development](#). Vol 28, No. 7 (July 2000), p. 1147. [online: web] URL: <http://www-unix.oit.umass.edu/~gepstein/econ797/updates/Week%20VII%20Gender/papers/grown.etal.2000.pdf>

[4]*Ibid.*

[5] Palmer, Ingrid, "Public Finance from a Gender Perspective," [World Development](#), Vol. 23, No. 11 (December 1995) and Elson, D., B. Evers and J. Gideon, Gender-Aware Country Economic Reports: Concepts and Sources, Working Paper No. 1, Genecon Unit, Graduate School of Social Sciences, University of Manchester, cited in Evers, Barbara, "Gender, International Trade and the Trade Policy Review Mechanism: Conceptual Reference Points For UNCTAD," January 23, 2002, p. 8 [online: web] URL: <http://www.gapresearch.org/governance/BE%20evers%20unctad%20paper1.pdf>.

[6] For an emerging database, see the World Bank's GenderStats at: <http://genderstats.worldbank.org/home.asp>.

[7] Development Alternatives for a New Era (DAWN), "Marketisation of Governance," 2000, p. 23. [online: web] URL: <http://www.dawn.org.fj/publications/docs/platformdoc/ch2.pdf>.

[8] World Bank, Integrating Gender into the World Bank's Work: A Strategy for Action, 2002, p. 5, cited in Gibb, Heather, Ann Weston, Chantal Blouin, "Gender, Trade and the WTO," [Speaking Notes for the WTO Public Symposium](#), Challenges Ahead on the Road to Cancun, June 16, 2003, Geneva, p. 2.

[9]"The Continuing Absence of Women in International Financial Institutions," WIN News, Summer 2002 [online: web] URL: http://www.findarticles.com/cf_0/m2872/3_28/90219952/p1/article.jhtml

[10] For more information and the programme for the symposium, refer to: http://www.wto.org/english/tratop_e/dda_e/symp_devagenda_03_e.htm.

[11]Riley, Maria, "Gender in the Multilateral Trading System; The Ongoing Debate," IGTN Monthly Bulletin, October-November 2003, Vol. 3, No. 8 [online: web] URL: www.igtan.org.

[12]Cited in "The World Trade Organization, Gender Equality, and Trade," The North-South Institute [online: web] URL: <http://www.nsi-ins.ca/ensi/publications/wto.html>.

Trade and Development

Arrested Development

By Joseph Stiglitz*

[*Guardian*](#), August 10, 2006

Hopes for a development round in world trade - opening up opportunities for developing countries to grow, and for reducing poverty - now seem dashed. Though crocodile tears may be shed all around, the extent of disappointment needs to be calibrated: Pascal Lamy, the head of the World Trade Organization, had long worked to diminish expectations, so much so that it was clear that whatever emerged would bring, at most, limited benefits to poor countries.

The failure hardly comes as a surprise: the United States and the European Union had long ago reneged on the promises they made in 2001 at Doha to rectify the imbalances of the last round of trade negotiations - a round so unfair that the world's poorest countries were actually made worse off. Once again, America's lack of commitment to multilateralism, its obstinacy, and its willingness to put political expediency above principles - and even its own national interests - has triumphed. With elections looming in November, President George W Bush could not "sacrifice" the 25,000 wealthy cotton farmers or the 10,000 prosperous rice farmers and their campaign contributions. Seldom have so many had to give up so much to protect the interests of so few.

The talks bogged down over agriculture, where subsidies and trade restrictions remain so much higher than in manufacturing. With 70% or so of people in developing countries depending directly or indirectly on agriculture, they are the losers under the current regime. But the focus on agriculture diverted attention from a far broader agenda that could have been pursued in ways that would have benefited both the north and the south. For example, so-called "escalating tariffs," which tax processed goods at a far higher rate than unprocessed products mean that manufacturing tariffs discourage developing countries from undertaking the higher value-added activities that create jobs and boost incomes.

Perhaps the most outrageous example is America's \$0.54 (28p) per gallon import tariff on ethanol, whereas there is no tariff on oil, and only a \$0.50 per gallon tax on gasoline. This contrasts with the \$0.51 per gallon subsidy that US companies (a huge portion of which goes to a single firm) receive on ethanol. Thus, foreign producers can't compete unless their costs are \$1.05 per gallon lower than those of American producers.

