

## **Working Paper**

# **DEVELOPING COUNTRIES IN GATT/WTO NEGOTIATIONS**

**Sheila Page**

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**Overseas Development Institute  
111 Westminster Bridge Road  
London SE1 7JD  
UK**

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## **1. Summary: Implications for future negotiations and the international System**

The growing role of developing countries in the WTO negotiations since the Tokyo Round suggests that the most power-based or pessimistic views of the international regime, that it is entirely determined by the interests of the most powerful, and that the outcome of international negotiations cannot be influenced by choices made by weaker countries is not correct. While the role of the largest countries remains central, they cannot impose outcomes against the will of all other countries, and differences among them offer further opportunities to affect the outcome.

The question of when and how to participate in international negotiations is therefore a real one for countries to face. If they identify and determine their own priorities, and their strengths and weaknesses, they can include the costs and benefits of participation in international negotiations as part of their economic strategy. Within these, they must again define their priorities: all countries, even the largest, have found that following all the subjects under the WTO negotiations impossible. The countries that have put a large share of limited resources into WTO negotiations have done so after making such assessments.

As the scope of the WTO extends into more areas of rules and economic activity, the number of areas in which a country needs to be ‘competitive’ will increase, and there will be an increasing number of areas in which it needs to choose between breadth of coverage and depth. Competitive here means to have a standard of expertise not equivalent to the most well-resourced countries, but at least no more removed from this than its resources require it to be, on average, on all areas of expertise.

Countries need, for trade negotiation as for other aspects of development, an effective way to coordinate policy at the national level. In addition, they need long term experience and expertise in the subject and in the process of international negotiations. Long-term commitment to participation is therefore required.

Even small countries can achieve some successes on their own, if they identify their objective clearly and use the negotiating or enforcement tools of the WTO effectively. But even large countries cannot achieve major changes against opposition alone (as the US discovered in Seattle), so that awareness of other countries’ interests and an ability to identify common interests is important.

Delegations without national support or interest have considerable freedom to act, to form alliances, and to accept exclusion from decisions (as long as this is not excessively publicised). Delegations with a clear mandate, from their local government, perhaps in consultation with economic or other interests, may have much less flexibility, but are less likely to conform to the more powerful. They must have much greater formal participation, to allow them to demonstrate that they participated actively, and therefore that any decisions, even if against them, are legitimate. Even the US, which has had this national support and restraint since at least the Tokyo Round allows some flexibility to the delegation, so that the result of countries’ being subject to national objectives is not necessarily deadlock, but deadlock may now be more likely. (Too much participation by too many countries, and too rigid national objectives could be added to the list of reasons for the Seattle failure.)

The problems of participation faced by developing countries are not irrelevant to the principal countries

in the WTO. They have an interest in the stability and legitimacy of the system, which requires that all members accept that decisions are made in an appropriate way. The establishment of formal programmes of meetings in the Uruguay Round alongside the informal meetings of the Tokyo Round was an advance, but there is still an uneasy balance of formal, officially informal, and completely informal meetings. With 142 members instead of the fifty active of the Tokyo Round, and the demonstrated ability of the non-major countries to block decisions, if not to initiate them, the formal procedures probably will acquire increasing weight (as they did in the agenda-forming process pre-Seattle). While ‘really’ informal meetings will always have a place, whether among powerful countries or those with an interest in a particular specialised area of negotiations, the intermediate ‘informal’ meetings may no longer be useful: they are treated as a substitute for formal consultation, but without providing a mechanism that guarantees that all interests are consulted. Thus they fail to provide legitimacy, but they have become too rigid in their composition to offer the advantages of *ad hoc* informal meetings. The attempt to use one, the Green Room process, to resolve major differences, not merely to identify possible solutions or resolve technical differences, triggered a loss of confidence in the system. The failure to adapt the informal WTO central procedures to use the informal groups among developing country members suggests that the informal procedures have become too rigid to offer the principal advantage of informality: flexibility. Although ‘informal consultations’ to identify a way into further negotiations were used again in 2000-01, the delegations of the smaller and weaker countries made it clear that they did not consider them legitimate. Nevertheless, the management of the WTO still believed that there was a ‘delicate balance between efficiency and inclusiveness’ (WTO news 31 October 2000), rather than that inclusiveness was necessary for an efficient solution. It is easier to find and learn written rules and procedures than informal ‘custom and practice’. Countries that are new and inexperienced will therefore be more disadvantaged by a system with large informal elements. As increasing numbers of developing countries become experienced, this becomes less of a developed-developing issue, and there are efforts by the experienced to induct the inexperienced, but it is odd for an international organisation to support a discriminatory system.

Extending the scope and detail of WTO rules places strains on its own implementing and negotiating procedures, and increases the potential for opposition in the member countries. The present structure of the WTO and the present lack of support for international trade within countries may restrain further expansion.

The emergence of better-informed policy positions in the course of the Uruguay Round discussion of services and the improvements seen in competence of individual country delegations in the Round suggest that long negotiations are more likely to produce informed outcomes for new subjects or new participants. The pressure for limited duration Rounds may not be in the interests of developing countries, or of any countries in the new areas.

## 2. Why developing countries participate

This paper tests the hypotheses that:

- The outcomes of international negotiations are not pre-determined by the relative power of countries, and more particularly that developing countries can affect the outcomes. The study of the outcomes of previous negotiations will cover this.
- There are replicable lessons, for developing countries' institutions and perhaps for donors; the lessons, particularly on the potential roles of inter-country alliances or mobilisation and representation of national interests, may be different for small countries and large; for those with and without effective representation of national interests.
- More structures or formal institutional arrangements, providing information and analysis on a more systematic basis on how international negotiations might affect national interests, can improve the quality of participation and negotiating success.

When should developing countries enter international negotiations? In which activities (and when) do the advantages of international institutions outweigh the disadvantages? Developing countries now want the gains which have been identified from trade (see paper on trade, climate change and poverty). Therefore, as international regulation and national intervention affect an increasing share of international transactions, they now have no choice but to participate in the results of international negotiations. These can deal with an international problem, offer a common regime for international transactions, give governments a common front against national companies or pressure groups, give developing countries protection from bilateral action and access to 'advanced model' agreements created by developed countries. In many issues, developing countries' importance to other countries or to the international system is now sufficiently great that other countries want to negotiate with them or include them in any agreed regime. The policy choice for developing countries, therefore, is how to balance achievement of their own objectives and making effective and considered strong responses to the demands of others against the disadvantages of international agreements: accepting a common standard; losing flexibility to respond to national interests; the costs of negotiation; and the other demands on their countries' resources.

The corollary of this is that international institutions can no longer choose whether to include developing countries in their rules or their negotiations and may need to adapt to more and weaker members, and to members with different interests.

The advantages of global regulation may be less for developing countries because:

- they are not yet as involved in global flows;
- their need or desire to intervene for specific national goals using national policies is greater;
- there are fixed costs, of intervention or regulation, which are proportionately higher for poorer countries (of environmental, labour or sanitary standards, for example);
- they face risks of undue pressures in making agreements with dominant trading partners;
- the balance of costs and benefits are different (consumers vs. producers of intellectual property; new producers vs. established producers with established standards; traders entering markets vs. traders protecting existing markets...).

or greater because:

- the need for international regulation to restrain larger countries or large firms is greater for small countries;
- it is more efficient to go directly to an international regime than to create and then adapt a national one.

In trade, developing countries face renegotiation of important special arrangements, including the negotiations with the EU within the Cotonou framework in the next eight years (see Solignac-Lecomte 2001). In multilateral negotiations, a new round of WTO negotiations on agriculture and services has begun, the issue of whether to include other areas remains on the table. The UNCTAD Bangkok declaration has emphasised the need for a ‘multilateral trading system...that provides benefits for all countries’. In the environment, will it be possible to include tropical forestry-based carbon offsets in the Clean Development Mechanism (CDM), and how will the political (eco-colonialism) and technical problems (surrounding measurement and compliance) to forests as carbon sinks be overcome? How will regulation and compliance under the CDM work? For each country, what are the difficulties of making the policy and legal changes demanded under the UNFCCC? (Richards 2001).

The first and most important question for each country is: what are its policy objectives for development and for other national interests? The second, is how each country expects economic development to contribute as a part of this. Each country needs to have a clear set of objectives and to know how they depend on each other in order to know what value to place on any costs or gains in their negotiations, including points on which other countries are making demands. In trade negotiations, a country must assess whether its economic structure is expected to change: does it need to negotiate for new trading patterns? Is it overly dependent on some commodities or some markets? What is the role of tariffs in government revenue? It must also recognise its own policy framework. Are there types of domestic policy which it wants to follow that might conflict with particular trading patterns or rules? Are there particular commodities which are so important to it that they determine its trade policy? Does it prefer making a series of targeted bilateral arrangements or the simplicity of broader trading arrangements? The third question, then, is: what are the implications of these for defining its objectives for trade and other areas affected by international negotiations. The first two depend on national choices, and examples of how countries make the choices and identify the implications for policy are in the country studies. The third permits some general analysis and conclusions, and the chapter on the implications of trade and climate change for poverty attempts to do this for two subjects. Once the objectives for negotiations are set, countries can ask what are the effective means to maximise gains and minimise losses. This paper, and the papers on the climate change (Richards 2001) and ACP/EU (Solignac-Lecomte 2001) negotiations provide evidence on the constraints to effective participation by developing country delegates in global governance fora and institutions and what forms of participation have been more or less effective, in order to determine ‘best practice’.

When the country has understood its own position clearly, it can make decisions about how and where to pursue its aims, whether in bilateral, regional, multilateral, or EU negotiations. Many countries are members of regional groups, some of more than one, and both the US and Japan are now increasingly seeking bilateral arrangements with developing countries and developing regions. Only when they have clarified their own objectives can they appraise what they need to negotiate in particular negotiations. Then they need to consider these not only individually but in their interactions: progress in any one of their trade negotiations will change the value added from the others, by altering the base position of the economy and the access they already enjoy. There may be administrative and economic implications of trying to combine schemes: rules of origin may be needed if trading arrangements are different with different partners; the demands of administering schemes, as well as of negotiating them, places strains

on limited supplies of negotiators and limited commitment of interest groups and policy-makers to make informed judgements on trade. And there are direct legal restrictions in many schemes on membership of others. Countries must accept that this is not a one-off process. As negotiations continue and choices are made or cut off, or new opportunities appear, analysing the situation is an iterative process.

For climate change, there are only multilateral, not regional negotiations. But these interact with trade commitments, and for all countries there are other negotiations: Most countries are members of other environmental conventions. And, although not covered in this project, all are members of a range of other international agreements, on transport, communications, etc.

In this paper it is first necessary to examine the nature of international institutions and negotiations, and any special characteristics of developing countries or their interests which affect the nature of their participation. The roles of developing countries in trade and of trade in developing countries have both changed over the years since the founding of GATT in 1947, and in particular in the last 20 years. This period has seen one major round of trade negotiations, the Uruguay Round 1986–1994, followed by a period of sectoral negotiations, implementation, and attempts to work with new institutions, and now by negotiations to extend WTO jurisdiction in the context of a new negotiating round. We can therefore examine how interaction between the institutions and developing countries has evolved, and whether either the institutions or developing countries have adapted to make their participation more effective, and what further changes would be desirable. Are there advantages of joint action by developing countries to meet these needs, or are the costs of coordination greater than the savings? Given difference in interests among developing countries, are issue groups, like Cairns for agriculture, more appropriate? What are effective models of policy advice and networking among developing country experts and between them and developed countries? Which modes of participation are efficient and sustainable? How should negotiators represent or mobilise outside interests?

As trade negotiations have increasingly been seen as a major area of national policy for developing countries, both international institutions and bilateral donors have included it as an area suitable for assistance. Developing countries are perceived to have particular difficulties in the negotiations, not only because of the lack of resources which constrains all their activities and the lack of government resources which is a general constraint on policy interventions, but because of the technical nature of rules negotiations (Short 1999, Rege 1999). It may also, therefore, be possible to find some evidence to identify what assistance is useful and appropriate. Any such assistance, like any policy recommendations on how to participate effectively, must be placed within the context of an appraisal of the importance of trade relative to other objectives.<sup>1</sup>

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<sup>1</sup>The extreme trade-ist view, that 'In dealing with the outside world, *commercial diplomacy has replaced political diplomacy* as the critical area for virtually all countries with limited government resources and a compelling need to promote economic development.' (Blackhurst 1999) suggests a risk that the increased interest in trade negotiations could go too far.

### 3. The nature of international institutions and negotiations

#### Negotiations and interests

The implication of the understanding that international trade allows producers to increase efficiency and therefore countries to increase their income is that negotiations to reduce obstacles to trade will benefit both sides. GATT and the WTO offer a further potential benefit, that of clearly defined, enforceable rights and obligations. This is an advantage both to private actors, by offering settled and transparent conditions within which to operate and to the weaker member countries, by offering at least a restraint on arbitrary unilateral action by stronger trading partners. International rules and institutions (like national) are needed in order to meet a common need for an international regime.

This international regime is required in order to meet international common needs. Some come from growing awareness that natural resources are ‘common’: for example, unpolluted sea and air and mid-ocean fish; some from increasing communication and contacts: health and safety standards; some from growing international trade and other cross-border transactions. These make a predictable common regime as much a public good internationally as good government at home. Absence of global government is a global policy failure with severe environmental consequences. Provision of a global public good, for example climate change, by some countries benefits every country, but if there is no way of ensuring that all share the costs, the costs may exceed the benefits for any single country, with the result that too little of the good will be provided (Barrett in Kaul et al, 1999; Morrissey et al, 2001).

As tariffs come down and more small companies participate in international flows, the need for regulations to replace custom and practice or intra-company understandings increases. Within countries, shifts from direct government intervention to use of markets has increased the need for rules to ensure that these operate efficiently and fairly: the same forces affect international flows, with the additional complication of often incompatible regulatory systems across borders. Negotiating to introduce or change rules will be increasingly important. With international institutions facing questions about their legitimacy, ensuring effective participation by all members becomes a requirement for them as well as a need for their members.

For negotiations to produce a welfare-maximising solution, the interests of all those who will be affected must be taken into account, whether by allowing all to participate or by some outside assessment and balancing of interests. This raises two questions. The second, of how developing countries’ interests can be represented, and in particular the importance of their own direct participation, will be discussed in the analysis of particular negotiations. The first deals with how all countries participate in international negotiations (what is the definition of ‘all interests’?): can countries be treated as single entities, seeking to achieve some advantage to the ‘national interest’, or are they better considered as representing a collection of interests? This requires some examination of the various theories of international relations, but it is important to note one aspect of trade negotiations which has significant implications for this debate and which is not found in some other economic and many other non-economic negotiations: that setting any rule is a benefit. Some trade rules, for example on intellectual property, will favour some countries over others, so that countries can identify clear benefits and costs and attempt to balance them, but even for these, the basic premise, that some rules are needed and beneficial, would not be challenged by any of the participants, whether countries or economic actors within countries, so that there is a clear reason for an international agreement.

In trade, negotiations in GATT and the WTO have been based on the premise that reducing barriers to imports is a cost, which requires bargaining about compensation or offsetting concessions. This, however, is contrary to the theoretical conclusions about the benefits of international trade (and to empirical simulations of the beneficial consequences to an individual country of unilateral reduction of barriers). The purely economic argument would tell each country that it would be best off if it reduced its barriers, regardless of the actions of others, so that there is no necessity for an international agreement and therefore no obvious form for a negotiation to follow. Implicitly each country is accepting lower benefits from international transactions, in order to avoid autonomous redistribution of gains within its own. This suggests one of three possibilities, two of which imply, and the third could be consistent with, an interest group approach: 1) that negotiators are not fully convinced of the economic arguments (that the interests dominating the negotiations are not primarily traders or economists) and there is no intra-country mechanism to reconcile interests or, 2) that they consider the interests of the groups which gain from trade barriers more important than those that lose (that the interests dominating the negotiations come from one section of the country). The third possibility is that the country has identified a non-economic national interest which requires a particular structure of the economy inconsistent with reduced barriers (this could reflect either a national or a sectoral interest). Particularly for countries for which trade is only recently a major policy interest (or, in some developing countries, where it is not yet one), it is not possible to draw conclusions about the nature of other, perhaps more central, objectives from observation of trade negotiations. These arguments do suggest that the interest group approach is likely to be relevant in many trade negotiations.

While economic analysis of negotiations (unlike international trade analysis) normally, at least implicitly, assumes that the country's position is determined by the interaction and relative weighting of a variety of different interests (whether of sectoral interests or of different types of actor: business, government, or even within-government interests: political, bureaucracy, even negotiator), international relations analysis traditionally puts a strong emphasis on the state (see Rege 1999 p. 39 for an interesting comparison; Henderson 1998, in contrast, explicitly rejects this position, emphasising the importance of the state, although at the same time noting different interests among politicians and bureaucrats, p. 74). Basing analysis on the state, and therefore, in the context of trade negotiations, on some non-economic national interest, would clearly make it inappropriate to use an economic analysis of the ways in which countries have chosen to negotiate, and to judge effectiveness by looking at economic gains. It is necessary, therefore, to examine any evidence that non-economic national interests are dominating trade negotiations. Such motives are found. The original formation of GATT can be placed in the context of the post-World War II settlement, as part of a political or security attempt to bind countries together. But the mechanism which was expected to do this was economic: that economic links would make military conflict unwelcome (or even, if integration went sufficiently far, impossible). Thus the actual motives that, it was assumed, would operate once GATT was established were those of economic self-interest.

A variant on the idea that the state acts as a sum of interests is the argument that the interests are sufficiently complementary that there are no (significant) conflicts to resolve: in a trade context, that liberalised trade will be beneficial to each group, as well as to the country as a whole (cf. Frieden, Lake, 1995). This will be discussed in more detail in the paper on the effects of trade on growth and poverty. It is still based on a purely economic view of national objectives. Like simple emphasis on the role of the state, it can lead to ignoring the role of non-traditional interests, because they do not seem central to the determination of policy (Uvin in Stiles 1999 p. 10). If there are an increasing number of actors interested in international trade negotiations, because of the increase in the extent and depth of contacts, this becomes an increasingly serious omission.

For many regulatory regimes, the arguments for public intervention are likely to suggest a necessary minimum scale, if only to reduce the costs per unit regulated. The greatly increased regulation at the world level, in the Uruguay Round settlement and the Climate Convention, as well as other international institutions (for transport safety and standards, telecommunications and other electronics standards, health, etc.), strongly suggests ‘the bigger the better’ in setting common standards. There is also the countervailing power argument. The larger are private interests, including economic interests, the greater is the need for powerful regulators, with a remit at least as broad as the private interests (multinationals require international regulation). There is a risk of regulatory capture if the regulatory agency is too small. For regulation of natural monopolies, increasing the size of units can reduce some needs for regulation.<sup>2</sup> And for many international regimes, developing countries do not have the choice of exclusion.

It is interesting to note that international economic relations (in contrast to the United Nations [sic]) have not in general used the nation as their basis. The formal membership of GATT and the WTO is based on the customs territory (so, for example, both the EU and Hong Kong are eligible), while the IMF, World Bank, and Bank for International Settlements all have different classes of members with financial criteria. The colonial empires differentiated economic rights and obligations among their members. At the bilateral level, most countries do not have economic representatives (many do not even have diplomatic representatives) in all countries. All these suggest that a purely nation-state approach is not valid.

