

# **TOWARDS FREE AND FAIR TRADE:** **A global public good perspective**

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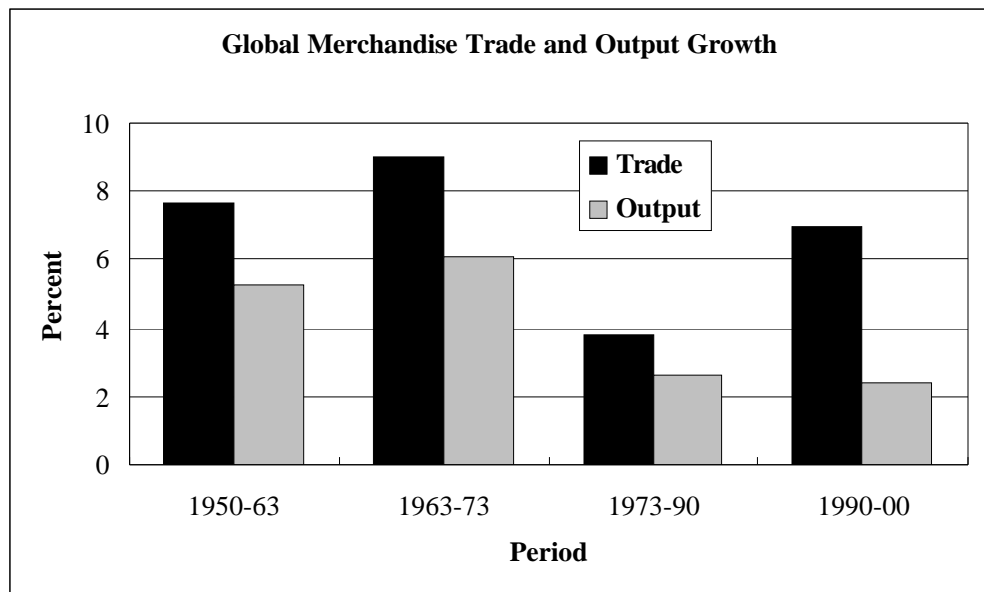
## OUTLINE OF THE PAPER

<b>SECTION:</b>	<b>PAGE:</b>
<b>Introduction</b>	<b>3</b>
<b>I. Balance in the trade regime</b>	<b>4</b>
<b>I.1 Free Trade</b>	<b>6</b>
<b>I.2 Fair Trade</b>	<b>7</b>
<b>II. Is there a balance?</b>	<b>9</b>
<b>II.1 Imbalances in the regime</b>	<b>10</b>
<b>II.1.1 The TRIPS Agreement</b>	<b>10</b>
<b>II.1.2 The Agreement on Textiles and Clothing</b>	<b>11</b>
<b>II.1.3 The Agreement on Agriculture</b>	
<b>II.2 Imbalances in the outcomes</b>	<b>13</b>
<b>II.2.1 Outcomes of specific agreements</b>	<b>13</b>
<b>II.2.2 Imbalances in trading patterns and vulnerability of developing countries</b>	<b>16</b>
<b>III. Reforms: Making the trade regime a GPG in form and substance</b>	<b>18</b>
<b>III.1 Rebalancing the “grand bargain”</b>	<b>19</b>
<b>III.2 A more balanced decision making process</b>	<b>20</b>
<b>III.2.1 More even bargaining!</b>	
<b>III.2.2 Even more bargaining?</b>	<b>22</b>
<b>III.3 More coherence with development</b>	<b>24</b>
<b>IV. Conclusion</b>	<b>26</b>
<b>Bibliography</b>	<b>27</b>

## Introduction

Less than 2 years away from the 5<sup>th</sup> WTO Ministerial to be held in Mexico in 2003, the multilateral trade regime today is at a crossroads. On the one hand, all recognize that expanded international trade potentially offers many benefits across countries, particularly those that seek to use it as a vehicle for growth and development. The facts bear this out: World Bank (2001) reports that trade has continued to expand for the world as a whole, 4.1% in 1999 and 13.5% in 2000, and for developing countries as well, 3.8% in 1999 and 19.2% in 2000.<sup>1</sup> Furthermore, the growth in global trade has continued to outstrip the growth in global output (see Figure 1). It is no surprise that development policy often includes expanded trade as its centerpiece.