The huge subsidies have meant that the US has become the largest producer of ethanol in the world. Yet, despite this huge advantage, some foreign firms can still make it in the American market. Brazilian sugar-based ethanol costs far less to produce than American corn-based ethanol. Brazil's firms are far more efficient than America's subsidized industry, which puts more energy into getting subsidies out of Congress than in improving efficiency. Some studies suggest that it requires more energy to produce America's ethanol than is contained in it.

If America eliminated these unfair trade barriers, it would buy more energy from Brazil and less from the Middle East. Evidently, the Bush administration would rather help Middle East oil producers, whose interests so often seem at variance with those of the US, than Brazil. Of course, the administration never puts it that way; with an energy policy forged by the oil companies, Archer Daniels Midland and other ethanol producers are just playing along in a corrupt system of campaign-contributions-for-subsidies.

In the trade talks, America said that it would cut subsidies only if others reciprocated by opening their markets. But, as one developing country minister put it, "Our farmers can compete with

America's farmers; we just can't compete with America's treasury." Developing countries cannot, and should not, open up their markets fully to America's agricultural goods unless US subsidies are fully eliminated. To compete on a level playing field would force these countries to subsidise their farmers, diverting scarce funds that are needed for education, health, and infrastructure.

In other areas of trade, the principle of countervailing duties has been recognised: when a country imposes a subsidy, others can impose a tax to offset the unfair advantage given to that country's producers. If markets are opened up, countries should be given the right to countervail American and European subsidies. This would be a major step forward in trying to create a fair trade regime that promotes development.

At the onset of the development round, most developing countries worried not only that the EU and the US would renege on their promises (which they have in large part), but also that the resulting agreement would once again make them worse off. As a result, much of the developing world is relieved that at least this risk has been avoided. Still, there was a second risk: that the world would think that the agreement itself had accomplished the objectives of a development round set forth at Doha, with trade negotiators then turning once again to making the next round as unfair as previous rounds. This concern, too, now seems to have been allayed.

There remains one further concern: America has rushed to sign a series of bilateral trade agreements that are even more one-sided and unfair to developing countries, which may prompt Europe and others to do likewise. This divide-and-conquer strategy undermines the multilateral trade system, which is based on the principle of non-discrimination. Countries that sign these agreements get preferential treatment over all others. But developing countries have little to gain and much to lose by signing these agreements, which almost never deliver the promised benefits.

Indeed, the entire world is the loser if the multilateral trade system is weakened. The rest of the world must not embrace America's unilateral approach: the multilateral trade system is too precious to allow it to be destroyed by a US president who has repeatedly shown his contempt for global democracy and multilateralism.

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Optional Reading

SIMON LESTER, IS THE DOHA ROUND OVER?: THE WTO'S NEGOTIATING AGENDA FOR 2016 AND BEYOND

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<https://www.cato.org/publications/free-trade-bulletin/doha-round-over-wtos-negotiating-agenda-2016-beyond>

The World Trade Organization's (WTO) most recent Ministerial Conference took place last December in Nairobi, Kenya. Opinions vary on how much was achieved, and, perhaps more importantly, where the WTO goes from here. The United States and the European Union have emphasized that "new" issues and approaches should guide WTO negotiations in the future. But it is not clear what that means, and how it relates to the "old" issues and approaches. And with the rise of mega-regional trade negotiations, such as the Trans Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), there are serious questions about the WTO's role as a negotiating forum for trade liberalization.

This paper reviews the current WTO negotiating agenda and the Nairobi outcomes, discusses possibilities for new directions, and makes suggestions for the WTO going forward.

The Nairobi Results

The Doha Round of WTO negotiations—formally, the Doha Development Agenda—was launched in November 2001. The work program covered about 20 areas of trade, including agriculture, services trade, market access for nonagricultural products, and certain intellectual property issues.¹ Despite initial optimism, the negotiations stalled early in the process as tension and disagreements between major trading countries in the developed and developing world impeded progress. In the ensuing years, while the negotiations at times showed signs of life, for the most part expectations remained low. To some extent, the Nairobi Ministerial outcome feels like a culmination of the Doha Round, as some governments have now expressed the view that it is time to move on (although other governments disagree).² If Doha is really over, was it a success? What exactly was achieved in Nairobi, and in the Doha Round overall, and where do we go from here?

A number of topics were discussed in Nairobi, not all of which were directly related to the original Doha agenda. As briefly described below, some of the more noteworthy outcomes were on agriculture trade, trade facilitation, and information technology products.

The most contentious topic in the Doha Round has been agriculture trade, where developed-country protections have long caused trade conflict, but now developing country market interventions have made the situation even worse. There are a variety of subissues here: export subsidies (including export credits), domestic support, stockpiling for food security, safeguard mechanisms, state trading entities, and cotton subsidies.