## International institutions

But even if the state is representing some weighted sum of interests, it is essential to recognise that the international institutions themselves are creatures of governments, not directly of economic interests, and this influences how they act and how countries can participate in them. Although the increased interest in ‘governance’ as a concept separable from ‘government’ provides another way of looking at the analysis of international institutions, even analysis of this concentrates on the role of the state, e.g. ‘Governance through agreement between the major political entities, . Governance through a substantial number of states creating international regulatory agencies’ are among the types of governance identified by Hirst and Thompson 1999, p. 191. They reject the alternative model of ‘a globalised economic system’ (*ibid.* p. 256). If it is only states which interact formally in international institutions, then the state must be where the individual interests within each country are combined, and ‘effectiveness’ in promoting national interests in international institutions requires efficient combination of interests as well as efficient negotiation.

But, as will be seen in the accounts of individual negotiations, this formal primacy of governments is modified by the informal mechanisms which now exist at international level, as they do at national, by which interest groups lobby, individually or in combination. One measure of the perceived effectiveness of an international institution (or a regional one like the EU) is the extent to which these processes emerge. Interests operating internationally may be either a single organisation (like a multinational company) or a group with common interests (e.g. agricultural interests or patent-holders).

Hirst and Thompson’s concept of sovereignty as ‘exclusive control of a definite territory’ may illustrate

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<sup>2</sup> In principle, the setting of the price for the exchange rate falls under this heading. The large literature on optimum currency areas can probably be viewed as a case within this wider debate.

one way in which the interaction of ideas of the state with economic negotiations may produce results which go against economic objectives. If sovereignty is ‘good’, perhaps exclusion is itself good; this would militate against trade opening. This ‘Westphalian’ view of states with exclusive jurisdictions, not required to take account of others’ interests, does not fit easily with the assumption behind economic analysis of international trade (or environmental) negotiations which provides the basic philosophical structure behind GATT: that countries have an obligation at least not to cause ‘unnecessary’ damage to each other’s interests, even if not to work together to maximise benefits. Nor does it fit with the at least equally old tradition of concepts of general human rights or standards, which started to be embodied in international agreements by the nineteenth century (rules of war or treatment of prisoners, for example). Common economic standards also predate agreement on trade (the ILO from 1919). The aid relationship, with an external donor imposing objectives and policy instruments would clearly violate any such assumption (Kilby in Stiles 1999, p. 49). It seems inaccurate to assume that there was ever a complete acceptance of the state as the only and the unchallengeable actor. Therefore the current position of accepting international intervention reflects not a radically different perception (as argued e.g., Hirst, Thompson 1999 p. 261), but an evolution and extension. If it is an evolution, then an examination of whether there are empirical reasons to believe that the common interests have increased relative to the national (in simple trade terms, if the share of trade in output has risen, but this can be extended to other types of economic and non-economic contact) provides one way of explaining the changes which have occurred.

Even where an international agreement brings gains to all sides, the fact that a formal agreement is being sought (rather than simple unilateral actions, as in market systems which rely on self-interest to produce an efficient solution) suggests that there are additional gains from joint implementation (all countries may gain from the existence of the Most Favoured Nation rule of equal treatment), and perhaps also that, without a rule, any individual pair of countries might gain, at the cost of others, by offering more favourable treatment. Therefore the issues of transparency and enforcement are central. The question of whether it is countries or interest groups which have an interest in international institutions and rules may have implications for the type of enforcement mechanisms which are needed. Where there is a general interest, self-interest may have a major role, with only a small role necessary for enforcement (international trade treaties pre-GATT and GATT itself had effectively no enforcement mechanisms except withdrawal of a misused agreement). If there are many interests, or interests of those not directly participating, to be considered (obvious examples being countries not in a regional arrangement, or not receiving some special treatment available to others, but also a large number of small effects), then more effective enforcement becomes necessary, and this has been seen in the history of the WTO.

One recent strand of theory on the role of international negotiations cuts across the view of the state as the sovereign unit. The idea that international regimes can ‘lock in’ countries’ policies, normally interpreted as meaning that an economic or governmental sector of a country can use an international agreement to strengthen its hand against other sectors (normally with the implicit assumption that this sector and the international system are making the ‘right’ choice) is a combination of the interest group and national interest approaches. The national interest exists, as some absolute or ideal, which one sector can recognise. This analysis assumes that the international enforcement mechanism is highly effective, but the reasoning may be circular. If it is only one sector that ‘wants’ the policy locked in by the international agreement, then the normal enforcement mechanism, losing the privileges covered by the agreement, is not a disincentive for any other sector. A group committed to preserving a national activity (food production or industrial planning), and giving this priority over other economic objectives (like exports) or even over total economic gains, would not consider losing access by breaking an agreement a significant disincentive. If the agreement is not valued by any other sector, then ultimately

it is the power of the sector within the country that gives it the ability to impose its international views on the rest, not the international agreement. There may, however, be an information advantage (other countries may know and understand the international agreement, and this is therefore a better indication of policy than a separate national law).

## Negotiations and power

Bargaining theory is important. If the more deterministic views prevail, it becomes almost impossible to ask the question of whether countries can change or improve their mode of participation in international negotiations. One issue is the question of whether there are natural equilibrium points at which bargains are struck (the traditional example is the number of countries which choose the middle of a river for a boundary, although this is not necessarily either efficient, requiring complicated arrangements for joint administration, or in accordance with relative power). The history of international trade theory offers some examples of ‘rules of thumb’ with little more validity than the middle (formula tariff reductions, for example), but many more of differentiated outcomes.

If ‘power’ can be assumed to be a single characteristic, determining a country’s position in all international bargains and based on characteristics difficult to change by policy (economic size would be relevant in market-type bargaining; financial strength in a broader context, especially where some countries give assistance to others, raising the possibility of ‘buying’ agreement; military strength remains the ultimate international force), it would be difficult to suggest a policy response. (See discussion by Martin, in Kaul et al., 1999, for example.) There are deterministic explanations which could apply whether or not there is a single dominant power. The predicted outcome changes if the system changes from a single dominant power to one with two or more (a possible interpretation of the changing roles of the US and EU in the GATT/WTO from the 1950s to the present), or a decline in the importance of one interest (the external threat posed by communism), allowing more scope for the ‘narrow egoism of key actors’ (Cohen in Frieden, Lake, 1996, p. 521). What is important is that the outcome would remain effectively predictable, given a correct analysis of the relative powers and interests. In such a predictable world, ‘weak’ countries effectively have no possibility of influencing the outcome, so have no interest in participating in negotiations.

Again, both examples and counter-examples can be found, but the existence of powerful players does not seem to preclude policy by the less powerful. The effective limit on even powerful countries in the current international regime, that they do not unilaterally take over weaker countries (even if they could), provides one reason for expecting weaker countries to have some bargaining power. If a powerful country considers some international rule or trade regime beneficial and this requires action by another country, it must secure the agreement of the other, and the absence of an international regime and the presence of states as well as markets means that there is no fixed, or computable, ‘price’ for that concession. Where the outcome is indeterminate, bargaining is possible.

## Types of evidence

It is difficult to judge some of the more deterministic views of trade negotiations or of the possible role of developing countries in them on the basis of empirical evidence from the past because there were reasons of interest as well as reasons of power for not participating in negotiations. Different economic theories suggest different appropriate objectives for developing countries, with contrasting implications for their participation. Inward-orientated development paths implied that there was little to gain from

exports and little to lose (and possibly something to gain) from excluding imports. A country with this strategy should rationally put few resources into international negotiations (the minimum necessary to understand and deal effectively with the demands of others, which will also be limited in these circumstances). If it then achieves little, this cannot be assumed to be because it could not do more.

Clearly GATT and the WTO have had elements of both traditions, of international relations as the protection of closed national interests, with the barriers to be breached only for identifiable gains, and of the mutual interests, non-zero sum games, of economic theory. This is important for understanding negotiations and potential alliances, and is also important for understanding the interests involved in assistance from one country to another: if there are gains for all from a successful international system, helping others to participate effectively may increase efficiency as well as being altruistic. This, combined with the various types of bargaining found, makes the WTO more like a complicated regime like that of a country than the simplified structure assumed in theories that regard international institutions as solely ways for states to act jointly, without their own legitimacy. As is evident from the evolution of customs unions into nations in the past (Germany and Italy) and into something approaching a nation currently (the EU), identifying a clear distinction between international institutions, which can offer ‘governance’, but not ‘government’, and states is less easy in practice than in international theory. The members of the WTO have a complex set of relationships. In a few, there are clear trade-offs. In many, there is a complicated bargaining position in which the country is defending some sectoral interests at the expense of others and of the national economy as a whole. In some, there is a clear collective interest in rules. As countries are aware of all these relationships (not merely repeated games, but simultaneous games), they have to modify their behaviour in each context to take account of the others, and the existence of some common interests and some indeterminate bargains makes the outcome unpredictable.

Held, et al. 1999 in discussing international regimes starts to refer to the regime and ‘intensification of patterns of global and regional enmeshment’ (p. 51), and notes that ‘the development of international agencies and organizations has led to significant changes in the decision-making structure of world politics’ (p. 53), while avoiding the word global government. An alternative interpretation would be that international relations were always ‘enmeshed’, with a variety of different types of relationship among countries, but that within large colonial empires, or *de facto* spheres of influence, these forces could operate without formal state-to-state agreement. It could be argued that GATT brought increased formalisation and institutionalisation of an existing system, rather than a change in the nature of international relations. This would be too evolutionary an explanation, but it is an important reminder that the real change may not be as abrupt as the institutional.<sup>3</sup>

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<sup>3</sup> If Mortensen (1997) correctly identifies ‘the fundamental insight of IR [international relations]: that international politics are conditioned by the absence of an overarching authority’, this suggests a failure to understand the historical processes.

## 4. Negotiations and trade interests before the Uruguay Round (pre-1986)

International trade and bilateral rules to deal with it have existed throughout recorded history. Improved technology of transport and communications has led to increases in the share of world consumption that is traded, but this share has been significant, in the sense that changes affect income and employment and are matters for macroeconomic policy, for at least a century and half. This is also the period in which countries' bilateral agreements to regulate their trade increased, and started to have some common elements. It is, however, only since the foundation of GATT in 1947 that there has been a common international regulation. GATT was founded principally by developed countries, but some developing countries (including Brazil and South Africa) were among the founder members of GATT, and some of the now developed countries were at low levels of development in 1947, so that it has never been true that only developed countries participated.

Before the Uruguay Round (1986–1994), however, for most developing countries trade was not an essential part of their national economic strategies, and the importance of their trade to the interests of the rest of the world was small, so their own potential interests in negotiating and the potential demand from others to negotiate were both small. Two technical rules also contributed to their *de facto* exclusion: until 1990, GATT operated on the basis that the major traders in a commodity negotiated together, and then presented an agreement to the rest and any change in tariff had to be negotiated with 'principal suppliers'. There are few commodities for which developing countries were principal suppliers or purchasers (and of these, many were either subject to special arrangements, commodity agreements or protocols, or duty-free). And the few agreements on rules were treated as separate from the main agreement, as plurilateral agreements, which countries could elect to join or not. Non-participation in the negotiations did not lead to agreements being imposed on them.

In the first part of the period from 1947 to 1986, even the developed countries other than the US could be characterised as weak participants. The US was the principal market, but also the principal provider of both public and private capital to the other developed countries, and it would have been difficult to regard any negotiations as among equals. On the other hand, the US had strong non-economic motives for building up the economic strength of Europe and later Japan, so that its bargaining power was constrained. The trade and monetary crises of the 1970s meant that Europe became both stronger and less dependent on the US than it had been, while the US felt decreasingly superior in competitiveness, and therefore less willing to concede to 'weaker' partners (Frieden, Lake 1995). 'Real' negotiations started to become both possible and necessary. The shift of negotiations from the pre-Tokyo pattern of commodity by commodity negotiations to a more complicated interplay of interests over a wide range of subjects simultaneously meant that developing countries with small shares in trade were not automatically excluded.

Developing country issues were not high on the agenda for GATT negotiations before 1986. Temperate agriculture was effectively excluded; many tropical agricultural products had special arrangements or long-term trading arrangements; clothing and textiles were under the Multi-Fibre Arrangement, MFA (and its predecessors), from the 1950s; and many developing countries had special trading relationships with the colonial powers, later the ex-colonial powers, which gave them better than the MFN treatment offered by GATT and thus no incentive to participate in GATT negotiations. (They had some incentive to avoid and discourage these, as any improvement in MFN reduced their advantage, but this does not seem to have been fully understood by negotiators or analysts until the 1990s.) Most developing

countries considered UNCTAD more important than GATT for information and representation and their relations with traditional trading partners more important than GATT for securing access for their exports. But in both these fora, they did not negotiate: they argued for special treatment (whether for reasons of development theory in UNCTAD or special ties with their traditional markets), so that they had little experience of negotiation, except on specifically ‘developing country’ issues. India, for example, had led the successful pressure for the addition of Part IV (1966) to the GATT agreement which effectively allowed them to maintain their own policies to protect or direct trade.

By the time of the Tokyo Round (1973–9), some developing countries were already moving into manufactures and starting to see advantages from negotiations, but most were still eligible for preferences and were not damaged by the trade policies of others. There were almost 100 countries participating (compared to 50 in the preceding round McDonald 2000). And developing countries had shown their trade strength dramatically with the OPEC rises in oil prices in 1973–4. Nevertheless, negotiations in the Tokyo Round were very much based on EU-US leadership.<sup>4</sup> ‘The GATT was hardly involved as the Tokyo Round proceeded toward its intensive final stages’ (McDonald 2000 p. 207). There were no important developing country interests to be addressed in the Round: commodities remained dominant in most countries’ exports; the EU and the US were united in supporting the continued exclusion of temperate agriculture; and the few developing countries which were exporting manufactures were only starting to face non-tariff barriers. ‘Voluntary’ export restraints started to spread from imposition on Japan to the more advanced developing countries during the 1970s, and the restrictions on clothing exports were starting to become important, but most developing countries, while facing potential barriers, were either not increasing their exports or diversifying into still uncontrolled sectors. The Tokyo Round conclusion again allowed ‘plurilateral’ arrangements on rules to continue, allowed export subsidies developing countries (Croome 1999, pp. 59), and thus allowed developing countries to participate only partially in GATT.

Some rule issues started to emerge as areas of developed-developing country negotiation, and therefore for some countries it ceased to be possible to remain outside the negotiations. On customs valuation (for a very informative account of the negotiation of two issues in the Tokyo and Uruguay Round, see Rege 1999), the pressure on developing countries came after the EU switched from opposition to support of the US position: as long as one major player had been on the ‘developing country side’, they had not faced strong pressure. Following US-EU agreement, the only concession allowed was additional time to comply. It remained possible, however, to stay outside that part of the agreement altogether, and for this reason, developed countries were under less pressure to find an agreement which the developing could accept, and therefore did not need to understand fully the different conditions in some developing countries which made the proposed procedures difficult or impossible to apply. Without a compelling need on either side to reach agreement, no agreement was reached. Most developing countries did not sign; the customs valuation agreement; Argentina, Brazil and India signed, but with provision for a five year delay in implementation. These countries had already demonstrated a strong participation in the negotiations.

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<sup>4</sup> McDonald (2000), the US negotiator writes that ‘It became evident that Denman [the EU representative] and I must first of all make a deal before there was any hope for anything but chaos in general meetings of the Multinational Group at GATT....Denman and I concluded that after we had come to a deal, we should then include the Japanese and afterward move through other industrial nations to gain agreement on a rather informal basis.’ (p. 207)

## 5. The Uruguay Round (1986–94)

By the beginning of the Uruguay Round, the position of the developing countries was very different from 1973: trade was more important in their economies. Some countries were already committed to changing from an inward to an outward-orientated approach to development at the beginning of the Round, so that access for their exports had become essential for their development strategy, and others moved increasingly to this position during the difficult economic conditions of the late 1980s. Their own trade was becoming significant in world markets: about a quarter of the total, so that other countries wanted access to them (and felt threatened by competition from them: they were providing an eighth of manufactured exports at the beginning of the round and more than a fifth by the end).

During the Round, there was a major change in the external environment, with the ending of communist rule in eastern Europe finally challenging the idea that all the GATT members had a common interest in economic growth to defend themselves from the rest of the world. As with other country groupings formed initially to counter external threats (e.g. the EU and SADC), GATT had to draw on the strength of demonstrated advantages over the years in which it had existed and the need for international regulation of greatly increased international flows to find a new *raison d'être*.

### History of the negotiations

The Uruguay Round is sometimes represented as a simple (or even 'grand') 'compromise' (e.g. Martin p24, 2001) by which developing countries accepted TRIPS and some reduction of their own tariffs in exchange for reform of agriculture and the MFA, but it was more complex than that, and therefore more interesting. Within textiles, there was a bargain between efficient producers and the non-quota bound; within agriculture, the interaction between exports and importers, developed and developing. On other issues, there were complex cross-development alliances. Therefore the negotiation required more skill and more negotiation than this type of analysis might imply.

### *Issues in the negotiations*

Developed country trade interests had changed, bringing them closer to developing, while some developing countries, as exporters of manufactures, were now interested in traditional GATT business. The US, eventually followed by the Cairns group, put agriculture back on the agenda. Although the Round was started on the initiative of the United States, which wanted to open services and agriculture, some developing countries also had specific policy objectives: to remove the restraints on their trade from the exclusion of agriculture and from the MFA. Their view of the preconditions for development had changed: emphasis on export-based development meant that closed markets were now a serious cost, not an irrelevance, and the success of the most advanced had brought them up against trade barriers (and had brought new barriers against them): excluding the oil exporters, more than half their exports were now manufactures. But their previous position, of subjection to non-tariff barriers and dependence on preferences, had left them both distrustful of trade, which they regarded (correctly from their point of view) as largely policy driven, not an area for mutual benefit from markets, and unprepared to negotiate, because most of their access had been based on concessional, unilateral, actions by trading partners, not on multilateral agreements.

The developed countries (especially the US) also wanted to add intellectual property to GATT

competence, and various other rule reforms, for example again the rules for customs valuation, were on the agenda. The developing did not bring rules in their objectives. One objective which emerged by the end, but too late to negotiate, was to change the treatment of preferences. Commitments to preferences are not bound under GATT rules, but entirely at the discretion of the developed countries. Eventually developing countries also tried to fight to preserve their freedom from rules on areas like subsidies. But at the beginning, their history was of trying to preserve discretion, and therefore of suspicion of too well defined rules, and they expected to retain their freedom not to sign rules agreements. Therefore, while they opposed any extension of the negotiations to new areas (Croome 1999), this did not lead to as strong opposition to their inclusion as in the pre-Seattle and pre-Doha discussions .

Better access for tropical products was identified from the beginning as an area where developing countries wanted concessions, and an offer would encourage their participation in other subjects, and a settlement on these was part the mid-term agreement (Croome 1999 pp.47, 144).

### *Evolution of the negotiations*

Agriculture, services, and intellectual property remained the central issues through the negotiations, but on agriculture, the US gradually weakened its position, while a new alliance of exporters, the Cairns group, emerged as the principal advocates of full liberalisation. On services, as well, the long duration of the Round gave time for US services with interests in protection to emerge and become strong, so that the eventual US offer was more restrictive than might have been expected, while on some services, notably financial, European alliances emerged to press for liberalisation. Both these changes illustrated the ability of participants other than the governments of the most powerful members to take initiatives and change the nature of the final settlement through a combination of information, for themselves and then their governments, about the possible implications of agreements and national pressures.

### *Results of the negotiations*

By the end of the negotiations, many of the preferences available to developing countries had been eroded by cuts in the MFN (general) tariff rates, especially in manufactures. At least relative to the least preferential preferences (GSP), the differential had been reduced or eliminated. Developing countries had not taken a position on this.