**Figure 1**



Source: WTO International Trade Statistics 2001.

Yet, trade has also become a contentious issue in the anti-globalization movement that has grown towards the late 1990s. Social and economic tension due to the expansion of its reach and impact into all countries developed and developing alike, now prompts a reevaluation of the process that has increased the breadth and depth of the multilateral trade regime. Developing countries, in particular, need to re-assess their development prospects as they become more and more integrated into this regime. There seems to be inadequate attention given to whether and to what extent the trade regime has over-all coherence or consistency with the development goals of the countries it is intended to benefit, despite repeated policy statements by all member countries in the WTO to

<sup>1</sup> The same report predicts a significant dip in the growth in trade for 2001, with recovery in 2002 and 2003. See table 1.2, page 10.

construct a regime that promotes development.<sup>2</sup> A re-evaluation of the trade regime is therefore necessary; and this is the objective of this paper.

We contend that central to this re-evaluation is the need to view and fully develop the trade regime as a global public good (GPG). As a set of rules and institutions that facilitate trade, this regime displays the key public good characteristics of non-rivalry and non-excludability. And as with all public goods, it should, ideally, be beneficial in a balanced and fair manner to all parties utilizing and co-producing it. The GPG lens offers some new insights into the discussions on trade, which should prove useful in the new phase of negotiations after the Fourth Ministerial Conference at Doha (2001) and in the next WTO Ministerial in Mexico in 2003.

This paper will proceed as follows. Section I introduces the concept of a “balance” between more free trade and more fair trade, when the multilateral trade regime is examined as a GPG. Section II then elaborates on how the present trade regime appears imbalanced in terms of the trade agreements that partly constitute the regime, and consequently the trade outcome itself. Both quantitative and qualitative evidence in this section reveals that the trade regime is an underprovided and malprovided GPG. Section III describes reform strategies for the developing countries in order to bring more balance to the trade regime. Over and above discussing a rebalancing of the Uruguay Round as well as improving bargaining capacity for the developing countries, this section emphasizes the need for the trade regime to be more coherent with the development framework. Implementing a more integrated policy framework and generating more objective research are both crucial in this regard. The possibility of introducing “Rawlsian mechanisms” within the context of the trade regime is also discussed. The main messages are noted in the final section.

## **I. Balance in the trade regime**

The multilateral trade regime - often referred to as the World Trade Organization - is primarily composed of the various trade agreements that serve as the legal ground rules for much of international commerce today. It began in 1947 with 23 contracting parties for The Protocol of Provisional Application of the General Agreement on Tariffs and Trade (GATT).<sup>3</sup> If we consider GATT-1947 a club, then both club membership and club rules have changed dramatically since its inception. Eight successive rounds of trade negotiations have since increased both the scope of membership in the trade regime as well as the range of areas covered within its discipline. In particular, the last two rounds of negotiations, the Tokyo Round (1973-1979) and the Uruguay Round (1986-1994), signaled an unprecedented deepening of integration and harmonization of rules in the

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<sup>2</sup> “The multilateral trading system [...] has contributed significantly to economic growth, development and employment throughout the past fifty years. We are determined [...] to maintain the process of reform and liberalization of trade policies, thus ensuring that the system plays its full part in promoting recovery, growth and development.” (Page 1, Paragraph 1) Doha Ministerial Declaration, November 20, 2001.