One area of success on agriculture trade in Nairobi was export subsidies.³ There is now a formal decision on phasing out these subsidies.⁴ However, its various carve-outs mean that its effectiveness might be somewhat less than suggested, and its full impact remains to be seen.⁵ And, while this result should be celebrated, it needs to be recognized that the line between export and domestic subsidies is not as clear as one might think. Subsidies can be structured and packaged in various ways, so that an export subsidy can be replaced by the same subsidy provided as a domestic subsidy (for example, by removing the export contingency). Depending on the new form it takes, the change in a particular subsidy's impact on trade might not be all that great.

Importantly, and unfortunately, the Nairobi package does not rein in domestic agriculture subsidies generally. These subsidies remain high and are proliferating. This is not just a rich-world problem anymore; middle-income developing countries are now big providers as well.⁶ In this regard, India has made a big push to legitimize some of its subsidies under the guise of "food security." In Nairobi, this issue was not resolved, and will remain on the agenda.⁷

A smaller issue related to agriculture subsidies in Nairobi was food aid. The United States provides this aid in such a way that producers in other nations have raised concerns about unfair competition. Here, the legal texts leave many questions open, although they appear to tighten the disciplines in certain ways.⁸

Beyond agriculture, the results from Nairobi were somewhat mixed. Some progress was made on trade facilitation, another element of the original Doha agenda. In Nairobi, additional countries ratified the new Trade Facilitation Agreement, although not enough yet for it to take effect. Two months before the Nairobi ministerial declaration, the WTO marked its 50th member to sign onto the treaty.⁹ The figure rose to 63 by the time of the Nairobi Ministerial Conference.¹⁰ (Ratification by two-thirds of the membership is necessary in order for the pact to take effect; there are 162 members as of this writing.¹¹)

Finally, another positive outcome from Nairobi was that the WTO announced during the conference that new trade liberalization had been achieved through a second Information Technology Agreement (ITA-II), an agreement among 53 WTO members to lower duties, on a most-favored-nation basis, on a wide range of technology products.¹² This initiative was not technically part of Doha, but it shows that WTO negotiations can still promote trade liberalization.

Beyond Doha

The biggest disagreement among WTO members, however, goes beyond specific substantive issues: it is about the future of the Doha agenda and the WTO's negotiating function itself. Should the WTO continue working on the Doha agenda, trying to complete the outstanding items? Or should it move on to other issues, and, if so, which ones?

The ministerial declaration references both positions without resolving the issue. In this regard, the declaration states:

We recognize that many Members reaffirm the Doha Development Agenda, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then, and reaffirm their full commitment to conclude the DDA on that basis. Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. Members have

different views on how to address the negotiations. We acknowledge the strong legal structure of this Organization.¹³

With regard to the opponents of continuing with Doha, in their statements on the Nairobi ministerial, both the United States and the European Union have emphasized the end of Doha and moving on to new issues and approaches. The U.S. Trade Representative Michael Froman has talked about “a new phase in the WTO’s evolution,” “a new era for the WTO,” and how WTO members will now “be freed to consider new approaches to pressing unresolved issues and begin evaluating new issues for the organization to consider.”¹⁴ For its part, the European Commission noted that “Ministers also mapped out the future direction for WTO trade negotiations and started a debate on new issues that the WTO should address.”¹⁵

However, neither makes clear how exactly these new issues fit with the old Doha agenda. Ambassador Froman explained things this way in a Financial Times op-ed:

That route forward is a new form of pragmatic multilateralism. Moving beyond Doha does not mean leaving its unfinished business behind. Rather, it means bringing new approaches to the table. Doha issues are too important to leave to the Doha architecture that has failed for so long.

Freeing ourselves from the strictures of Doha would also allow us to explore emerging trade issues. Many developing countries have encouraged new discussions on issues like ecommerce and the needs of small businesses.¹⁶

But it is unclear what Froman is proposing here. Does the Doha Round need to be formally ended, or just renamed? What should the content of future WTO trade negotiations cover? Along the same lines, the European Commission’s lead trade officials said, “The WTO should keep working on outstanding Doha Development Agenda issues but with new approaches.”¹⁷ Again, specifics are lacking on how the new and the old relate. The ministerial declaration states that “there remains a strong commitment of all Members to advance negotiations on the remaining Doha issues.”¹⁸ But where and how these issues will be addressed has not been specified.