The outcome of the negotiations for the first time included major commitments by the developing countries: all the Latin American and most of the Asian countries not only bound their tariffs, but lowered them. The negotiations were extended to services, and again the Latin American and more advanced Asian countries made significant commitments. On both tariffs and services, the African countries made very limited commitments, with offers effectively limited to binding some existing tariffs and rules.

There were two other significant changes in the negotiations. A substantial number of agreements were made on rules, most conspicuously on intellectual property, but also on technical areas like customs valuation and policy areas like anti-dumping and the use of subsidies. These were applied to all developing countries because of the second change: the ‘single undertaking’: the decision that all the agreements should be considered a single agreement. This evolved from a simple commitment to vote on all parts of the agreement at the same time (nothing is decided until everything is decided) to a requirement that all accept all parts of the agreement (Finger, Schuler 1999). Only some of the Tokyo

Round agreements remained ‘plurilateral’, not binding on all: government procurement, civil aircraft, beef and dairy products (Croome 1999, p.282).

The agreement on intellectual property provided minimum rules and standards of enforcement which all countries had to meet (extra time was allowed for developing and least developed countries). This was a rule change with a clear continuing cost to developing countries which are still net importers of technology, in addition to the administrative and technical costs of setting up the required systems. Some developing countries recognised this, and opposed the measure and/or sought offsetting concessions.

The dispute procedure was strengthened: in the absence of consensus, condemnation by a disputes panel is now accepted; previously it was rejected. Enforcement procedures were extended, and the timing was tightened to bring most disputes to termination in under two years.

GATT’s assistance to developing countries had always been not through direct action, but in the form of forbearance: exemption from controls on domestic policy and from limits on special treatment by other countries bilaterally, and this was reflected in the new parts of the WTO. Under intellectual property, subsidy and other agreements countries were given more time to comply (and for subsidies, a lower standard of compliance), but unlike the traditional preferences, this was not based on any view of how development worked. The traditional exemptions had been based on the belief, now challenged but accepted at the time, that developing countries’ exports were inherently disadvantaged (wrong commodities, small scale, high initial costs of seeking new markets), and therefore needed special treatment to compete equally, and that national intervention in the economy, and in particular in trade policy, was an appropriate tool of development, and therefore should not be restrained by the normal rules on import controls or subsidies. In contrast, the negotiations on rules assumed that these were beneficial for all (subsidies are expensive and encourage inefficiency; innovation is encouraged by good intellectual property protection), so that there was no internal logic in ‘allowing’ countries to disadvantage themselves by not complying. There was a (last minute) assumption that it was harder for developing to adjust to new rules, therefore it would take more time, but no practical assessment of their adjustment costs. This left an uncertain status for ‘special and differential’ treatment: still acceptance that developing countries ‘deserve’, it but no consensus that they ought to want it. (If the rules had been advocated as beneficial to some countries and to the international system, but costly to others, as economic analysis would in fact suggest, this could have led to negotiations to make balancing concessions, and left a clearer procedure and result.)

Various estimates were made after the end of the Round of the economic effects on developing countries (e.g. Page, Davenport, 1994; Martin, Winters, 1996). While the numbers vary, the general conclusion was, for both developed and developing countries, that those which had gone into the Round with clear objectives had gained these, at least in part, with acceptably low costs in concessions to other countries. The US had gained some reform on agriculture, if much less than it had wanted, and had gained beyond all expectations on the rules measures, especially intellectual property. The Latin American countries had gained from access on manufactures and agriculture; the Asian, from access on textiles and clothing; and all developing countries, from strengthening and extension of the rules on conventional trade, and the strengthening of their enforcement. There were also some modifications of the rules to take account of developing country interests which were more than had been expected. The services agreements were assumed to be mainly statements of existing rules, rather than liberalisation, so that the only ‘gain’ here was certainty of access, and some transparency. The intellectual property and anti-dumping agreements were expected to be on balance negative for most developing countries. The area which had none of the advantages, but all the disadvantages, was Africa, with high existing

preferences and therefore little to gain from improved access, and much to lose, on relative access and costs of implementation. It was also the area which was still more like the developing country average of the 1950s and 1960s: low shares of trade in the economy, low share of world trade, concentration on traditional products, and therefore it is not surprising that the general observation which had held then, that developing countries had little to gain from negotiations, appeared still to hold for Africa in the 1980s. But the gains for others made this failure to gain more obvious and resented, and the obligation that all should accept the agreements on rules was new.

## **Participation by developing countries in the Uruguay Round**

### *Developing countries in the negotiations*

For most, both those which were members at the beginning of the Round and the 31 countries which joined during the round, this was the first negotiation in which they bargained. It became clear in the round that if countries were to obtain any of the concessions which they wanted, they (particularly the more advanced) would now be expected to make offers.

It also became clear during the Round that there were different interests among the developing, partly because of their different importance to developed countries: only the rich or large (in Asia) were really pressed to liberalise markets to developed country exports, but also because of their own interests: the opening by south East Asia was also welcomed, if not actually sought, by other Asian developing countries. The negotiations over both the MFA and agriculture, the central ‘developing country’ issues had to take account of important divisions: between the MFA quota-bound countries and the non-quota; between exporters of food and importers benefiting from subsidised developed country food. Nevertheless, there was still an identifiable ‘developing country’ interest, particularly as it became clear that the developed countries would press for developing countries to conform to GATT rules like tariff binding (even if at high levels) and to participate in all aspects of the agreement. Traditional leaders like India still considered that they could speak for the majority of developing country members. There were non-GATT fora like UNCTAD in which ‘developing country’ positions were formulated, principally by the secretariats (partly from developing, partly from developed countries), but with input from the leading countries, notably India and Brazil. The leading new exporters (Singapore, Malaysia, Korea) were not as active in these groups.

The MFA negotiations were led by developing countries, with India and Bangladesh particularly active along with the South East Asian countries. On clothing, the major exporters operated as a bloc, including both quota and non-quota countries, and settling their differences before negotiating with the importers. The final settlement allowed sufficient time for any exporter whose advantage had been initially in simply being not protected to develop alternative exports and/or to find ways of exploiting its advantage as an existing, experienced exporter to protect its position. This was helped by the fact that all countries realised that the history of successful exporters facing rising costs and rising barriers, and being replaced within a decade or so by new yet more competitive exporters, was likely to be repeated (especially with the entry of China into the market). Therefore the principal ‘losses’ would be to China, not yet a member of GATT, and not close politically to any of the current exporters, and to the next generation of non-quota exporters, who had not yet emerged or identified themselves. There were efforts by some developed importers to mobilise opposition to reform from the potential losers (the non-quota-bound like Bangladesh), but the developing countries preferred to ally themselves with other developing countries. This was in contrast to what happened in agriculture with the food importing countries.

On agriculture, the emergence of the Cairns Group in 1986 brought new non-major country interests in. Although the final settlement was negotiated between the EU and the US, the Cairns Group was sufficiently strong to block their first proposal. In the Cairns Group, although Australia and Canada led, Argentina and Brazil were important participants, and were particularly active in preventing an EU-US-brokered settlement in 1990. The participation of developing countries was therefore very different from in the clothing and textile negotiations, or in all previous negotiations about ‘special and differential treatment’ for developing: developing countries were no longer operating as a group. The major exporters (or potential exporters) joined with the developed exporters in the Cairns group, and the food importers were supported by, and supported, some explicitly, the protecting developed countries which provided them with cheap food.

Why was there this difference? In agriculture, the food importing countries were directly tied to the developed country exporters of subsidised food through links like the Lomé Convention. (These were also the aid-givers on which many of these countries depended.) They were smaller, weaker negotiators. On the other side, the Cairns Group was more tied to a rigid pro-liberalisation position, without (at this time) concessions to countries that wanted time to adjust or sympathy for countries dependent on subsidies. It was also not, principally, a developing country group, while the leaders of the textile and clothing negotiations were not only developing countries, but included India which still regarded itself as speaking for all developing countries, not simply protecting its own interests, and may have restrained its policies accordingly.

On services, there was a move from a united developing country position to interest-based differences. The developing countries as a group initially opposed all inclusion of services in GATT (corresponding to the Indian and Brazilian interests of highly protected domestic sector), but the long duration of the Round gave time for some countries to identify advantages, of cheap labour and no traditional, inefficient sectors. So, as in the US and EU, the long duration of the Round allowed interest groups to inform themselves and mobilise. There was, therefore, no unified developing country position for or against services after the initial position at Punta del Este.

As had happened in the Tokyo Round, most negotiations were initially between the US and EU, then extended to the other major developed countries, and only then to the full membership, which meant not merely that it was their interests which prevailed, but that the negotiators were not always aware of the interests or the practical problems facing other countries before proposals became rigid. This had created problems in the Tokyo Round, but there, at least for rules, it could be justified as the discussions included most of those expected to participate. In the Uruguay Round, however, for the first time the developing countries secured the commitment that there would be an agreed programme of negotiations, so that at least formally the sidelining of GATT and the rest of the members observed in the Tokyo Round could not be repeated. There were also smaller negotiations among the most important or most interested countries, but these were of two types: those that were restricted for efficiency to those with a major interest in the outcome, where the group was essentially self-selected, and the completely ‘private’ negotiations between the major powers. The former was an important advance on the traditional major exporter/major importer agreements. The existence of the formal programme and the semi-formal meetings acted as some permanent check that at least information, if not participation was widely available. Even at the end, when EU - US negotiations again became important, there was a meeting (December 1993) to review the effects on developing countries (Croome 1999, pp. 322).

In a few areas, for example on subsidies, some developing countries, notably India and Brazil were brought into the second (major country) stage of the negotiations. These are both big countries, but they

were also active negotiators, leading the opposition of developing countries to the inclusion of services and intellectual property in the agenda of the Round. (And India, of course, already had a history of leadership of developing countries, in and outside of GATT negotiations, and Brazil was a founder member of GATT.) They also both have an experienced cadre of negotiators, so that on an individual level they participate with the same experience, if not the same depth of background research and support, as is available to the developed country negotiators. (A single Indian ambassador remained in Geneva from 1989–94; Indian and Brazilian ambassadors were chairing important negotiating committees.) In customs valuation, they had supported each other in complaints about the difficult of implementation, and Indian participation extended to proposing a revised draft which helped to open the negotiations to the eventual settlement. Other developing countries did not participate actively in the initial stages, but eventually East Asian and East African groups both joined the Indian-Brazilian position. For the latter, the PTA (Preferential Trade Area of Eastern and Southern African States) offered an early example of direct participation in the negotiations by a region of developing countries: formally, this was done through membership in country delegations, but it was made clear that the positions being taken were for the region. On an issue of trade rules, a region is the obvious equivalent of a group of similar exporters in tariff negotiations.

In the negotiations on pre-shipment inspection, again a developing country vs. developed issue, Indonesia, along with Ghana, Nigeria, the Philippines, Tanzania, Zaire and Zimbabwe were leaders, but this is a rather different case from the other examples of developing country participation, because it is those countries which do not feel confident in themselves dealing with potentially fraudulent customs documents that use PSI, and thus it is the strongest of the weakest, not the strongest developing countries which are likely to be involved.

### *Formation of interests in the negotiations*

For all the countries participating for the first time, inexperience of the issues: of what had been proposed, and agreed or not agreed, and why, in previous rounds; of which countries had taken positions... and indeed of negotiating, was an obvious problem. In contrast, India and Brazil's negotiators, like those of the major developed countries, had been present in the Tokyo (and earlier) rounds, and in Geneva in the preparations for the Uruguay Round. The larger countries were also able to have representatives of a range of departments (the US had had one from each interested department as early as the Tokyo Round). Zimbabwe, for example (see Hess, 2001) had opened a mission in Geneva in 1986, at the beginning of the Round. Initially it accepted the leadership of India and Brazil, but as the round continued over seven years its negotiators 'used their acquired knowledge and experience of this process to improve their participation in the negotiations, by increasingly clarifying their national interests.... By 1988, the country had identified...specific areas. as key issues of interest' (Hess 2001; see also Mbirimi, 1989). These corresponded closely to the principal concerns of the leading developing countries: tropical products, agriculture, textiles and clothing, plus rules on subsidies and safeguards (Mbirimi 1989). It still generally accepted the leadership of India and Brazil, but this was not without at least a preliminary assessment of its own.<sup>5</sup>

By the end of the Round, there were less experienced countries coming in, so that even the first-time participants had some countries over which they had an advantage: South Africa after its change of government and the first members from Eastern Europe. Interestingly, in both these cases, of countries

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<sup>5</sup> Mbirimi 1989 identifies clothing as important because it was part of the export programme; assesses the advantages and disadvantages of joining the subsidies code; and notes what changes would be needed in intellectual property legislation.

being run by new people, where the old industrial and government interests were discredited, there were examples of a different, ‘ideological’ type of identification of interests. South Africa took a liberalisation position based on the research which had been done by economists for the ANC in opposition, while some eastern European took extreme liberalisation views.

Particularly on the ‘new’ issues, services, intellectual property, and rules, the developed countries, first the US, then, following its example, the EU, faced lobbying from industrial interests and used private industrial groups and firms to provide the expertise which was not available within the government. Most developing countries lacked not only the specialised industries, but any formal mechanisms for them to mobilise or be mobilised to participate. It is only recently and in a few countries that trade and other international flows have become sufficiently important to attract interest and lobbying. While superficially this was an advantage to governments, because it meant that there was no opposition to what was officially negotiated, countries like Zimbabwe considered it more of an obstacle, because it meant that negotiators were not supported by private industry knowledge and research. On the technical issues, therefore, developing countries had difficulty in researching and calculating the consequences for them of applying the rules, and this made it difficult for them to convince developed countries that there were problems. In the customs value negotiations, there was eventually negotiation among officials. Some of those from developed countries had direct experience of the conditions and therefore the differences in developing countries, while the developing countries also had the equivalent of industrial expertise in their experts. The technicians were able to reach an agreement.

In less focused negotiations, the broad groups dealing with areas like services for example, developing countries with only narrow interests (because of undiversified economies) were at a disadvantage in terms of identifying bargaining counters.

The fact that countries like the US had better ways for lobby groups to make their interests felt than many developing countries had the interesting effect that there was substantial lobbying by developing in the US (UN-ECLAC 1990): Colombia and Jamaica were major spenders. While most of this was directed at bilateral issues, this gave experience in forming coalitions with interests in the US (for example against particular trade restrictions).

Many developing countries also suffered from a lack of back up from their governments. McDonald (2000) notes that the US had from the beginning of the Tokyo Round in 1973 an inter-departmental committee and established systems for exchanging information and proposals on negotiating positions between Geneva and Washington. This allowed constant comparison of US positions to those of other countries, and informed bilateral discussions. In the absence of such identification of issues and interests at the national level, other delegations responded to those pressed by the active countries in the negotiations, and as a result their country positions were defined by the delegations and in response to international stimuli, rather than by national governments in response to national pressures. This probably contributed to the smaller countries’ acceptance of leadership by the major developing countries as these were the only ‘pressure group’ operating on the delegations of the unprepared countries. In contrast, the developed countries (and a few of the developing, e.g. Morocco) not only had industrial committees at home, but brought leading representatives to the negotiations, both to inform them about the negotiations and to give expertise to the negotiators.

On the issue of the formation of a World Trade Organization, to replace the *ad hoc* GATT, the negotiations were initially entirely secret, precisely to stop lobbying (Rege 1999, p. 49), because the negotiators expected this to be opposed. These negotiations thus showed a very different type of role for the government relative to the private sector, closer to the state-centric view, perhaps explicable by

the greater non-economic, ‘national’ interest character of an international organisation than, for example, provisions on patent protection. But another result of the institutionalisation of the WTO was the Single Undertaking, the development of an understanding that all countries that wanted to participate in the trade side would also have to accept all (in the end, almost all) the rules agreements, although these words were in the Punta del Este Declaration (Croome 1999, p. 344).. That these negotiations were kept secret meant that the rules negotiations were initially done in the absence of awareness, by most participants, that they had to accept the rules: thus they started with the same lack of pressure for agreement as in the Tokyo Round, but finished with a commitment, without going through the stage of negotiations under pressure, and therefore without the necessary exchange of full information about positions and difficulties and without compromises. The progress on the two declared objectives of developing countries in the Round led to a willingness to accept the other agreements, and perhaps to insufficient attention to the commitments made, especially given the way in which negotiations had preceded their awareness that they would be committed to the results.

## **Assistance to developing countries during the Uruguay Round**

Like developing countries, agencies like the World Bank and the OECD greatly increased their activities compared to previous rounds, providing information and policy advice for the developing countries during the Uruguay Round. Although they started relatively late (after the Round had begun), this was still an advance on complete absence in previous rounds. The Bank’s compilations of data and comparisons of tariff rates were useful (Finger, Olechowski, 1987), but during the Round, they and the OECD also prepared recklessly high estimates of the potential gains from trade. Methodologically, these were incorrect because they included the gains to welfare from countries’ own liberalisation (which is a national policy option, not dependent on a Round) as well as those from increased access to others. They also made optimistic assumptions about the extent of liberalisation, especially of agriculture, by developed countries. When the results were much less impressive, this probably contributed to a distrust and disillusionment with expectations about gains from trade on the part of those who had had to rely on these calculations instead of their own: both developing countries and agencies like NGOs that had an interest in them.

UNCTAD traditionally offered trade policy advice and assistance, but considered itself more an alternative than an assistant to the WTO. It also offered more information during the Round, and from a more sceptical point of view than the World Bank. It supported the traditional developing country lobby (G-77). Like the Bank and bilateral donors (also active for the first time), it was slow to start with its estimates of effects of potential policies, with most activities starting in the early 1990s, or even following the Round. Studies of ‘the effect of the Uruguay Round’ on southern and eastern African countries were being commissioned as late as 1999.

There had been effectively no assistance to developing countries to prepare positions or to understand the implications of others’ proposals before the Round began. In this, the agencies appeared to be accepting the traditional negotiating model, that settlements were made by the developed countries, and accepted by the developing which then had to learn how to adjust to them, rather than having the opportunity to take positions of their own.

On technical issues, such as the role of pre-shipment inspection (Rege 1999), the international agencies were divided, depending on different interpretations of the evidence on the need to check on exporters, rather than an ideological position of support for trade liberalisation, but no good studies were done

The Uruguay Round, at least at the end, saw the first significant lobbying by developed country NGO groups interested in development. This was, however, was not based on developing country initiatives or participation.

## 6. Lessons drawn by developing countries from the Uruguay Round

The countries which had gained were the countries which had participated in the negotiations. This was not a universal rule, and the causation may have been, at least in part, in the opposite direction: those who had the most probability of gaining, because they were exporting advanced or protected products, participated most actively. But the conclusion most non-participating countries drew was that absence was damaging, while those which had participated regarded their gains as justifying their decision to participate, and believed they were now seen as necessary parties to the negotiations by the developed countries. The fact that 31 countries joined during the Round reflected developing country belief that the WTO was now an important, if not necessarily yet the principal, forum for trade negotiations. Even some of the actively participating countries (for example Jamaica, House of Commons 2000, p. 130), however were dissatisfied.

Open-ended or vague commitments could become significant agreements: services were designated at Punta del Este as a separate negotiation, which might or might not be completed. There was an ‘absence of precise wording in the provision dealing with TRIPs’ (Panagariya, 2000 p.5)6, which allowed eventually a very precise and wide-ranging commitment. Setting the agenda for a subsequent Round should therefore be regarded as a major part of the negotiation, not a formality to be completed before serious preparations were started.