[Source: [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)]

<sup>3</sup> GATT-1947 followed directly from the unsuccessful attempt to establish an international trade organization in the United Nations Conference on Trade and Employment, held in Havana, Cuba, in 1947.

multilateral trade regime, as opposed to the previous trade rounds which focused mainly on lowering tariff barriers. Among the key areas covered by in these two rounds were safeguards and the dispute settlement mechanism (in the Tokyo Round) and investments, services, and intellectual property rights (in the Uruguay Round). Most important, the WTO was launched as a consequence of the Uruguay Round, with the intention of possibly fostering further trade integration among a growing number of member countries. Today the WTO has 144 member countries, with at least 30 more planning to accede.

This expansion in membership as well as the increased coverage and depth of rules, make the trade regime a *de facto* global public good. That is, it has been made available to the global public through agreement among sovereign nations. To clarify, services provided by government(s) or public institutions can be considered public goods is so far as “they facilitate the conveniences of daily living and provide a measure of order and predictability to daily life” (Mendez 1992:p.58). The trade regime certainly fits this description, by lessening the probability of costly “trade wars” through mutually binding codes in the conduct of much of international trade. Seen as a system that builds on deeper integration within a shared rule-based framework, the trade regime also provides benefits across nations by restraining costly and inefficient protectionism, fostering cost-reducing scale economies in production and distribution of goods and services, and helping prevent *races to the bottom* (i.e. investment policy) that would otherwise have occurred from competitive pressures (Birdsall and Lawrence 1999).

As with most regimes, the trade regime is non-rival in nature and made non-excludable by policy choice. Countries increase the value of the rules that constitute this regime with more usage. By facilitating mutually beneficial trade, the regime manifests as a non-rival public good to any who choose to trade. As regards the concept of non-excludability, exclusion from the regime is undesirable because of increased gains due to more participants. Ultimately, more consumers and producers enhance the functioning of the international market system, as positive network externalities abound with more traders. Furthermore, it has also explicitly been a policy to expand membership in the multilateral trade regime - making it non-exclusive - given the significant emphasis that trade has been given in development policies among most, if not all, the developing countries as well as by international organizations like the World Bank and the International Monetary Fund.<sup>4</sup>

It is therefore appropriate to view the trade regime from the GPG lens, in order to properly evaluate the adequacy and nature of its provision. More free trade under an expanding trade regime is ideal because it would increase global output when more countries specialize. Yet the benefits created from increased trade are often heavily concentrated within the developed countries that already enjoy a wide lead in both the

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<sup>4</sup> There are several nuances here. First, within the WTO’s 144 member countries, the impact of this regime’s rules and processes are definitely non-rival and non-excludable. The broader impact of the regime on global trade patterns is also, arguably, non-rival and non-excludable for all countries, both members and non-members alike. However, membership in the WTO is still excludable, though made less exclusive as more countries accede.

firm-level capacity to compete in world markets as well as the national capacity to implement trade related reforms and comply with WTO discipline. We argue that more fair trade is also necessary since all countries should benefit from this global public good.<sup>5</sup> This is even more important given the emphasis on trade in development policy. These issues are clarified further by distinguishing the notions of “free trade” and “fair trade.”

## **I.1 Free Trade**

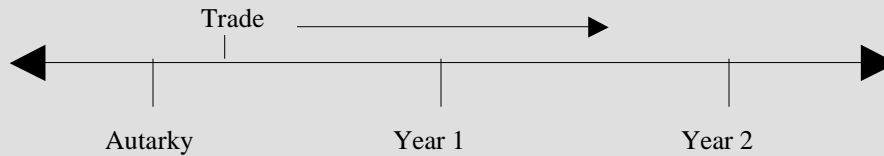
The process of pursuing more free trade - often negotiated among countries in the context of reciprocal market access and non-discrimination - involves such activities as the harmonization of trading rules and the reduction of barriers to trade such as tariffs and quotas. In its simplest sense, the pursuit of free trade belongs to the blanket process of “leveling the playing field.” If one takes this analogy to its logical conclusion, more free trade would result from the application of the same policies, rules, mechanisms, and institutions to each participant in the trade regime, regardless of origin or capacity.