The EU has noted that the new issues could include investment, digital trade, e-commerce, regulatory issues affecting goods and services behind the border, and better discipline for subsidies and local content obligations.¹⁹ It may be that the United States and the European Union simply want to take their bilateral/regional trade agenda and apply it at the WTO. But they may face resistance. In this regard, many developing countries are pushing back on the idea of new issues and arguing instead for completing the Doha agenda. In reaction to the conclusion of the Nairobi Ministerial Conference, China said, “The WTO members should develop authorization according to Doha, and steadily promote Doha to gain active achievements.”²⁰ And India stated: “The Ministerial Declaration circulated today . . . reflects the division amongst the WTO Membership on the issue of the reaffirmation of the Doha mandate. India, along with other developing countries, especially most members of the G-33, LDCs, the Africa Group, and the ACP, wanted a reaffirmation of the mandate of the Doha Round.”²¹

How to Negotiate Successfully at the WTO

With major trading countries holding positions that appear to be far apart, it may not be possible to negotiate anything at the WTO these days. And perhaps that is fine. The WTO has achieved so much already, and relying on it as the arbiter of existing rules may be enough. Currently, it serves as the main constraint on the use and abuse of antidumping duties, as well as protectionist

domestic regulations. Having the WTO as the global oversight body for rules against protectionism is extremely valuable.

On the other hand, there may be ways to make additional progress on trade liberalization at the WTO, and it would be a shame to miss the opportunity. The spread of agriculture subsidies is actually an opportunity for liberalization: because more countries are now doing this, a proposal to stop would have a more balanced impact.

If trade negotiators want to think big, they could push for some kind of “grand bargain,” where governments who are big providers of agriculture subsidies make real cuts in exchange for disciplines on, for example, state-owned enterprises and e-commerce.

Alternatively, they could think small and push for more sectoral deals like the ITA-II. This deal reflects the traditional form of trade liberalization: lowering tariffs on a multilateral basis. As much as people tout new issues in trade negotiations, there are few initiatives more beneficial than removing tariffs. Currently, a similar deal on tariff reductions for environmental goods is being negotiated.²² More sectoral tariff liberalization of this sort might be a good area to pursue.

Along the same lines, the trade in services talks going on in Geneva could be brought formally into the WTO framework.²³ This liberalization mirrors, in terms of its focus on liberalization, the tariff reductions on information technology and environmental goods.

But more generally, putting aside the question of the best strategic approach, there is a fundamental question for governments: Are you willing to address your own protectionism? If the answer is no, the whole process may be doomed from the outset and is not worth the time and effort. It may be possible to reach a trade deal, but the liberalization in it is unlikely to be significant. In this regard, bilateral and regional trade deals have proliferated, but their tariff reductions and services liberalization are preferential (i.e., discriminatory) and they do not address some of the most pressing issues, such as trade remedies and agriculture subsidies. While such deals may have political value, their economic benefits are limited.

It is often said the WTO is a member-driven organization. It is up to the governments, then, where they want to drive it. Recently, it seems as though governments have chosen to get out of the car for a pit stop (to put the classic “bicycle theory” in a new vehicle). But the reality is, the WTO cannot liberalize trade unless governments want to do so.

Unfortunately, every government seems to have a reason why its own agriculture subsidies or other sacrosanct protectionism should be excluded from disciplines. The focus is always on addressing the kinds of protectionism that others engage in. With that attitude, though, real trade liberalization becomes almost impossible to achieve.

Losing the WTO as an effective forum for trade liberalization would be a setback for free trade. Despite its existing successes, there is much more the WTO could achieve, as trade liberalization is most beneficial when carried out multilaterally. It is therefore in the interests of all governments to make the WTO work by committing to trade liberalization in relation to their own protectionism.

Notes

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5. “WTO Deal on Export Competition Sets New Rules without Enforcement Mechanism,” *Inside U.S. Trade*, December 19, 2015, <http://insidetrade.com/daily-news/wto-deal-export-competition-sets-new-rules-without-enforcement-mechanism>.
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17. “Joint Statement by Commissioners Malmström and Hogan Ahead of the 10th WTO Ministerial Conference in Nairobi,” December 14, 2015, http://europa.eu/rapid/press-release_STATEMENT-15-6302_en.htm.

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20. “MOFCOM Spokesman Comments on the Conclusion of the 10th WTO Ministerial Conference,” December 22, 2015, <http://english.mofcom.gov.cn/article/newsrelease/policyreleasing/201512/20151201222786.shtml>.

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