The nature of commitments could change: a discussion over the timing of discussions became a commitment to the ‘Single Undertaking’, committing countries to agreements which they had negotiated (or watched being negotiated) in the expectation that they could exclude themselves. Again, this suggested that countries could not remain outside any negotiation, however irrelevant or unimportant it might seem to their current interests.

The advice of some international agencies had proved not to be based on accurate calculations of benefits (and costs). Advice and technical assistance and especially information could be useful, but developing countries had to develop their own resources.

The developed countries would attempt to reach agreements on their own, and then impose them on the developing (for example the formation of the WTO to replace the GATT), but where there were differences among the developed (as on agriculture), developing countries could have a voice. Alliances with developed countries, as in the Cairns Group, were feasible and potentially high return.

Alliances among developing countries had also worked, notably among the clothing producers, where both those who had suffered from quotas and those who had gained from temporary exemption from quotas were able to find a common interest in liberalising trade in clothing. Arguably, such alliances could work better to protect developing countries not in sympathy with the aims (in contrast to the loss of interest in the food importing countries), but this depended on a continuing acceptance of developing country solidarity.

The example of the developed countries had convinced some developing countries that the advantages of informed and participating private sectors outweighed any disadvantages from potential opposition or interference.

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6 ‘The negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines’ (in Croome, 1999, p349).

If the ‘crisis’ theory of policy change has any validity, that it takes a crisis to force a major change in policy (or the crash theory: that safety design is only improved after a crash), then the failure of most developing countries can be regarded as a relatively mild ‘crash’ and warning to avoid lack of participation in the future.

The conclusions for the nature of the system seem to support the view that a variety of interests (some, like intellectual property producers or agricultural exporters and importers, operating across national boundaries), impelled by the increasing importance of trade to national economies (and to economic actors within them), had decided that it was time to move forward the development of an international regime to come closer to the degree of predictability and enforceability of rules found within countries. The liberalisation of old, now declining, sectors, like agriculture and clothing in the developed countries corresponded to changes in the strengths of interests within countries (agricultural support was also a heavy budgetary burden). More generally, liberalisation by both developed and developing countries was consistent with a declining commitment to national control of economies. The achievements of groups of non-powerful countries like the Cairns Group and the textile producers suggested that at least where there are divided interests within or among powerful countries, non-power-based outcomes are possible.

It may also be possible to identify a range, and perhaps a hierarchy, of interests which are represented by countries in the negotiations. Where there are strong economic sectors, these are represented. In their absence, governments may be able to impose non-economic interest solutions, whether based on non-economic goals or economic analysis: in traditional terms, this may be the technocratic solution. In the absence of any strong national interest-formation, policy-setting shifts to the negotiators and to their identification of interests, for example the ‘developing country’ group.

## 7. Between Rounds 1994–1998

### Negotiations and implementation

The Uruguay Round settlement required countries to make not only the usual range of tariff and other adjustments to existing trade policies, but major changes in legislation, in all countries, but particularly in those developing countries which had not participated in previous ‘plurilateral’ agreements or which had little or no legislation in areas like intellectual property or trade rules like anti-dumping. In addition, there was specific provision for Ministerial Meetings every two years, which were to renew the uncompleted negotiations on financial services; to reopen negotiations on all services and on agriculture five years after completion (by end-1999); and implicitly to identify new potential areas for negotiation. Negotiating on existing and new issues was therefore to be treated as the normal business of the WTO, in contrast to the GATT and the aftermath of previous Rounds. Rounds had been treated as exceptional, to be called when (and only when) countries wanted to reopen negotiations.

The financial services negotiations were largely among developed countries (it was opening among these that was wanted), and were completed in 1998. The Singapore ministerial meeting (in 1996) saw debate over the inclusion of investment (a working group was set up) and labour declared to be the competence of the ILO. It also saw an initiative, swiftly followed through, to make an agreement on telecommunications.

Both developed and developing countries started (or intensified) regional negotiations during the period following the Uruguay Round, with MERCOSUR becoming more integrated in Latin America and starting to form bonds outside the original four, and the proposal for an FTAA from the US, leading to the possibility of NAFTA, MERCOSUR, the Caribbean group, and all those left forming one region. African groups like COMESA, SADC, East Africa and some of the West African either resumed moves towards trade integration or introduced them. The EU announced in 1997 that it expected to transform its purely preferential arrangements with its associated African, Caribbean and Pacific countries into regional trade agreements, and negotiated agreements with Mexico and South Africa; started negotiations with Chile and MERCOSUR; and strengthened its links with the north African countries. These initiatives have not apparently led to a shift of negotiating resources away from the multilateral, but they have certainly prevented a shift toward this, in spite of the increase in the importance of multilateral agreements following the extensions in the Uruguay Round and the proposed new areas. For some ACP countries, the number of regional commitments plus their ties to the EU continue to mean no representation in multilateral negotiations; instead they dedicate resources to the EU and their own regional negotiations. For some countries, this can be explained as the more important area: the EU is a major partner for many of the ACP, and the advantages of familiarity would also support this. But other developing countries manage to support both regional and multilateral negotiations. The US is the major market for Mexico (which only joined GATT in 1986), but Mexico is also independently active in the WTO, as are some of the Central American countries (Fox, 2000).

The choice needs other explanations. There is the traditional view that regions are more homogeneous, and therefore that it is easier to reach agreement. It is interesting to note that the NGOs, many of which take a localist approach, are more opposed to WTO (and multilateral investment) agreements than to regional agreements like MERCOSUR or SADC (NAFTA may be an exception), while Hess (2001) and Durrant (2001) both note earlier and greater interest and involvement of private interests in regional

negotiations than in multilateral. For small countries, they may seem easier to influence, as well as more familiar, so easier to participate in.

## **Participation by developing countries**

### *Developing countries in the institutions*

The developing countries which had participated in the Uruguay Round continued to participate in the committees set up after it, and their ambassadors were increasingly frequently seen as chairs. Those which had not negotiated had to participate in implementation. In the absence of negotiations and bargaining, the formation of alliances has been less evident. All the existing groups continued. The only new grouping to emerge, driven partly by the costs and difficulties of implementation, was small island countries. Developing country demands would be in conflict in a negotiating round, but until then they did not need to choose whether to emphasise the differences or the general unity of developing countries. All countries supported (or did not oppose) all the groups. The G77 positions also continued to exist, taking positions for ‘all developing countries’.

### *Formation of interests*

The lack of interest within developing countries in WTO issues, however, started to change. There was a similar marked increase in awareness of the WTO in developed countries, but there it was an extension from traditional interest groups and the new groups (consumers, NGOs) saw a conflict with the old (business, government). In most developing countries all were new, and saw, at least at first, a common interest in spreading information. Some of the traditional developing leaders (India, Brazil) also saw conflicts between the new interests and the old. (Intellectual property became a major issue in India.) The changes were partly because implementation of the wide-ranging Uruguay Round settlement necessarily affected more elements of the economy; services as well as goods; standards and intellectual property protection even in non-trading sectors. There was also a deliberate effort by the WTO itself, by UNCTAD, and by other international agencies to inform private interests about the agreements which had not been done after previous rounds. The within-country informing and consultation after the fact paralleled the late entrance by World Bank and other agencies, which had supplied information only after the negotiations had begun and the developed countries had taken their positions. For both, the explanation was partly failure to realise how important the Round would be to developing countries and partly the implicit assumption that developing countries could not influence the result, but had to accept it. The increased information led to some opposition to specific agreements, as their implications were clarified, and to awareness that the agreements had been reached without consultation before negotiation. Hess (2001) describes how ‘this “consultative” process was undertaken post-facto, resulting in the widespread criticism that government itself did not understand the implications of the deal that it had signed’. In India and Thailand, what had seemed the technical issue of intellectual property was identified as a major cost to agriculture and pharmaceutical interests. The increasing ease of communication (and its use by some international NGOs) also meant that information about opposition in some countries spread immediately to all countries. The international NGOs which had started to take an interest in WTO and trade issues at the end of the Uruguay Round started to mobilise national NGOs into interest groups. Some of these, like some countries, then adopted ‘international’ positions, while others looked specifically at their own country issues and interests. There was a reinforcing opposition to the agreements, as unacceptable, not only because of specific criticisms of their content, but for reasons of process: lack of consultation or research on their effects.

The growing international acceptance that developing countries had not made the major gains which had been predicted for them led to a search for explanations. Countries (and analysts) did not argue that this was an inevitable result of weakness. Lack of participation by developing countries in the negotiations and by national interests in the formation of positions were identified as possible explanations. The implications of this analysis for how developing countries would participate in future, however, were not clear. On the one hand, consulting within countries, calculating effects, and identifying national interests would imply more differentiated positions, led from national capitals rather than from the developing country caucus of negotiators. On the other, the international pressure groups which were pressing the complaints about the outcome of the Round, attempted to identify common 'developing country' interests.

Some countries started to set up systems to provide better information and consultation in the future. Zimbabwe set up a Standing Committee on the WTO in 1998, first among government departments, subsequently extended to private sector organisations. Swaziland had set up an inter-departmental committee in 1997, in response to the visit of a WTO Trade Policy Review team. Some countries already had such committees to direct regional negotiations (Zambia and Malawi, for example), and extended their responsibilities to the WTO.

The traditional developing country leaders in the WTO (India and Brazil, for example) already had industrial organisations and government coordination, and there had been at least informal coordination in the Uruguay Round. (The US had had an Industrial Sector Advisory Committee from the beginning of the Tokyo Round.) But a range of much smaller countries with traditionally strong trade interests also had such organisations, including Mauritius, some Caribbean, and Central American (Fox 2000), as well as the larger Latin American. Some of these were adopted or mobilised to deal with WTO matters.

### *Implementation of WTO business*

The growing range of WTO rules meant that developing countries had to find satisfactory ways of participating not only in the negotiation process itself, but in ongoing regimes. This is no longer a one-off process of identifying changes required by a settlement, and implementing them. There are now areas like health measures where countries can impose new measures, providing these are non-discriminatory and meet the other WTO rules, by providing 'adequate' notification to all other members. This is done by notification to the WTO, which then disseminates the notification for comment or complaint. In the absence of opposition, the new regulation is adopted. This requires countries to have sufficiently good systems and capacity to identify which private or public interests may be affected, analyse the effect, and make an official reply, within a tight time limit. This is a burden on some countries, but it has also stimulated continuing interest and awareness of the implications of the international trade regime. The increasing use of anti-dumping measures against developing countries, which began during the Uruguay Round, required governments to develop the capacity to gather and analyse the data required to challenge these.

Although the conventional view of the outcome of the Uruguay Round was that it left developing countries struggling to keep up with implementation, some have used the rule changes effectively. From 1994–9, developing countries took over the lead position in taking anti-dumping actions (with South Africa and India among the four largest users). Some also became active users of the new, strengthened, dispute procedure: India successfully challenged the EU-Turkey customs union for breaking the rules for regions, while Brazil is challenging the EU's preferences for Andean countries. The banana dispute

with the EU involved the US, but was formally led by Latin American countries. Mexico and Thailand challenged the US on environmental protection. The Central American countries have participated actively in negotiations (Fox, 2000), as well as in the challenges on bananas. With the exception of the banana case (where the US provided leadership), all these countries are among those active in negotiations.

## Assistance

The WTO and UNCTAD have led in providing information about the obligations of countries under the WTO agreements, although the traditional bilateral and multilateral donors have been quantitatively more important when financial resources were required for changes. But there was no rush to design or re-designate programmes to meet Uruguay Round commitments. The effects of the Round, although larger than those of previous Rounds, were in most countries small compared to all the other adjustments which developing countries need to make, to meet their own objectives or to respond to other changes in the external environment, and in many cases were closely related to the other changes: opening or simplification on trade policy; development of transparent and predictable trade rules; setting standards. (For this reason, estimates of the total cost of such measures should not be attributed entirely to WTO requirements<sup>7</sup>. The logical position for donors and advisers would be treat them as simply one element of the background, not a subject of a special programme. This seems to have been the initial response, especially as the costs, financial and institutional, of rule implementation had been identified only qualitatively (and developing and especially Least Developed countries were allowed considerable delays). Proper analysis of what needed to be done, and what its impact would be on the rest of the economies was not undertaken until well after the Round. And the countries most dependent on aid were those where the direct trade effects were expected to be smallest, and in many cases to be considerably delayed (some would lose from the MFA or agricultural reforms, but not until, at earliest, 2001). But eventually a combination of better calculation of the costs of the rules and pressure from those who assumed that the effects of such a major negotiation must be large, whether good or bad, produced targeted responses. UNCTAD started a programme on Uruguay Round effects in 1999, and the World Bank announced its programme also in 1999. In 1997, an Integrated Framework for the Least Developed countries had been announced, including the WTO, World Bank, IMF, UNCTAD, ITC, and UNDP, which began operations in 1999–2000, and in 2001 is moving towards its second tranche of countries. All these initiatives took the results of the Round as given, and tried to help countries to implement them.

## 8. Seattle and Doha

### Pre-Seattle

By the beginning of 1999, the Uruguay Round commitment to reopen agriculture and services negotiations by 2000 had become an initiative for a new, general, round, and both developed and developing countries were planning their trade policy with that in mind. The preparations saw a further advance in formalising procedures, compared to the Uruguay and Tokyo Rounds. The experience of the Uruguay Round and the disputes about what should be included in Singapore had led to a greatly increased belief in the importance of defining the agenda. Therefore, an iterative procedure of proposals by countries and drafting of an agenda was carried out through 1999.

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<sup>7</sup> Finger and Schuler, 1999.)

At the Seattle Ministerial meeting, November – December 1999, it proved impossible to reach agreement: differences on agriculture, intellectual property, and extension of WTO rules between the EU and the US were great; differences on agriculture between them and country groups like the Cairns group were great; there was disagreement over whether the agenda should be ‘broad’ or ‘narrow’; there were disagreements over whether there was sufficient consultation of all members; there was insufficient preparation and consolidation of positions before a meeting which was too short, and artificially constrained to finish; there were organisational faults by the WTO and the US. The surplus of reasons for failure allowed a variety of interpretations of the negotiation, including some that would preclude any successful negotiation until power balances change: that the EU and US are now joint hegemons, and their disagreement was fatal; or that they were weakened hegemons, no longer sufficiently powerful to impose a solution. But there were others that suggested only a temporary failure: that there was no strong commitment by any member or group of members to the holding of a round; or that bad organisation can be fatal. There was agreement, therefore, that something had to change, but no consensus on what needed to change.

## **Developing countries in the Seattle negotiations**

Participation by developing countries was, for the first time, a major issue in the preparations for a potential new 1999 Round. The widely held conclusion that failure to participate had led to losses (or at least no gains) for many developing countries in the Uruguay Round meant that both countries and the WTO were discussing how to change this in a new Round, and countries took active steps: ‘51% of the 230 proposals’ in the agenda-setting process (Ricupero in House of Lords 2000, p. 193) were from developing countries. The system of informal contacts, which in the Tokyo Round was exclusively US-EU, and in the Uruguay extended to other major developed and the leading developing, was likely to become unwieldy with at a minimum all the countries which had been first time participants in the Uruguay Round now prepared to participate actively, and some of the new generation also aware of what non-participation had cost. In addition the governments of all developing countries needed to avoid the accusations at home of failure to participate and failure to establish their own positions which had followed the Uruguay Round, so that they had to be publicly seen to be participating.

In the final months before the Seattle meeting (September-November 1999), there were procedures for including all countries at least occasionally in the consultations on the agenda for negotiations (Mannan in House of Commons 2000 p. 131, Benjelloun-Toumi, *ibid.*, p. 133). This followed what had been established as the normal ‘informal’ procedure in negotiations in the Uruguay Round, of small committees which were effectively open to anyone who was known to have an interest. This was not without risks: countries which were too new or small (or absent from Geneva and the negotiations) to be known to have an interest were not always included, but it avoided official discrimination among countries, and was accessible to the active countries, which were those who would challenge exclusion. But there was no change in the official standing orders, which left the final decision on who should participate in such groups to the chair of the meeting. Thus when the Chair of the Ministerial meeting in Seattle (the US) decided to designate the members of the ‘Green Room’, the informal group to establish the agenda, there was no formal mechanism for challenging this. But informal mechanisms, statements by the developing areas: Africa, Latin America, and the Caribbean, that they would not accept the results, did challenge the legitimacy of the procedure. Whether this was the principal reason, a contributing factor, or irrelevant to the failure to reach agreement remains unresolvable, but one interpretation is that the increased formal participation by developing countries, in the formal meetings

and through submitting proposals, did reflect a shift in the real balance of power: the Uruguay Round model of the major countries (including selected developing) making the decisions and announcing them to the rest was no longer feasible.

The countries which had participated without experience and with little success in the Uruguay Round were now seeing their second Round, and started to share the advantages of the ‘old’ developing country leaders: Zimbabwe delegates were active in the preparations for the new Round, and by 2001, their head of mission was chairing one of the WTO committees. The developing countries selected by the EU and Japan for their ‘informal’ preparations for Doha were (EC Trade Directorate 28 March 2001) Brazil, Chile, Egypt, Hong Kong, India, South Korea, Malaysia, Mexico, Morocco, Singapore, South Africa, and Thailand: all active participants since at least the Uruguay Round, but excluding some of the prominent countries: for example Bangladesh, Mauritius, Jamaica, Indonesia. Developing countries, invited by Egypt, plan their own meeting in April. The additional invitees included Zimbabwe, Kenya, and Argentina (AFP 26 March 2001), all countries active in negotiations, but usually second in their regions (to South Africa and Brazil). At the preparatory meetings in Mexico in September and Singapore in October 2001, Argentina, Brazil, Egypt, India, Jamaica, Mexico, Singapore, S. Africa, Tanzania (now representing the Least Developed instead of Bangladesh) and Uruguay were present.

The regional negotiations which most Latin American, Caribbean, and African countries had participated in by 1999 provided experience in identifying negotiating issues and allies, and in negotiation. Even in the largest countries, the participants in regional and WTO negotiations are taken from the same small group of people so that most developing countries are beginning to acquire the same familiarity with their negotiating counterparts which the US and EU have had and used (McDonald 2000) for many years. These negotiations have also in some cases generated analysis and data on trade rules, trade patterns and interests which can be used in the multilateral negotiations. The southern African countries have had to look at their trade from the point of view of SADC integration, the effects of the South Africa-EU arrangements, their various bilateral arrangements, and the proposed SADC-EU arrangements. The MERCOSUR countries have looked at their own interaction, the effects of integration with other Latin American countries, the effects of an agreement with the US and the effects of an agreement with the EU. While this may have provided some distraction of resources, it has also provided a databank of background information. In particular, the FTAA and the EU-MERCOSUR processes have set up technical groups to clarify data and existing trade rules.

Some countries, however, still remained absent, either through inadequate participation or literally so: with 17 African members having no presence in Geneva by the beginning of 1999. This had fallen to 13 by early 2001 with at least two of these considering establishing missions.

## Alliances

There are two conflicting influences. International pressures to accept that there are ‘developing country’ interests, dating from the way in which developing countries participated in the international system until the Uruguay Round, and reinforced by the international exchange of information and opinions about the outcome of that Round, continue to argue that developing countries should work together, for strength, and that they can do so, because they have common interests (the G-77 model). Against this is increasing national pressure for countries to research and consult to identify their specific national interests, accepting that these may differ from other developing countries and that some developed countries may be more appropriate allies (the Cairns Group model) ( See Bojanic 2001 Trade

and Bojanic 2001 Climate, for Bolivia's attempts to balance two sets of allies.). Pre-Seattle the former prevailed: the traditional groups like the G-77 met, and issued agreed positions, based on UNCTAD research and analysis. While the proposals for the agenda put forward by different developing countries (and groups) showed differences in emphasis, and in strength of feeling on issues like the inclusion of investment or competition or the importance of changes to the rules, there were not obvious differences or conflicts between developing countries, and at the Seattle Ministerial meeting there were still no negotiations which required choices (and therefore opposition). The only general developing country interests which were expressed were those on which there were no disagreements, for more transparency and more direct developing country participation. Most of the special developing country interest groups (small countries, least developed) were recognised in the (unadopted) agenda for negotiations; the Cairns group expanded (to include Bolivia and South Africa) and, in a modification of their single-minded pursuit of liberalisation in the Uruguay Round, did not stress its differences with developing countries which want to protect parts of their agriculture.

What started to emerge in Seattle and has been informally formalised since is an extension of the old India-Brazil leadership, now including also Egypt, Nigeria, and South Africa. (The East and South East Asian countries remain outside, although the Thai Director-General Designate has supported some of the group's positions.) All were in the inner negotiations (the Green Room) with the developed countries in Seattle. All are among the middle-sized developing countries which would be expected not only to have trading interests, but the strength to pursue them. All have a common interest in continuing liberalisation in the WTO context, although with very different (and potentially opposed) interests in particular elements of the negotiation. Their interests are also in some respects very different from those of the smaller economies (where trade is a much more important part of the economy) so that they are not seen as (although they may see themselves as) leaders of the full old developing country alignment. All could be seen as leaders of regional groups: MERCOSUR, Northern Africa, SAARC, ECOWAS, and SADC. Brazil and South Africa, at least, have acted informally as reporters-back to their groups in the WTO negotiations but it is not clear whether the smaller members of the groups accept their leadership. Other smaller or poorer countries have also emerged as frequent leaders in taking positions, chairing committees, etc.: Jamaica, Mauritius, Bangladesh.

With the potential new WTO issues, of investment, competition policy, labour, and the environment, there are new alliances, crossing developed and developing. On these (as on agriculture) the fact that the two principal trading powers, the EU and the US, are divided, gives the opportunity for other countries and their alliances to achieve objectives, although on the other subjects, this has not been by creating a third force (like the Cairns group), but by allying with one side (as on investment and labour).

At the same time, other groups have emerged: the regional free trade areas and customs unions at least inform each other of positions. Only the EU negotiates as one; the other customs unions (MERCOSUR, SACU, COMESA) would need to do so if tariff negotiations began, but do not need joint positions on services or rules.

The Caribbean has a Regional Negotiating Machinery, which has a small secretariat and funds to provide background data and studies on issues for negotiation. It is represented in Geneva (informally because it is not recognised by the WTO) and the countries work together to cover meetings and exchange information. This is the nearest (outside the EU) to a common negotiating body, but it operates slightly outside the trade ministries of the member countries, and is not formally under the regional trade organisation, CARICOM. The secretariat acts semi-independently: it is led by diplomats with reputations and experience, and it is largely funded by donor, not member country, funds. In November 2000, it was agreed that CARICOM should 'speak from a common brief which had been

regionally approved (RNM Newsletter, January 2001). Along with the decision in 1997 (Page Regions, 2000) that CARICOM should negotiate jointly in the FTAA, this represents a clear transition to seeing CARICOM as having external negotiating responsibilities, and may lead to a reorganisation of the relationship to RNM (where the secretariat is also changing its membership).

The African countries (all Africa, so cutting across the various regional trade and other groups) started to meet as the Africa group in the run-up to the Seattle meeting. They occasionally formulate joint positions (these were done in the preparations for the Seattle Ministerial and formally in the agriculture and services negotiations, as well as in September 2001 for Doha), but more often, like the Carribbeans, provide coverage of all WTO meetings (beyond the capacity of any but the largest developed country delegations acting alone), and share information. The Commonwealth Group has access to research and exchanges information. All these are ways of coping with negotiations, perhaps forms of mutual technical assistance, not substitutes for individual countries' participation in negotiations, because this cannot be done (except where countries have chosen to merge their external relations in a customs union). A group of Small Island Developing States have formed an informal group, identifying needs, if not pressing for special treatment. These informal groups (which are also found among developed countries, for example the Nordic group) exist along side, and apparently are not used by, the informal processes of consultation initiated by the major countries and the WTO itself.

The first significant break in developing country solidarity since the Uruguay Round came with opposition to the EU's proposal, in September 2000, to offer duty and quota free access for all products from Least Developed countries (EBA, Everything But Arms). This had been proposed as a development tool by the WTO in 1997, and endorsed by the EU, New Zealand and other developed countries, but at the time, the initiative was diverted into proposals for special aid (the Integrated Framework). Special trade treatment for some categories of developing had evolved since the early 1980s. It faced challenge in the context of the EU special arrangements for its associated countries, but, the Enabling Clause 1979 allowed discrimination in favour of Least Developed, and had been tacitly accepted by other developing countries, as not too much diversion, in a few commodities, for minor trading countries. The new proposal was challenged. It came after the EU had proposed to change its relations with the ACP countries from preferences to contractual, reciprocal relations, so that the contrast between the need to avoid, or compensate for, trade diversion in regional agreements and the acceptance of it in preferences was particularly striking. The EBA preferences also implicitly revived and accepted the 'old' model of trade negotiations: developed countries decided and developing adapted. This could survive into the current model of developing country participation, but only if the disadvantages to those suffering diversion were small or the countries hurt were weak. But the number and range of countries affected by such diversion is now sufficient for them to consider themselves a strong group. Other Latin Americans had been hurt by special treatment for the Andean; now sugar producers and some very poor, but not Least Developed, African countries, plus India, expected to be disadvantaged by the Least Developed proposal. This is a group that includes two of the traditional leaders, India and Brazil, some of the newly active: Jamaica, Mauritius, Zimbabwe, and a significant number of members of some of the new pressure groups: small islands, small countries. Those affected by the EU action have so far confined themselves to public protests and pressure (although public protest at assistance for other developing countries is itself very unusual), but Brazil challenged, under the WTO disputes procedure, the preferences given to the Andean countries by the EU, and received compensating concessions. On the other side, the Least Developed countries formed their own group in January 2001.

## Preparations for Doha

In the procedures to try to reduce acrimony and start the preparations for another ministerial (in 2001, the required biennial meeting), the first procedure followed was 'informal' (in the WTO sense) consultations: the Director General and leading delegates consulted outside the framework of official meetings 'individual members or groups of Members', with some rules of procedure laid down by those consulting: to give an opportunity for all to express their views (Bridges 18 July 2000), but no formal process to record or count the views. The outcome was a discussion paper by the Chair of the General Council (the Norwegian Ambassador) (WTO news 31 October 2000), but no proposals for reform. At the same time, formal procedures were started for agriculture and services (where negotiations had been mandated by the Uruguay Agreement), asking countries to put in proposals and responses. The latter processes came to an end in early 2001, and 'informal processes' to prepare for the ministerial resumed. There was an 'informal' General Council, open to all, and a review by the General Council in July, but also a series of smaller meetings to the first of which the EU and Japan invited about 20 other leading delegations (selected by the organisers) (EC Trade Directorate 28 March 2001). Although invited, India and Egypt opposed the procedure of informal meetings (Bridges Newsletter 15 March 2001).

Informal meetings, which have become increasingly important in the WTO, are not minuted (South Centre 2000), and therefore unlike official meetings cannot be followed without actual presence or a system, which has become semi-formal within some groups of countries, of receiving reports from those who are present. In the regional negotiations in which most of the members are also engaged, while there are of course informal meetings, the regular meetings, scheduled in advance, prepared for, and minuted, have a much more central role (see e.g. Devlin 2000).

In 2001, preparation intensified, and there was much more than in the pre-Seattle period. Some of this was a return to the long and comprehensive preparation seen in the pre-Uruguay Round period (compared to the truncated Seattle process). There were, however, two other explanations: a determination not to repeat Seattle (because of the systemic risk to the WTO of a second failure to agree) and a deliberate attempt to include, and be seen to include, developing country interests.

The 'informal' consultations continued, and two successive competent chairs of the General Council were able to engage and be trusted by most of the delegations. This led to drafts of the Doha ministerial declaration (on the chair's authority) which were formally opposed by some (developed and developing) delegations, but which identified consensus where it existed, and made clear the remaining elements of disagreement. The process of formally submitting country positions carried on, although the WTO (WTO 2002) has now explicitly said that this was discouraged and that it preferred 'bottom up attempts to reach agreement'. While these had the advantage of avoiding too many fixed positions, from which it might be difficult to retreat, they had the disadvantage of putting all the weight on the skill of the chair. The combination of good chairs and the general will to avoid failure meant that the system did not break down in the preparatory period, and the developing countries felt that their opinions had been taken into account, even if not sufficiently. Neither of these, however, could be relied on in a future negotiation, so that the system remains weak.

Under the provisions of the Uruguay Round, negotiations had been started on agriculture and services in 2000, these may have contributed to greater contacts and familiarity with issues and positions.

As well as these processes in Geneva, during the period from June to September 2001 developing countries had meetings, in regions, for example SADC and COMESA; in broader areas, e.g. Africa, and

in other types of group: all developing, the Least Developed, AOSIS (small islands). Each of these produced a position paper, some of which were formally submitted in the WTO process, while others were widely circulated among governments. As in the pre-Seattle period, some of these were sponsored by donors (notably UNCTAD, but also some bilateral). While on many subjects, the documents show similar priorities (and identical wording), on some policies they differ, indicating that in 2001 there was a greater contribution by individual country interests than in 1999. These, together with the positions of individual countries (which again combined the regional positions with specifically national interests) did not play a direct role in the negotiations, but their content was reflected in the Ministerial Statement.

The positions were different from most of those prepared pre-Seattle, or in previous negotiations, in including not only the traditional developing country issues (agriculture, non-tariff barriers, tariff discrimination and escalation), plus opposition to the new 'developed country issues' (inclusion of investment, competition policy, labour), but also new subjects for the agenda. Some of these reflected problems from previous negotiations: notably the need to have a more formal commitment to technical assistance to meet new requirements, but others were attempts to extend the agenda in areas of interest to developing countries (as developed countries had done with intellectual property in the Uruguay Round). Developing countries' new issues included: the importance of infrastructure for trade, linkages between debt and trade and the nature of commodity markets. This illustrates that they were not prepared to accept that they could only respond to (or block) initiatives by others.

Their definition of the important development issues for the Round were not confined to those suggested by those developed countries who took the position of wanting a 'development round'. These centred around the role of liberalising trade in development and technical assistance. Even on intellectual property, as well as the issues identified from outside as development issues: access to medicines, patents, they were interested in, for example, protecting indigenous knowledge and securing the right to protect their own products by restrictions on geographical indications (the protection obtained for alcoholic products in the Uruguay Round).

These positions and the way in which they were taken and advocated indicated much more familiarity with the issues and with the WTO processes than in the previous round.

## **Outcome of Doha, and developing countries' role**

The key issue for most countries was agriculture. Negotiations on this had been in process since 2000, but with little expectation of success without a further ministerial initiative. There was a general alliance (going well beyond the Cairns Group, and including on some issues the US) against the EU's efforts to protect its regime of subsidies and to obtain recognition that agriculture could be aided for social and environmental purposes ('multifunctionality'). On this, there was formal victory ('we commit ourselves to comprehensive negotiations aimed at:...reductions of, with a view to phasing out, all forms of export subsidies', WTO Ministerial 2001), although including this on the agenda does not guarantee progress, much less achievement, during the current Round. The divisions among developing countries, not only between importers and exporters, but those with various forms of special access (quota holders, least developed countries, those in preferential arrangements) and those without, as well as between those wanting an EU-style recognition that agriculture could be at least in part exempt from normal trade rules (for development reasons: the 'development box' proposal) and those wanting a freer market started to surface in some of the pre-round papers, but were not important at Doha. The broad support for the anti-subsidy position precludes defining this as a developing country achievement, but the developing

countries were a visible part of the alliance, and the concessions given in return were in some of the areas in which they had strong positions.

The declaration did accept that special and differential treatment should be 'an integral part' of the agricultural negotiations and agreements, and this phrasing recurs in other parts of the Statement. This could represent a shift back to the pre-Uruguay position: that there is a permanent need for some types of special treatment, in contrast to the Uruguay emphasis on similar, but smaller or more delayed obligations. Doha also extended the times for Least Developed to comply with subsidy and intellectual property rules. These were both important parts of developing country positions, and strongly opposed in the initial discussions of implementation between Seattle and Doha, so their relatively easy achievement at Doha is a result of the informal negotiations and, presumably, the assessment that these were a necessary part of any bargain.

On non-agricultural tariffs, the agenda specifically mentions peaks and escalation and the 'special needs and interests of developing and least-developed participants' and 'less than full reciprocity', meeting the positions of developing countries. This paragraph also contains (like several others) a commitment to technical assistance, and there is an additional separate section on it. Mentions were present in the Uruguay Round agreements, but there may be a slightly more specific character now. In tariffs, specifically, it is for 'appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations'. The section on technology transfer has specific proposals to increase funding

On services, the Uruguay Round negotiations and offers were done in the face of considerable ignorance about the nature of liberalisation and very inadequate data. The experience of five years of operating under GATS, plus the negotiations which had already started in 2000, meant that there was much increased knowledge of both the effects of liberalisation and, within countries, what restrictions their industries want and what they suffer from in other countries. There was therefore greater confidence and precision in offers and positions, in the negotiations and at Doha. In addition, this issue did not come to Doha with the pressures behind it that characterised it in the Uruguay Round or that still apply to agriculture. Agreement was reached to continue on the basis already started, with early deadlines for making requests and offers (2002 and March 2003). In one area, however, where there seemed signs of progress, developing countries may face new obstacles because of external events: there had been some acceptance of their case for greater freedom for labour to move, temporarily, to provide services outside their countries. Security and other considerations may now increase opposition to this.

An area of controversy on services that remains is what is seen by developing countries as a commitment dating from the Uruguay Round that the Secretariat should make a formal assessment of the effects of the initial GATS agreements. It has not done this, although it has published descriptions of some sectors. This was strongly pressed by developing countries in early positions, but the issue seems to be fading, perhaps partly because countries have more confidence in their own assessments and judgements. On other areas of 'implementation': the argument that developed countries had not fully completed their obligations from the Uruguay Round, and the developing countries need more time to meet theirs, there was no general outcome: on some areas, as noted, countries were given more time, and the implication was that there would be considerable sympathy for continued requests for case-by-case concessions, but there were no general or permanent exemptions from rules as had been requested. There was a prominent, but vague, section on 'implementation' in the Declaration. This and the failure to find a way of making firm, contractual commitments on technical assistance seem a defeat for developing country objectives, but it is not obvious that they were pressing them strongly by the time of the ministerial meeting. This could be either because they had determined that they would fail or because they had decided to concentrate on more specific issues. Lack of achievement may therefore

be the result of not trying, rather than inability to achieve.

On intellectual property: the headline developing country issue, of developing country rights to allow production of drugs for serious illnesses, in spite of any patent protection, there was an apparent victory.

This is not entirely clear-cut: the attempt by Canada to obtain access to a drug in the period immediately before the conference and general concern about germ warfare had made it less of an exclusively developing country issue, and the agreement did not make clear whether countries could import cheap drugs, if they could not themselves produce them, but the issue was seen on both sides as a developing-developed one, and remained controversial until the meeting.

There were some victories on rules: the US, which had opposed any reform of the anti-dumping rules agreed to include them on the agenda. Some developed countries joined the attack on the US, and some developing countries may not welcome restriction of the ability to use this tool, but this was another issue pressed by almost all the joint and national developing country positions, and one which the Latin American countries had been trying to win against the US in the Free Trade Area of the Americas negotiations. Unsuccessful there, they were more successful in alliance with other developing and some developed countries.

The ACP countries and the EU had been seeking since March 2000 a special extension of their preferential access to the EU until different agreements can be negotiated. Normally this would not be Ministerial Conference business, but they used the general wish to obtain a consensus to press it, and it was approved during the meeting. There was also a provision in the statement that the rules on regions should be clarified and 'take into account the developmental aspects of regional trade agreements' which could make it easier to negotiate the proposed new, reciprocal arrangements between the EU and ACP regions.

Whether the wording reached on the new developed country issues: investment, competition policy, government procurement, and trade facilitation, is a victory for the developed countries: 'negotiations will take place after the Fifth Session of the Ministerial Conference' (i.e.. after 2003) or for the developing: this will be 'on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations' is not yet clear. The Chair, but not all delegations, interpreted this to mean that the negotiations might not take place; some delegations, but not the WTO, interpreted 'explicit consensus' to mean something stronger than the normal 'consensus'. It certainly represents a further shift in the direction of the presumption on whether they should be negotiations: now there would need to be an explicit decision against, rather than one for. It goes further than many countries wanted, but goes more slowly (some developing countries took the position that they agreed that negotiations would eventually be necessary, but not yet), and goes less far than the EU wanted. It was the 'payment' that the EU required for getting 'phasing out' of subsidies on agriculture.

In these new issues, as well, there is a recognition of the 'special..needs of developing and least developed countries..integral part of any framework'. But this is less than had been tentatively floated by the EU before Doha, when it foresaw the possibility of some countries choosing when to join.

On the environment, there was a stronger defeat for the developing: negotiations will start on the relationship between the WTO and multilateral environment agreements. Although the provision mentions countries which are not members of the environmental agreements, it does not provide for how they will participate in the negotiations, and negotiations can start already on environmental labelling requirements, seen by developing countries as potentially protection.

Of the new developing country issues, only debt appeared in the statement: a new working group on 'the relationship between trade, debt and finance'. This can be considered either a way of avoiding the issue or, on the model of the working groups on investment and competition policy, a first step to formal negotiations. But it is important as a new issue brought to the table entirely by developing countries, and therefore a clear shift to more than a purely reactive and blocking role.

One procedural problem, and *de facto* defeat, for developing countries is the crowded and demanding timetable. The negotiations have a target of 3 years, but with many intermediate targets in 2002 and 2003, including those referred to the next Ministerial. They therefore face the old problems of inadequate negotiating capacity. It is clearly impossible, even if the commitments to improve capacity are kept, for these to have an effect by June 2002 (the first deadline).

On a couple of issues, there were examples of small, weak countries using the procedures successfully to obtain very specific national interests: the Dominican Republic (the rules on free trade zones) and Ecuador (bananas) got their concessions because the general interest in consensus made the 'costs' worth bearing. Of the larger countries, Brazil worked mainly with others (for example with Mexico and Canada against the US on anti-dumping), while India took a strong leadership role on investment (even securing the reinterpretation of the words by the Chair), but its position was essentially one of opposing proposals, not presenting initiatives of its own. Both strategies 'worked' in the context of the meeting; it is not clear what will work in the future. Of the alliances, the common characteristic groups seem to have been more active and more effective than the regions: the least developed secured a range of special mentions, and avoided any expressions of opposition to special treatment for them; the small economies got a 'work programme to examine issues': this is even weaker than a working group, but is more than the non-small developing or most developed wanted to concede to them a year earlier. There was little evidence and no symbolic achievement suggesting active work by a formally established regional group among developing countries. (Some major regions, like MERCOSUR and NAFTA, did not even send observers, see table 1.) The Africa Group, however, which includes a range of regions with different negotiating positions, was effective in mobilising support for the developing countries own issues, notably debt. In the period of preparations, there had been differing views of whether the regional group or the interest group (notably that of least developed countries) should be taken as the principal negotiating tools. As in the Uruguay Round, the groups and countries with clear agendas of their own were perceived to be more successful than those who seemed only to be blocking.

The participation can be considered to have been reasonably effective (given that small, weak countries, will never be able to take control of the process from the larger countries). They were successful on their declared priorities (agriculture, other tariffs, intellectual property), achieved some own-initiatives, and are not, yet, defeated on the developed country new issues. They were extensively, even effusively, praised by the other delegations after the meeting. Some of this may be the continuation of the 'confidence building' efforts, and some reflects an assumption that any participation by developing countries is so surprising as to be praiseworthy, but some is real, and developing countries have not expressed the same resentment and disillusionment as after Seattle or in the years after the Uruguay Round. Unlike at Seattle, there was no protest that developing countries were not being heard, so the presumption must be that this was a deliberate choice of priorities. Countries tailor their objectives to what they think they can achieve so failure to achieve all the objectives, combined with success in some, suggests that developing countries do have some ability to influence the outcome of negotiations. The procedures remained informal: groups were set up on the major issues, but the principal negotiations were informal, led by informally chosen 'friends of the chair'. This worked better than in Seattle, but not for institutional, automatically replicable, reasons. The people were better chosen; the chair was less confrontational and not from a major trader (the custom of giving this role to the host country

remained); there was a conscious effort to be seen to be including developing countries (the normal response, of avoiding the errors of the previous event).

The more important question is what they will achieve in the negotiations.

## **The nature of delegations**

If we accept that power relations do not determine the outcomes, and that bargaining can be effective, the role of strong individuals with good experience, possibly gained through postings at first junior, then senior level can make a difference even if they are from weak countries.<sup>8</sup> Experienced, long-serving and respected leaders of delegations are chosen as chairs of WTO committees, giving them not only formal presence in all meetings, but the informal opportunity to steer negotiations. The Brazilian delegation has been led by experienced ambassadors, of recognised ability: one is now Director General of UNCTAD; others in the cabinet. Small countries can have strong representation. Mauritius also benefits from continuity, and has ambassadors with experience who are chosen as chairs of WTO committees. Tanzania provided the chair of the General Council in the Ministerial meeting in Seattle and he remains (2001) in Geneva. Providing a few good negotiators is possible with limited resources. But with the exception of a few countries, these countries do not have as strong a support structure in their countries as the major countries, and without well studied positions to put forward, these negotiators are only semi-effective, and in the absence of direction from national policy, they can take their own positions (Rege 1999, p. 51). India and Brazil have a depth of experience and long service in Geneva (or other major trading missions like Washington) in the supporting members of their delegation. For Mauritius, in contrast, Geneva is one of only 13 posts, although it has a strong representation there. Zimbabwe has two officials in Geneva concentrating on trade, with two others active in it. Jamaica, however, although it has not only the current ambassador, who has chaired the committee on development, but a previous ambassador based in Geneva, does not have strong support.

The experienced developing country delegations, like those of developed countries, recognise the need to coordinate their members, and direct them at individual negotiators, whether in multilateral meetings or bilateral consultations. The inexperienced may not do this, so that size is not sufficient measure of effectiveness.

With an unlimited number of potential WTO meetings to attend (official, official-informal, bilateral contacts), and a large range of other organisations with their own meetings in Geneva, all countries have to choose their priorities, so that the view that there are too many meetings for a small delegation to manage is simplistic: there are ‘too many’ for any delegation to cover. One distinction which most countries try to make is between their representation to the WTO (perhaps combined with UNCTAD) and their representation to all the other missions in Geneva, implying that the WTO is seen as an essential area of responsibility, which should not have to compete on a day-to-day basis with other interests. Some do this though completely separate missions, including some developing countries: Egypt, India, some Latin American and Asian (Blackhurst 1999). The US has separate missions; the EU is only competent in trade, and thus only has a WTO mission. For missions with small numbers, perhaps 1-2 in total, this is not practical, but even these nearly all designate at least one official to the WTO. (The fact that the Swiss government provides financial support for Least Developed country missions to the WTO may make separate missions a luxury for any Least Developed countries.) Ability

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<sup>8</sup>‘Costa Rica was regularly getting into the Green Room before Seattle because their Ambassador is good.’ Eglin in House of Lords 2000 p. 167.

to allocate resources efficiently is required within the negotiating process as well as in deciding what to allocate to negotiations. The informal groups can spread the benefits of strong ambassadors, and help with coverage of meetings and acquiring information, but they are not a substitute for research and analytic capacity plus experience within a delegation.

Countries have a variety of ways of coordinating between negotiators and home governments. Where geography (and funding) permit, these include interchange of personnel (an advantage for Europe and north Africa). There is often a combination of representation by the lead department and the others (often agriculture), but formal mechanisms of permanent contact are necessary. What must be achieved is continuing monitoring by the Geneva mission of international issues with national implications, and referring these back to the capital, and, by the capital, monitoring of national issues with international implications, referring these to Geneva, and careful coordination to ensure that none is forgotten.

The nature and number of delegates to the Seattle and Doha Ministerial meetings gives some indication of countries' interests and strengths, although there many influences on this (and the lists published by the WTO are not completely accurate) (Tables 1, 2). While it is obvious that the developed countries have larger delegations than the developing (even discounting the large number from the US who registered when it was in Seattle), there are striking anomalies. Japan, although normally taking a defensive rather than an initiating position, has the leading number (unless the EU delegations are grouped). Particularly in 2001, the small African countries had larger delegations for their size than many Latin American and Caribbean countries, and even within Africa the East African countries tended to have much larger than the southern (except South Africa) or western (except Nigeria)<sup>9</sup>. Many of their regions (COMESA, ECOWAS, SADC, OAU) also sent observers. These, particularly those that show increases, suggest that these countries were making a deliberate effort to increase their participation, whether spurred by greater interests or by pressure from their private sectors, or even encouraged by assistance to 'trade capacity'.

The information on non-government affiliations is not always clear, but suggests that, except in Latin America, there is a serious attempt to include other interests in delegations. Of the case country studies, Bolivia and Guyana followed the Latin American model, with none; Zimbabwe had one from the commercial farmer sector in each year (in spite of the domestic conflicts over agriculture), but none from other sectors, although some of these are at least as important as in some of the better represented African countries.

## 9. Capacity to Negotiate

### Identification of interests

In the pre-Doha period, in parallel with the regional and other group positions, individual countries had a process of position forming, with consultation of a range of government interests and private sectors, often through trade working groups (e.g. Malawi) or ad hoc meetings (e.g. Tanzania). These also led to position papers, either for submission to the WTO (see appendix) or simply to guide the country negotiators. Both these and the regional meetings allowed a much wider participation and more informed policy formation than in previous rounds. But in the regional or other groupings and in the

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<sup>9</sup> That East African were also relatively numerous in Seattle suggests that this is not simply a result of distance and costs.

more inexperienced countries, these were still treated more as a research or consultation exercise than like formal policy-making. In some cases, there was direct interest group lobbying and political discussion as well, but an important function of the meetings remained exchanging views and information. Countries effectively were starting the process of building a policy-making system, as well as using it.

In order to be able to provide the country interest input to negotiations, and avoid having positions set by default by other major negotiators, countries need effective mechanisms to agree development objectives and research the implications of these for trade policy. Developing countries face the usual problems of lack of resources, but also the lack of an equivalent for governments of the information flow about 'best practice' that markets provide for the private sector.

Countries need to have a clear economic strategy, and a way of translating this into trade policy. Mechanisms are needed in each country to ensure that all government departments involved in any of the areas now or potentially under international negotiation are aware of the issues, and that there is a coordinating mechanism (committee; centralised information) which will not only achieve the initial task of coordination, but provide a continuing process of adapting national positions and responses to new issues. Those involved include not only trade, foreign affairs, and customs, but (and this is not an exhaustive list) finance (revenue impacts of reduced tariffs), agriculture and industry (strategies to identify and take advantage of new opportunities emerging from trade negotiations and to assist the adjustment of sectors adversely affected), transport, communications, etc. (trade in services), law (intellectual property, competition policy, regulation of services), health or safety (standards, environmental concerns). Depending on the structure of national government, the group may include levels below the national if regulation, economic policy or purchases are at state or local level.

There is some debate about what the most effective way of forming national government positions across trade, finance, and foreign policy is, with some countries concentrating this function in a single strong ministry, while the traditional developed country model has been inter-departmental coordination (although this is a spectrum, not a sharp division). And if there is a ministry, which should it be? There is a wide variety both in how policy is directed within governments and in the extent of consultation between public and private sectors. This is an area where it may be difficult to tell from outside where the real contacts and decision making are located, and for developing countries it is an area where there is little empirical study. The different arrangements in developed countries suggest that country characteristics and history will be an important determinant; there may however be some common characteristics of successful models.

The formal leadership on trade may be located in a trade ministry, the external affairs ministry, finance, or sometimes a special commission. The conventional model (Blackhurst 2000) is a trade ministry, and some of the most effective developing countries use the conventional trade ministry approach (South Africa); but some major negotiators like Brazil and Mauritius, and some new participants like Estonia (Feldmann, Sally 2001) have placed it in the Foreign Ministry<sup>10</sup>, and Hong Kong, in Finance. Removing trade policy from a purely economic ministry could reflect a view that there are non-sectoral national interests to be protected; trade ministries are (or are believed to be) more open to capture by economic interests. But it could also stem from the reality that it is in foreign ministries that can be found a tradition of long term experience in international negotiations. If there is adequate information on the specific matters for negotiation, such a ministry may be more effective. Clearly, some of the differences

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10 Fears that using the external affairs ministry could weaken participation because of 'its limited understanding of economic issues and its limited interaction with major domestic trade policy stakeholders' (Blackhurst, et al 2000 495) therefore seem surprising.

could be explained by size of country: for Mauritius to have only one ministry dealing with the rest of the world may allow economies for a small country. This explanation, however, would not apply to Brazil. There, a very long tradition of expertise in the foreign ministry was applied to economic interests when Brazil switched to an external economic strategy.

There is the possibility that inter-departmental rivalries will prevent effective cooperation (Rege 1999 p. 52), but this is probably not a special risk for trade policy. If it does happen, the lead ministry, like the delegation to the WTO, may have or take discretion to set policy without control. Whether this is good depends on a view of whether countries should be presenting some aggregate interests or taking a government position above interests, and on the motives of the lead ministry.

Where governments are weak, with problems of corruption or lack of competence, or where there are serious past problems of training and education, the departments dealing with trade may share these characteristics. There is some reason *a priori* to believe that trade (or other external) ministries may have some advantages: they are more likely to be exposed to other countries' structures and experiences (trade negotiators meet trade negotiators<sup>11</sup>) and the WTO has an internship programme for trade officials. These mechanisms are much more limited than those for finance ministries and reserve banks (from the World Bank and the IMF), but probably better than for many other ministries. The lead trade ministry will also have the experience of WTO Trade Policy Reviews, which require a complete picture of policies affecting trade to be collected (once every six years for developing countries, less for Least Developed). In some cases these have led to the introduction of continuing coordinating mechanisms. (See Hess 2001 and Bojanic 2001 Trade for detailed descriptions of how trade policy can be organised and coordinated.)

Regular channels of communication with the private sector need to be established and maintained to ensure that sectoral views inform the negotiations. This must now be a permanent, not *ad hoc* process. Countries need to find ways of identifying the groups whose interests are affected by and (much more difficult) potentially affected by trade. In the developed and more experienced developing countries, there are economic interest groups and in some cases large individual companies with their own resources to identify where their interests may be affected, and lobby. In Mauritius, the sugar producers finance their own permanent representative: in Brussels, but dealing also with the WTO. Some of the new participating countries have industrial and other groups, with different forms of relation with government bodies, but others need to develop them. In regional arrangements like MERCOSUR, there is experience of governments encouraging such groups to develop, to provide balance to the corresponding groups in other countries. There are also cross-country groups, for example for business and for some commodities. As was noted in the previous section, some countries developed committees of government, business, agriculture, labour, and NGOs to provide support in regional negotiations or to respond to WTO Trade Policy Reviews. It is probably best to rely where possible on existing organisations (industrial federations or exporters' groups, for example) because these should already have means for gathering opinions from their members and transmitting information back to them. The problem (as was seen in developed countries when they first entered into services negotiations in the Uruguay Round) is that those sectors which have not previously been able to trade may have much to gain, but are least likely to realise the need to join a 'trade forum'. Partly for this reason, but also because the regulatory and services side of the WTO now affects almost all parts of the economy, any such group must actively seek all major sectors in the country.

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11 One South African negotiator suggested this was a potential gain from negotiating with the EU: >Whether or not we concluded the Agreement, this would be a useful process after the many years of isolation. The European Union(EU) is a world player and therefore a case study for trade students all over the world.- (Smalberger in Bertelsmann-Scott, p.47)

The increasing use of commodity – (or service – or subject – ) specific negotiations has brought an increased direct input from specialists, from other branches of government and from the private sector. In developing countries as well as developed, even well-prepared officials feel less confident in negotiating on these than on conventional trade measures like tariffs. Some regional negotiations (SADC and FTAA, for example) have provision for private participation in sectoral sessions or working groups. Environmental negotiations have gone further both in using specialists from other government departments and in accepting private participation (see Richards 2001). Such increased participation certainly improves information. It may, however, lead to greater weight being given to sectoral interests. Countries need to find a balance between the strengths of specialisation by topic and those of specialisation in negotiations and international institutions.

The question of whether NGOs should be among the interests to be involved has no general answer. In some countries, they are important participants in policy formation and in the economy (Bangladesh for example), with significant national legitimacy. In others, they are largely financed by donors (Kilby in Stiles 2000), and countries need to choose whether they add to the formation of a national position. In countries with no tradition of any non-government involvement (and little government experience), the move to include NGOs is accepted as part of the general process of mobilising all groups with information or views to contribute.

The NGOs, along with industrial or agricultural interests, were accepted as participants in the preparations, and in some cases the delegations, for Seattle (table 1). Most countries include some delegates who were not in the central government,<sup>12</sup> but the most common additions were parliamentarians (13 developed countries; 8 developing) and business representatives (12 and 14). At least 7 developed and 6 developing had identifiable NGO representation, of which 4 were African countries, supporting the evidence that new participants were more open.

In countries with longer traditions of participation (including the developed), acceptance of NGOs was more hesitant, because it required a change in procedure. And in some developing, there was no active NGO sector to involve.

## **Africa as a special case?**

African countries remain those with the least active participation, although the conspicuous role of the African Group before and at Doha suggests that they are joining the participants. Thirteen countries are still not represented in Geneva, and there is a need for special support by the WTO secretariat for the Africa Group. One reason is that many are poor (the non-poor, Mauritius and South Africa, are active), but some of the poor are among the leaders: Tanzania, and many of the poor countries in other continents, for example India and Bangladesh, are active. Some are small, but the smallest (Mauritius) has a mission, and four with populations around 10 million do not. Most African countries have a tradition (discussed in Solignac-Lecomte, 2001) of close and special trade links with the EU. With their major market providing not only free access, but special assistance for some of their exports in the form of the meat and sugar protocols, it is perhaps not surprising that they have concentrated their efforts on this relationship. But the Caribbean countries, who are equally dependent, have long been active in the WTO, as well as in negotiations with the EU, with the US, and, more recently, with some of the Latin America countries (a major allocation of their resources to trade negotiations). A survey showing that a third of African bureaucrats believed ‘that economic policy is formulated outside the country,

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12 The delegates list does not always give the affiliation of delegates, listing some as ‘observers’ or ‘delegates’, and some were added at the time of the meeting, too late for the list.

particularly by the Bretton Woods institutions' (Court et al 1999) provides another possible explanation for slow moves to negotiate: that these countries have adopted one of the pessimistic, deterministic views of policy formation, at least for aid-dependent states. (A much higher proportion of Latin American and Asian respondents claimed to initiate policies.) More encouragingly, they do, in general, think that cooperation with the private sector has increased, so that this may provide a basis for policy initiation in the future. Within the Africa Group at the WTO, the usual countries are active: Egypt, South Africa, Mauritius, Zimbabwe, but that in itself is now provoking participation by others: to avoid having their countries' positions determined by these leaders. In Seattle, Tanzania chaired the General Council and it was active in Doha, as was Zambia.

## **Assistance to developing countries**

The analysis of what countries need in order to negotiate effectively suggests that assistance could be helpful both at the final stage, of negotiating and applying decisions, and at the more basic one of formulating and understanding the role of trade policy in economic strategy. Both require resources, expertise, and information. In the last three years there has been increasing donor interest in helping countries in trade policy. This can be explained as identification of a new need or activity in developing countries, which requires a donor response: the growing participation in negotiations and the costs of implementation mean that 'infrastructure' to negotiate is now added to the other areas of government spending to support. But trade support is not an immediately obvious contributor to the growing emphasis on reducing poverty as a donor target (although there are connections: see Page, 2001). In systemic terms, improving countries' ability to participate may lead to a more efficient outcome to negotiations (although at the cost of some advantages to the powerful negotiators) or may help to make the outcomes more legitimate. The inclusion of trade policy and negotiations in the scope of aid, however, also provides a direct reminder of the donors' financial power to those who both depend on and negotiate against the developed countries. The principal focus has been on the final stage, negotiation, although developing country practitioners (Mannan in House of Commons 2000, p. xxii, comments by WTO officials and delegates) stress the need for training and institution-building at country level.

The World Bank had planned to repeat both the information compilation and the analysis of effects which it had done in the Uruguay Round for a new Seattle Round. As it was planned from 1998, to be implemented in 1999-2000, it would have been more timely than the Uruguay Round assistance. Like that, however, it was to be done principally by 'international specialists': it was designed by the Bank, 'WTO representatives, prospective partner institutions, World Bank Staff...and numerous academic experts' (Hoekman, Martin 1999, pp. 8-9), to be passed on to developing countries to apply. Only at this stage would developing country experts (not apparently developing country governments or economic interest groups) be involved. It was, in fact, seen as 'capacity building' in research, as well as assistance in preparation for the negotiations. It thus took for granted that the aims of countries could be identified from outside, presumably from principles of national economic welfare, and thus took a very specific approach to international negotiations and the political economy of policy formation. There was no distinction in the approach between research by 'international experts', international institutions like the Bank and UNCTAD, and national researchers, with all assumed to be offering equivalent guidance to national policy.

The WTO is much smaller as an international secretariat than the other multilateral organisations, and unlike them has always been claimed to be 'member driven', so that it lacks a mandate to intervene directly to support the negotiating positions of developing countries and the capacity to offer major

support. Unlike the financial organisations, it does not take positions on policy and support countries which accept these. It offers courses for trade officials, normally near the beginning of their careers. There is now an additional programme, financed by the Netherlands, providing for about five internships a year in the WTO: officials are treated as Secretariat officials for 6–24 months (and may not be recruited by the Secretariat immediately after).

On specialised issues, such as Sanitary and Phyto-Sanitary and Technical Barriers to Trade, the WTO provides additional technical information and compilations of information for developing countries. It organises regional and national workshops (it appears that concentrated national workshops, involving both public and private sectors, and dealing with specific national concerns are more effective, again supporting the need for strengthening in-country back-up to negotiators). It can provide financial assistance for country experts to attend seminars in Geneva, and schedules these to allow them to attend negotiating meetings. This gives supplementary numbers and expertise for small national missions and also increases awareness in the capital of international issues.

Countries, particularly through missions in Geneva, can ask the WTO or UNCTAD to prepare technical studies of issues of interest to them. Although both organisations are resource-constrained, they are required to respond to members' requests when feasible. Countries which are aware of and use this facility therefore have an advantage.

The Legal Advisory Centre (formally established in December 1999, expected to be operational some time in 2001) will provide both legal advice and training in legal issues relevant to the WTO, with the possibilities of internships. On this, as on technical issues, both legal and non-legal officials and members of missions stressed the importance of building up national expertise. Hiring international lawyers, as some developing countries have had to do to take or defend cases in the disputes mechanism, could only be a supplement, not a substitute.

The Trade Policy Review Mechanism was designed to inform other countries about each member's trade policy (and for that reason is most frequent, every 2 years, for the largest countries with most impact on the rest of the world, and least frequent for the smallest, every 6 years, or less often), but in practice it has been used, first almost by accident, now as a matter of deliberate policy by the Trade Policy Review Division of the WTO, to improve the structure for national coordination of trade policy. At a minimum, the information which must be compiled, jointly by the country and the WTO Secretariat, on trade policy, trade flows, tariff policies and revenue, investment and regional incentives, intellectual property, technical standards, and all the other areas of WTO competence, is a useful background for negotiators. In many cases, it has led to recognition by countries of the extent to which trade policy crosses ministerial boundaries, and public-private divisions. A common model to deal with the Review is an inter-ministerial committee, supplemented by public-private workshops or committees. These can then continue, with appropriate modification, to follow implementation and negotiations, and to take on responsibilities in regional as well as multilateral negotiations.

Proposed reforms of the TPRM would acknowledge its importance to the country being reviewed, not only to its trading partners, and switch some resources from re-reviewing large countries to re-reviewing countries which are developing their trade policies and institutional structures or encourage direct exchange of experience among countries under review (at present, this depends on informal contacts). Mozambique was reviewed in 2000 and Malawi will be reviewed in 2001, and for both the WTO encourages them to use the opportunity to review their trade structure, with effectively 'free' technical assistance from the WTO TPR officials.

The WTO provides secretariat support for the Africa and Least Developed groups.

All these WTO initiatives, however, apply only outside negotiations. In the negotiating procedure itself, there is no special assistance, technical or financial, for inexperienced or small delegations (WTO finance is not normally made available to attend meetings as this would be considered too close to policy intervention), so that there is no attempt to secure an efficient outcome of the bargaining process by providing effective bargaining capacity to all participants.

UNCTAD has a long tradition of providing support and background research on trade for developing countries, and was active in formulating positions for pre-Seattle initiatives like that of the G-77 and in supporting the Least Developed pre-Doha. Here the risk has been that it has provided advice on the basis of its assessment of developing countries' interest, and emphasised group solidarity, not assisted them in formulating their own positions.

The Commercial Diplomacy branch of the Division on International Trade is able to provide assistance on regional as well as multilateral trade negotiations, and locates its role as in the transition from background studies to using these in negotiations. It thus offers training in negotiating techniques but only tied to specific issues and negotiations. It can help missions by providing background on specific issues, or can offer more general information and training in capitals (including to the private sector) to create interest and awareness, and develop a trade policy strategy. Formally, it acts on request from countries, but donors or UNCTAD can make suggestions.

Some of the other international organisations, such as the World Customs Organisation, World Intellectual Property Organisation, or International Textiles and Clothing Bureau offer information, about technical standards and negotiators.

Under the arrangements for negotiating the Free Trade Area of the Americas, the Organization of American States, Interamerican Development Bank and UN Economic Commission for Latin America and the Caribbean were given the responsibility of building up a data bank and also providing technical support in negotiations for all countries, but particularly for the smaller without their own resources. This is taken to include support in all negotiations, and therefore potentially in multilateral. Common support need not imply common regional positions in multilateral negotiations: positions may differ (few regions have all their members or none of their members in the Cairns group, for example), but it can meet the need for information about the proposals on the table and current trade and trade policy data. Its work is based on requests from governments (or joint agencies like the Caribbean Regional Negotiating Machinery). Although some of the 'requests' are probably stimulated from the providers, it is at least in principle more responsive and less directing than the World Bank approach. The OAU has collaborated with the UN Economic Commission for Africa, UNCTAD and the ACP Secretariat to commission research and discussion of agricultural issues in the negotiations with the EU, and provides assistance, workshops, and information for the Africa group.

Bilateral donors are moving into support. Direct assistance by donors is, however, increasingly recognised to be a sensitive area, where the commercial interests of countries (which are themselves major participants in trade negotiations) may be in conflict with the development objective of building up the negotiating strength of 'the opposition', and in some cases there will be particular sectoral interests: should countries be encouraged to develop and obtain trade access in sectors in which they compete against the donor? should they be encouraged to form alliances which will negotiate opposite the donor? And if donors help countries to develop their negotiating positions or finance delegates to attend meetings, they may obtain the unfair advantage of knowing their positions in advance or may

influence the composition of the delegation. Countries which enter into international negotiations have of course already effectively accepted the legitimacy of international constraint on what they do, but only in the context of a negotiated agreement. For this reason, the simultaneous existence of trade negotiations, trade preferences, and aid relationships between the same set of countries requires sensitivity, even if it proves impossible to avoid contradictory relationships.<sup>13</sup>

The European Commission has assisted countries to identify trading interests since the mid-1990s, and has a major programme of assistance for its associated countries to negotiate with it under the Cotonou agreement. In both, however, it, like the World Bank, fails to recognise the possibility of a conflict of interest. All documents are open to the Commission (and some primarily for the Commission), and workshops to discuss interests and negotiating positions and strategy are attended by the Commission.

Other donors, like DFID, recognise the problem, and may provide funding for independent assistance, monitored by the aid agency but not fully available to it. In contrast to the WTO's refusal to fund attendance at formal meetings, it does fund both delegates and trade ministries. USAID had started programmes to create capacity in government and in industrial organisations in Central America and West and Southern Africa, with some successful efforts to creating continuing institutions in Central America (Fox 1999).<sup>14</sup> It is easy to identify potential pressure points in the donor-trade policy relationship: in policy: offering preferences in exchange for support; in aid: threatening withdrawal if recipients oppose the donor; in direct assistance: aid to take policies approved by the donor. But the existence of these threats itself suggests that negotiations, even with the 'weak', are taken sufficiently seriously by the 'strong' powers to be worth threatening. Although the potentially difficult relationship with donors might explain the poor performance of Africa in negotiations, the fact that donor trade assistance has not had this effect elsewhere weakens this explanation.

The Commonwealth Secretariat working for governments, but without negotiating roles or interests of its own, provides less suspect assistance, both in general advice and by providing an adviser in Geneva for WTO issues.

An academic institution, the Foundation for International Environmental Law and Development, at SOAS in London, has also been involved in policy-making capacity building, but also in guiding countries towards some common 'good' policies. There are a range of NGOs in Geneva providing information (as well as taking positions). The most useful include ICTSD, South Centre, and Quaker Peace and Service. The Third World Network can also be useful. Delegations in Geneva can receive their newsletters or background reports (some available also on email), and are invited to briefing meetings.

Where countries do not have clear objectives of their own, they are at risk of being pressured to support the views developed by their advisers, whether well-intentioned or not. In contrast where they have

<sup>13</sup> 'In the case of a legitimate government, how do we balance respect for state sovereignty with aid effectiveness? Both are based on moral arguments yet some measures to promote aid effectiveness clearly run afoul of respect for sovereignty' Kilby in Stiles 2000 p. 53.

<sup>14</sup> Fox even argues that 'donors may have over-invested in trade negotiations', citing the large number of agreements which the Central American countries have negotiated. p. 28

programmes of their own, the availability of expert legal, economic, or specialised advice can help them to participate more equally in international negotiations. To use these effectively, they need their own specialist capacity: in the issues which are significant for them and in the legal area which is central to all WTO business.

**Table 1: WTO Delegates - 1999 and 2001**





	industry 2001	agriculture 2001	union 2001	consumer 2001	NGO 2001	parliament 2001	local gov 2001	observers 2001	Consultants 2001	Total 2001	Total 1999
Jordan										4	obs 25
Kuwait										8	11
Oman										8	obs 5
Qatar										38	7
UAE	0					4				30	20
MIDDLE EAST	0	0	0	0	0	4	0	0	0	100	73
Australia	3	5			1	2				44	29
Canada	1	4			5	8	9			62	60
Japan										159	189
EC						24				56	87
Austria		1			1	1				17	25
Belgium						2			1	32	46
Denmark	2	1	2		2	7	4			43	48
Finland	1	1	1			2				23	31
France						13			1	75	63
Germany						9				43	41
Greece										16	21
Ireland		1			3				2	22	17
Italy	4	3			6	7				47	56
Luxembourg										8	11
Netherlands	1	1	1		1	5	1			31	27
Portugal										12	27
Spain										22	20
Sweden	2		2			2			2	21	25
UK	1		1		1					35	38
EU total										503	583
Iceland										5	8
Liechtenstein										2	2
New Zealand	1	1	1		1	2				33	25
Norway	1		1		1					20	29
Switzerland										21	21
US										51	181
DEVELOPED	17	18	9	0	22	84	14	0	6	900	1127







	industry 2001	agriculture 2001	union 2001	consumer 2001	NGO 2001	parliament 2001	local gov 2001	observers 2001	Consultants 2001	Total 2001	Total 1999
ILO									1	7	
IMF									4	7	
ISO									1	1	
jITU										1	
ITC									7	5	
Islamic Dvlpt Bank									5	6	
UNAIDS									1	1	
LA Fisheries									1	1	
Office Epizooties									1		
Francophonie									1	2	
OECD									6	7	
Islamic Conf									3	4	
South Centre									6	2	
UNCTAD									7	9	
UNDP									4	3	
ESCAP									1	2	
ESCWA									1	1	
ECA									2	3	
ECE										2	
ECLA										1	
UNEP									4		
UNIDO									1		
UNITAR									1		
UNU										2	
World Bank									13	16	
WCO									1	2	
WHO									3	7	
WIPO									1	4	
WToO,									1	1	
CARICOM	special mention in Guyana delegation: 1 each CARICOM and RNM (Bernal listed here and Jamaica) in 2001									96	118
										2471	2728

Grynb erg: Com Sec and Solomon Islands in 2001

Mchumu Tanzania and OAU in 2001

industry 2001	agriculture 2001	union 2001	consumer 2001	NGO 2001	parliament 2001	local gov 2001	observers 2001	Consultants 2001	Total 2001	Total 1999
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Source: WTO (2001) List of Representatives, Ministerial Conference WT/Min(01)/INF/15

WTO (1999) Provisional List of Representatives Ministerial Conference WT/Min(99)/INF/8

**Table 2: Non-ministerial delegates to Seattle Ministerial Conference**

	Industry	Agriculture	Union	Consumer	NGO	Parliament	Local gov	Observers'
Argentina			2			4	2	
Barbados	1		2					
Brazil						8		
Dom Rep								6
Peru								2
Trin & Tob	1				1			
Uruguay						4		
Bangladesh	7					3		
Fiji		1						
India	8							
Indonesia	4							
Korea					6	5		
Kuwait								2 press
Philippines		2	1			8		
UAE	2							
Cameroon	1	1						
Egypt	2							
Kenya	3	1			1			
Malawi	1							
Mauritius	4	2						
Morocco	4	1						
Namibia							1	
Senegal	2				1	3		
South Africa	4	1	4		2	2		
Uganda				1	2			
Zimbabwe		1						
Australia	6	1				1		
Canada	9		2		3	10	16	
EC						13		13
Finland	1	3	1		1			
Austria	2	1	1					
Belgium						5		3
Denmark	3	2	2		3	12	6	
France	1	1				16		
Germany		3				5		
Greece						2		1
Ireland							2	
Italy	5	3	3		1	6		
Netherlands	1	1	1		1	5		
Sweden	4		1			2		
UK	1		1		1			
New Zealand						1		
Norway	1	1	1		1			
Poland	1		1	1				
US						89	7	

CARICOM special mention in Guyana delegation

SADC special mention in Tanzania delegation

Source: WTO (1999) Provisional List of Representatives, Ministerial Conference WT/Min(99)/INF/8

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## APPENDIX

### **Appendix 1 - Statement by Dr John Abu, OAU/AEC, Seattle, 2 December 1999**

The following is the text of a statement by Dr John Abu MP, Minister of Trade and Industry of the Republic of Ghana and 1<sup>st</sup> Vice-President of the OAU/AEC Ministerial Committee on Trade, on behalf of African Ministers of Trade.

Released by the Organization of African Unity in Geneva (OAU), Seattle, USA, December 1999.

We, the Ministers of Trade of Member States of the Organization of African Unity / African Economic Community (OAU/AEC), wish to express our disappointment and disagreement with the way in which the negotiations are being conducted at this Third WTO Ministerial Conference.

There is no transparency in the proceedings and African countries are being marginalised and generally excluded on issues of vital importance for our peoples and their future. 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.

We reject the approach that is being employed and we must point out that under the present circumstances, we will not be able to join the consensus required to meet the objectives of this Ministerial Conference. We therefore expect that our concerns as consistently articulated by African counties in separate statements to be adequately addressed.

We therefore urge the chairperson of the conference to address the concerns expressed by many members to ensure that we reach consensus required to meet the objectives of the Ministerial Conference.

## **Appendix 2: WTO paper, Preparations for the 4<sup>th</sup> Session of the Ministerial Conference: Communication from Malawi**

**WORLD TRADE**

**WT/GC/W/451**

11 October 2001

**ORGANIZATION**

(01-4987)

**General Council**

Original: English

### **PREPARATIONS FOR THE FOURTH SESSION OF THE MINISTERIAL CONFERENCE**

#### Issues and Proposals for the Fourth WTO Ministerial Conference

#### *Communication from Malawi*

The following communication, dated 3 October 2001, has been received from the Ministry of Commerce and Industry of Malawi.

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#### **1. The Need to Focus on Development**

1.1 Malawi believes that no new Round should be started until there has been full implementation of the agreements concluded in the last Round, and an evaluation of their effects done.

1.2 It is Malawi's view like many developing countries that the rules and disciplines that emerge from the negotiations should support efforts for strengthening supply capacities; provide flexibility in the use of appropriate policy instruments to enhance the process of structural transformation of the economies of developing countries; improve market access for products of export interest to them; and have a developmental agenda. Unless these questions are resolved, it does not believe that further negotiations on new areas should be initiated.

1.3 Malawi today, just like other least developed countries faces severe trade and economic problems, including external debt, decline in commodity prices, weak competitiveness, supply side constraints, weak institutional and human capacity, all of which affect her export earnings and balance of payment position. Regrettably, these issues are not being covered under the WTO framework, and there is no coordination with initiatives such as the UN's proposals on a new financial architecture.

1.4 Malawi, therefore, proposes that development issues should be given priority.

Its five priorities are:

1.4.1 Assistance to develop infrastructure for trade, in particular inter linkages in the transport system to overcome the problem of being landlocked. Further, multinational and regional financial organizations and bilateral and multilateral donors should give special attention to the building of infrastructure to enhance the attractiveness of LDC economies to foreign investors;

1.4.2. Further debt relief to release funds to develop supply capacities to meet new market access. In this respect, Malawi welcomes the HIPC initiative, which will go along way in helping Malawi use the resources for social and economic (productive) development;

- 1.4.3. Examination of the structure of commodity markets and the resulting low prices;
- 1.4.4. Establishing permanent institutions to facilitate technology transfer; and.

1.4.5. Establishment of a trust fund to ensure that developing countries have sufficient finance to meet the costs of implementing WTO agreements and other international obligations

1.5 After considering the problems of implementation, this submission addresses the following issues considered crucial to Malawi:

- Market access for agricultural exports;
- Services;
- Intellectual property protection;
- Market access conditions for manufactures for least developed countries;
- Rules for anti-dumping actions and safeguards;
- Barriers to trade caused by Sanitary and Phytosanitary measures and Technical Barriers to Trade;
- Trade related investment measures;
- The relationship between trade and environment regulations;
- Reforms needed in the way the WTO works; and
- Needs for technical assistance.

## **2. Implementation Issues**

2.1 Malawi is concerned that developed countries have not fully complied, in letter and spirit, with the agreements made in the Uruguay Round to provide Special and Differential Treatment (S&D) to all developing countries, and especially the least developed, or to provide technical assistance to them to meet their obligations under the WTO agreement and to take advantage of the new opportunities which that agreement created. It therefore asks that a system of review and evaluation be established to consider:

- Implementation of S&D Treatment;
- Progress on technical assistance, in particular the IF and JITAP programme; and
- The impact of the agreements on least developed countries.

2.2 The provision of S&D Treatment in the WTO Agreement was a recognition of the special situation facing developing countries, and LDCs in particular, regarding their capacity to implement the Agreement and take advantage of trade opportunities arising from the Uruguay Round Agreements.

2.3 The developing and least developed countries, including Malawi, need effective and implementable S&D provisions due to low levels of industrialization, high cost of capital, lack of adequate technology, inadequate infrastructure, lack of skilled manpower, balance-of-payments problems, and high dependence on primary products for export.

2.3 Unfortunately, since the entry into force of the WTO agreements, most of the developed countries have not honoured their commitments to the S&D provisions. As a result, developing countries and least developed countries have not achieved desired access to the markets of developed countries..

2.4 Malawi, therefore, proposes the following:

- The provisions for S&D treatment under the various WTO agreements should be operationalized;

- S&D provisions that are general in nature should be translated into more specific terms;
- S&D provisions should be made a permanent feature in the WTO Agreement; and
- Developed countries should be effectively committed to the implementation of the Special and Differential Treatment provisions of the WTO especially in areas of technical assistance and transfer of technology.

2.5 Malawi also has some more specific concerns:

Malawi, still faces difficulties in implementing the Uruguay Round Agreements. The difficulties faced are primarily attributed to weak and inadequate institutional capacity of the local implementing agencies.

2.6 The constraints which Malawi faces relating to implementation include the following:

2.6.1 Notification requirements:

Since the coming into force of the WTO agreements, Malawi has experienced difficulties in meeting the notification obligations. The notifications are numerous, and in some cases complex.

Malawi therefore proposes that:

- The questionnaires and formats be simplified; and
- All least developed countries should be exempted from notifying certain types of ad-hoc measures.

2.6.2 Alignment of national laws, rules and regulations to WTO requirements:

Member countries are called upon to align their national laws, rules and regulations to WTO requirements. Owing to weak institutional capacity and financial constraints, it has been difficult for Malawi to implement the requirements. Further, certain Agreements mandate the establishment of national institutions, which are a strain on the financial and administrative resource of the country.

In this regard, Malawi, proposes that:

- Transitional periods for compliance should be further extended for least developed countries; and
- technical assistance should be provided to build capacities to draft new legislation and establish institutions to administer new laws and regulations.

2.6.3 Agreement on Customs Valuation

Customs Valuation plays a crucial role given the relative dependence on customs duties as a source of most LDCs' government revenue. This holds specially true when it is considered that most

least developed countries have already reduced their nominal tariffs following structural adjustment programmes.

Malawi, therefore, proposes that:

- The implementation phase of the Agreement and its possible impact on revenue and the capacity of national customs authorities to administer it should be further examined; and
- The transitional period provided for in Article XX of the Agreement should be extended in order to allow LDCs to acquire the necessary technical assistance and expertise to implement the agreement.

#### 2.6.3 Dispute Settlement

While recognizing that the Uruguay Round has made a significant improvement on the efficiency of dispute settlement, least developed countries have not been able to utilize the mechanism largely due to their lack of financial resources and legal expertise associated with dispute settlement procedures. Notwithstanding this connection, Malawi welcomes the coming into being of the legal advisory centre independent of the WTO Framework, which will provide free services to LDCs.

Malawi, however, proposes that:

- An organ be established to monitor and enforce the implementation of the provisions in favour of LDCs, under the Dispute Settlement Mechanism; this organ should be funded from the WTO regular budget and housed in the WTO secretariat building.
- The Legal Advisory Centre should be able to advise on and assist in the adoption of domestic laws and measures.

For many of these implementation issues, Malawi will require technical and financial assistance.

### **3. Market Access for Agricultural Exports**

3.1 The current negotiations on agriculture and trade in services are mandated under the Built-In Agenda of the Agreement on Agriculture and Agreement on Trade in Services. The TRIPs Agreement also has its own built-in agenda in the form of reviews of specific provisions

3.2 Agriculture is the mainstay of Malawi's economy. Food security and the maintenance of agriculture-based livelihoods are the major development goals for least developed countries. The market access of agricultural products from least developed countries continues to be adversely affected because of the following:

- the lack of specific disciplines with regard to the implementation of tariff rate quotas which stifle market access opportunities;
- the continued application of subsidies by developed countries resulting in market distortions;
- existence of high import duties, tariff peaks and tariff escalation; and
- prevalence of non-tariff barriers e.g. SPS and TBT measures.

3.3 Notwithstanding these limitations, Malawi shares the objectives of:

- Maintaining and improving market access;
- Improving her food security and protection of the environment; and

- Addressing difficulties caused by complex technical requirements such as SPS and TBT.

3.4 It is well known that the on-going negotiations on Agriculture essentially dwell on the substantial reduction of the high tariff levels and domestic support (subsidies) making the sector more liberalized, removal of market distorting export subsidies and bringing meaningful disciplines in agriculture trade.

3.5 For Agricultural negotiations, Malawi, therefore, proposes that:

- existing quotas should be increased and bound at minimal levels, with the ultimate goal of duty free access for all agricultural products, including those in processed form exported by least developed countries;
- all least developed countries should maintain their exemption from undertaking commitments on domestic support and export subsidies;
- the Agreement on Agriculture should be reviewed to increase flexibility in the use by developing countries of the de minimis measures;
- the regulation of export subsidies should be revised to prevent subsidies with harmful effects on other countries' trade, while allowing those necessary to support the food consumption of poor people;
- financial assistance to LDCs be geared to catalyse optimal agricultural production, to assist them to increase local food production and capacity in marketing, storage and distribution and assist them to meet rising food requirements and the associated high food import costs;
- removal of export subsidies by developed countries;
- reduction of tariffs and removal of tariff peaks and tariff escalations by developed countries, for example those on cigarettes, processed tea; and
- removal of non tariff barriers and the use of barriers such as SPS and TBT for protectionist purposes in agriculture trade.

#### **4. The General Agreement on Trade in Service (GATS)**

4.1 Malawi takes note of the WTO adoption on 28th March 2001 of the guidelines and procedures for the multilateral negotiations on trade in services. According to the guidelines, there will be no prior exclusion of any service sector or mode of supply. However, special attention will be paid to sectors and modes of supply of export interest to member countries.

4.2 Under Services, Malawi proposes that:

- the Special and Differential Treatment Measures accorded to LDCs, in particular the right to regulate service sectors to meet national development policy objectives be retained;
- least developed countries have been encouraged to endeavour to strategically liberalize those services geared towards their national development policy objectives. Malawi has significantly liberalised its financial sector, but assistance is required in sequencing any liberalisation and undertaking further liberalisation;
- Malawi would also like other members to liberalise in the priority sectors such as transportation, and tourism;

- it proposes that a code be established to regulate the conditions of transit trade, under which countries would be required to offer national treatment to transit traffic;
- there is need to preserve the architecture of the GATS and to pursue the effective implementation of the provisions in favour of developing countries, notably Articles IV and XIX;
- as proposed in the last Round, a safeguard mechanism should be introduced into the GATS; and
- liberalisation of movement of natural persons under mode 4 should be given due attention.

## **5. The Agreement on Trade – Related Aspects of Intellectual Property Rights (TRIPS)**

5.1 The TRIPS Agreement contains shortcomings unfavourable to least developed countries' interests. These include:

- non-recognition of the rights of local communities to their traditional and indigenous knowledge which may lead to unjustified patenting of their knowledge and of biological resources by foreign corporations;
- inadequate transitional periods i.e. limited periods of time are given to least-developed countries for the implementation of the TRIPS Agreement;
- the scope of Article 23 of the TRIPS Agreement on the protection of geographical indications being limited to wines and spirits which are products of special interest to developed countries in particular European countries;
- lack of commitment to implement all the provisions dealing with transfer of technology to least developed countries in particular Article 66.2 of TRIPS; and
- problem of access to essential medicines as for instance demonstrated by Brazil's and South Africa's cases on AIDS-related drugs.

5.2 It is, therefore, proposed that :

- under the review of Article 27.3, which provides for patentability of life forms, there should be a formal clarification that naturally occurring plants, animals, biological processes for the production of plants, animals and their parts must not be patentable;
- A provision should be incorporated to the effect that patents must not be granted without the prior informed consent of the country of origin. Further, patents inconsistent with article 15 of the Convention on Biological Diversity which recognizes the sovereign rights of States over their natural resources and further states that access to genetic resources should be subjected to prior informed consent of the contracting party providing such resources, must not be granted ;
- transitional periods for least developed countries should be extended to match their capacity to implement and benefit from the TRIPS Agreement based upon an assessment of technological capacity of LDCs;
- the common understanding that no provision of the TRIPS Agreement should prohibit members from taking measures to provide access to essential medicines at affordable prices and promote public health and nutrition should be confirmed through a ministerial declaration;

- essential drugs for example those for malaria, tuberculosis, HIV AIDS should be excluded from patentability;
- Members must retain the option to select their sui generis system for plant variety protection, including recognising traditional knowledge, traditional medicine and the rights of farmers to use, save and exchange seeds; and
- on geographical indications, the protection should be extended to other products than wines and spirits. Among those which are important for Malawi are: tobacco, coffee, tea, fish.

## **6. Market Access Conditions for Manufactures for Least Developed Countries**

### **6.1 Special arrangements for least developed countries**

Market access issues continue to pre-occupy many least developed countries. The initiative to improve market access for LDCs was first contained in the 1996 Singapore Ministerial Declaration by which WTO Members agreed to a Plan of Action in favour of LDCs. Among the stated objectives of this initiative, was that of taking positive measures, for example, to provide duty free market access on an autonomous basis, for products of LDCs and thus aiming at their overall capacity to respond to the opportunities offered by the multilateral trading system.

While recent initiatives have been undertaken by the major trading partners in favour of LDCs such as the Everything But Arms (EBA) and the African Growth Opportunity Act (AGOA), nonetheless, much more needs to be done in areas of non-tariff barriers such as sanitary and phytosanitary measures, technical standards, rules of origin, anti-dumping activities etc.

The position of Malawi on market access therefore includes the following elements:

- developed countries should provide bound duty-free, quota preferences on all products of export interest to least developed countries;
- developed countries should reduce and remove tariffs, tariff peaks and tariff escalations on all products particularly those from LDCs;
- duty-free treatment should be provided to all products of export interest to least developed countries; and
  - all forms of unnecessarily restrictive non-tariff barriers should be removed, for instance unjustifiable packaging requirements, obstructive use of import permits, foreign exchange constraints.

### **6.2 The Agreement on Textiles and Clothing**

Malawi considers that market access for textile and clothing is crucial for employment creation, foreign exchange generation and the creation of a window for industrialization.

Malawi, therefore, proposes that:

- Quota free access of LDC textiles and clothing exports be provided under special preferential trading arrangements.

### **6.3 Rules of origin**

Strict, complex, and varying rules of origin are a major barrier to trade to Malawi and to other least developed countries with a high share of exports under preferential and regional agreements. Malawi therefore shares the concern of other countries that the Committee to harmonise non-preferential rules of origin has not completed its work programme within the time frame set in the agreement because of some of the following reasons:

- the complexity and amount of technical work; and
- lack of common understanding among members as to the future disciplines to “equally apply” the harmonized rules of origin for “all purpose”. etc..

Considering that rules of origin have a bearing on market access, Malawi proposes that

- the above issues should be re-looked at with speed in order to achieve harmonisation and simplification of the rules of origin and documentation procedures;
- the Committee should complete its work and be authorised to start consideration of preferential rules of origin, with a view to setting a code for rules of origin that take regional trade agreements into account. For instance, based on the COMESA rules of origin; and
- the rules of origin on textiles and clothing should be harmonised and simplified to ensure effective and full utilisation of preferences.

## **7. Anti-Dumping, Safeguards and the Agreement on Subsidies**

### **7.1      Anti-dumping**

The Agreement on Anti-Dumping is complex and costly to use, and can be misused to amount to harassment of exporters. The process of initiation and application is very burdensome. Least developed countries are neither able to defend their industries against dumped imports nor able to protect their legitimate interests of their exporters. However, anti-dumping is an important instrument that can be used by least developed countries as they liberalize and participate more in the international trading system.

The following proposals are, therefore, advanced:

- the process of investigation on dumping which is expensive, complex and cumbersome should be simplified to enable least developed countries to undertake thorough investigations;
- LDC exports, in particular textiles and clothing, should be exempted from anti-dumping measures;
- the level of negligible imports should be increased to a level higher than the current 3% on the basis of empirical research demonstrating a positive trade impact;
- the cumulation of suppliers that individually meet the negligibility criteria using the 7% rule should be eliminated;
- questionnaires should be simplified, focusing only on necessary information; and
- consideration should be given to the preparation of a standard questionnaire.

### **7.2      Agreements on Safeguards Measures**

Just like the Agreement on Anti-dumping, the process of investigation for, and the procedure involved in the initiation of a safeguard action are very complex and technical. However, with the liberalization of the import regime, LDCs may find themselves more frequently in situations where they may need to use safeguard action themselves.

In this regard, Malawi proposes that:

- LDCs should be exempted from all safeguard actions.

### 7.3 Agreement on Subsidies and Countervailing Measures

Malawi recognizes that subsidies can play an important role in the economic development programme of least developed countries. However, many of these countries do not possess the financial resources to subsidise.

While subsidies commonly used by developed countries (e.g. subsidies on Environmental Protection) have been categorized as non-actionable those subsidies that are needed by developing and least developed countries for industrialization and development (such as cheaper provision of finance for investment and working capital) have either been prohibited or made actionable.

In this regard, Malawi proposes the following:

- Non-actionable categories of subsidies should be reviewed to include those subsidies for development, diversification and upgrading of infant industries, which are needed and are commonly used by least developed countries;
- Export subsidies applied by least developed countries should be exempted from export competitiveness thresholds; and
- The de-minimis subsidy level for countervailing duty investigation should be increased from 2% to 15% for developing countries' exports.

## 8. Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade

### 8.1 SPS measures.

SPS measures have to a larger extent constituted major barriers to agricultural exports from least developed countries. LDCs' exports to developed country markets have often faced various sanitary and phytosanitary measures that have constituted market access constraints and trade barriers. Worse still, some of these measures have been applied unilaterally.

Malawi, therefore, proposes that:

- the provision given in Article 10 of the SPS Agreement which stipulates that “developed countries should take account of the special needs of the developing countries in the preparation and application of the sanitary and phytosanitary measures” should be made more concrete by committing developed countries to provide technical assistance to LDCs; and
- Members should adhere to the SPS Agreement by avoiding unilateral measures.

### 8.2 TBT

Malawi recognizes that the TBT Agreement has a significant potential in ensuring that technical regulations, standards, guidelines and procedures of conformity assessment do not create

unnecessary obstacles to international trade. However, there are certain issues which are of concern to least developed countries, including Malawi. These include:

- TBT measures that are related to Process and Production Methods (PPMs);
- inadequate capacity of LDCs to effectively participate in the preparation of international standard making process; and
- limited technical know-how to improve product quality of major export markets. In this regard, Malawi proposes that:
- Interests of LDC should be taken into account by international and regional standardisation bodies in preparing standards, guidelines and recommendations; and
- Participation of LDCs in international standard setting bodies should be enhanced.

### 8.3 General

Any new SPS standards or TBTs, which impose costs on least developed countries should be conditional on provision of technical assistance by developed countries or international agencies to enable them to comply.

## **9. The Agreement on Trade-Related Investment Measures (TRIMs)**

9.1 Trade-related investment measures (TRIMs) continue to be an important policy tool for strengthening LDCs production and export supply base. Malawi does not maintain any of the prohibited trade-related investment measures as defined in the illustrative list annexed to the Agreement.

9.2 Malawi however, proposes that the time for compliance for least developed countries should be extended for an additional 10 years. When the Agreement on TRIMs comes up for review, investment friendly measures favourable for LDCs should be incorporated.

## **10. The New Issues of Environment, Competition Policy, Labour Standards, Investment, and Electronic Commerce**

10.1 Malawi just like other least-developed countries is concerned about the inclusion of new issues in the future negotiations. Currently, the existing issues have not been fully understood and implemented. It is, therefore, important that more studies and exploratory work be done on the new issues before positions are undertaken.

### **10.1.1 Trade and Environment.**

Malawi is a keen advocate of environmental conservation, and recognises the right of countries to protect themselves from the risks which can be posed by new plants or processes. It encourages the regulation of environmental concerns through multilateral environmental agreements. However, Malawi objects to any move to use environmental measures as a barrier to trade, and supports the requirement that any measures taken by individual countries do not discriminate between national production and imports of the same product.

Malawi's view is that before going further and "mainstreaming" environment into the WTO, more analytical work should be done.

In this regard, Malawi proposes that:

- environmental circumstances should never be used for protectionist purposes against LDCs' products; and
- more studies should be done on the relationship between trade and environment, and trade and development and also on trade, environment and poverty.

#### **10.1.2 Trade and Competition Policy**

Malawi recognises that restrictive business practices may impede the realization of the benefits that could arise from the implementation of WTO Agreements. Further, Malawi is of the view that restrictive business practices particularly those restraining competition should be removed. However, the benefits of competition policy are more likely to be realized in the context of sufficient supply capacity. This is lacking in Malawi and most LDCs. Prevalence of market imperfection, in particular with reference to market entry and exit and supply-side constraints make it difficult for LDCs to enjoy the benefits of competition policy. Least developed countries also lack capacity to enforce competition law and policy. The relationship between competition policy and economic development is a complex one.

Malawi proposes that:

- analytical work on trade and competition policy at WTO should continue.

#### **10.1.3 Trade and Labour Standards**

The subject of labour standards is not on the WTO's formal agenda, but seems very much on the negotiating agenda for many developed country members. Malawi re-affirms the position taken at the Singapore Ministerial conference that Labour issues are the mandate of the International Labour Organisation (ILO).

#### **10.1.4 Trade and Investment**

It is well known that a working Group was established at the Singapore Ministerial Conference to examine the relationship between trade and investment. The Group has not yet.

completed its work. In this regard, Malawi proposes that the group should continue its study process and that the outcome should contribute to facilitating investment flows to least developed countries.

#### **10.1.5 Electronic Commerce**

The growing importance of Electronic Commerce in global trade led to the Ministerial Declaration on global Electronic Commerce in May, 1998. Although Malawi has not fully developed the capacity to effectively participate in e-commerce, there is need to consider E-Commerce issues in relation to the economic, financial and development implications and therefore, there should be a careful evaluation of any proposals before bringing in these issues into the WTO mainstream agenda.

### **11. Reforms to the WTO System**

11.1 Malawi believes that the WTO needs to review the way in which the WTO operates to make participation easier for developing countries and to increase transparency. The staffing and resource constraints of developing and least developed countries should be taken into account in setting the number and timing of, and in calling, meetings of the WTO.

11.2 The WTO Secretariat and Director General should be de facto and de jure neutral in preparing for possible negotiations. This will be in the spirit of Article IV(4) of the Marrakesh Agreement Establishing the

World Trade Organization.

## **12. Capacity Building and Technical Assistance**

12.1 Malawi attaches a lot of importance on technical assistance provided under the various WTO agreements. Further, Malawi welcomes the Integrated Initiatives for Trade-Related Technical Assistance which was adopted at a High Level Meeting (HLM) in October, 1997 pursuant to the decision taken at the WTO First Ministerial Conference in Singapore in 1996. The initiative provides a coherent framework of cooperation among least developed countries and the six core agencies namely, the World Bank, IMF, WTO, UNCTAD, UNDP and ITC.

12.2 Capacity building is at the core of needs from least developed countries in their effort to fully and effectively integrate into the world economy and the multilateral trading system and should therefore be at the core of the WTO multilateral agreements, taking into account full participation by local authorities as well as mainstreaming trade into the poverty reduction strategies.

12.3 Malawi proposes that more technical assistance should be targeted at least developed countries to support the following areas:

### **12.3.1 Implementation**

Technical assistance be provided in setting-up administrative reporting systems in LDCs to administer notification obligations. Information points should be established with external finance in each least developed country to give full information about both WTO requirements and sources of technical assistance for help in complying.

- financial and technical assistance be provided to least developed countries to develop their institutional capacities and align their national laws and regulations to WTO requirements;
- the Integrated Framework for Trade Related Technical Assistance in favour of LDCs should be implemented expeditiously with transparency in the selection of beneficiary countries ; and.
- the JITAP programme should be extended to more developing countries, including Malawi.

### **12.3.2 Support for increasing trade capacity**

- More support should be provided to least developed countries as they develop and mainstream their trade policies into their national development agenda of poverty reduction;
- Negotiating capacities of LDCs should be strengthened as an essential element in integrating LDCs into the multilateral trading system; and
- Technical assistance and capacity-building programmes for LDCs should be provided in order to address supply-side constraints on taking advantage of new market opportunities, including development of transport and communications infrastructure, information technology, and other inputs to trade. They should have clear targets for deliverables and timetables.

### **12.3.3 Transfer of technology**

Least developed countries require permanent systems to encourage direct links between firms in developed and least developed countries to encourage transfer of technology. Supervision is required to ensure that the technology is modern and sustainable.

#### **12.3.4 Trade facilitation**

Malawi recognized the need to simplify trade procedures and further believed than it is important to harmonise trade facilitation procedures. In this regard, Malawi proposes that technical assistance aimed at increasing LDCs institutional capacity in terms of both infrastructure and human resources should be enhanced.

#### **12.3.5 TRIPS**

- The provisions of the TRIPS agreement under Articles 7, 8, and 66.2 which required specific assistance for transfer of technology should be implemented; and
- Financial and technical assistance should be provided to prepare compliant, but development-friendly laws for LDCs and equip the intellectual property offices of LDCs including long term training in accordance with national goals.

#### **12.3.6 Market access**

In view of worldwide liberalization of textiles, least developed countries should be provided with opportunities through special measures, which will enable them to withstand the increased competition arising from the implementation of the agreement.

#### **12.3.7 Anti-dumping and safeguards**

- Necessary financial and technical assistance should be provided to train exporters to understand dumping issues so as to minimize the risk of antidumping actions;
- Financial assistance should be provided to set-up or strengthen the institutions that handle or administer dumping issues; and.
- LDCs should be provided with technical and legal assistance for the initiation of safeguard actions.

#### **12.3.8 SPS and TBT**

- Technical assistance for SPS compliance should include, among other things, building-up capacity in the fields of accreditation and certification, provision of laboratory equipment and training of personnel; and
- Provision of technical assistance, such as technology transfer, establishment of laboratories, human resource development, building capacity in the fields of accreditation, standards, metrology and certification;

#### **12.3.9 Environment, competition**

- Financial assistance should be made available to facilitate conversion to environmental friendly production processes and methods;
  - There should be availability of relevant technology transfer which can be absorbed and adopted by least developed countries to enable more environmentally sound development; and
  - Financial and technical assistance should be made available to least developed countries to develop, implement, and enforce competition policy and legislation.
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