The drive towards more free trade has been theoretically premised on David Ricardo’s classical theory of comparative advantage, the latter driven by inherent differences in capacity - hence cost - of producing different products and services across countries. However, much has changed since Ricardo’s simple world of Portuguese wine and British cloth. While the static mutual gains from trade is still unchallenged - and remains one of the strongest tenets of Economics - the dynamic gains from today’s trade require that these same gains be evaluated *over time*. Declining terms of trade shrinks the welfare gains from trade, possibly limiting the positive impact of trade on development. The decision for more free trade is therefore not so straightforward. (See Box 1.)

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<sup>5</sup> Note that the term “global public good” is conceptual and not normative. For instance, a highway with numerous potholes is still a public good consumed by those who use it. However, the nature of its provision determines the extent of the utility (or disutility) it generates among its users. In the same vein, the trade regime is a global public good, notwithstanding imbalances in the benefits and costs it imposes across countries.

**Box 1: Benefits of Trade: From which vantage point?**



Classical trade theory suggests that trade and specialization increases global output beyond the autarkic scenario. Hence, countries, in general, are made better off (or at least no single country is made worse off) with trade. The “with-trade” outcomes (i.e. years 1 and 2) are therefore clearly preferred to the autarkic scenario. However, will the outcome in year 2 be preferable to that of year 1? From a global vantage point, the answer would probably be yes. Productivity growth is often positively linked to various openness measures, and some countries will likely experience such growth, hence increasing global output. However, there is no reason to believe that all countries will automatically benefit from such growth. Much of a country’s gains from trade - including those that directly impact on development - will depend on its comparative advantage in the second year and afterwards. Therefore, although each country is likely better off with respect to the autarkic case, it is also important to look at how they fare under a more open trade regime over time. The appropriate basis for the decision to trade is therefore not just the autarkic scenario. How gains from trade in succeeding periods evolve should be factored in as well.

References: Cypher and Dietz (1998) and World Bank (2001)

To illustrate, Gomory and Baumol (2001) use the conditions of economies of scale and productivity growth in their economic models, in order to demonstrate that comparative advantage can in fact be developed and retained.<sup>6</sup> For instance, one perhaps cannot acquire the capacity to produce wine in the Philippines, but one can arguably develop the capacity to produce computers and software in that country - or any other developed or developing country for that matter. Wolff (2000) provides empirical support for these models using data from the Organization for Economic Cooperation and Development (OECD) countries. While this particular empirical study primarily focuses on the developed world, these arguments can just as easily be applied in the developing countries, as evidenced by the successful industrializers in East Asia. These studies have revealed that the indeterminacy of comparative advantage over time - a condition that now arguably characterizes much of skill-intensive manufactures - has weakened the emphasis on current comparative advantage, in favor of *potential* comparative advantage, particularly those in high(er) value-added sectors. It follows that in order to evaluate the over-all benefit derived from the trade regime, both static and dynamic gains need to be considered.

## **I.2 Fair Trade**

That last point now brings us to the conceptual notion of *fair* trade, particularly from a developing country perspective. Despite the unquestioned positive static gains from trade,

<sup>6</sup> They argue that, absent scale diseconomies, multiple trading - and therefore national welfare - equilibria can occur, depending on which country ends up with which industry.

one has to consider how the gains from trade are shared and how this partitioning evolves over time. Central to this examination is the fact that building dynamic comparative advantage often requires some degree of protection in order to develop competitiveness in certain sectors, thus going against the process (at least temporarily) of “leveling the playing field” and free-trade. In fact, it may be the case that improvement in the productive capacity of one country can only be attained at the expense of another country’s general welfare (Gomory and Baumol 2001).<sup>7</sup>

This leads to a dilemma. In the Ricardian world, all countries will find it in their interest to pursue more trade; yet we know that pursuing more trade without considering the development of comparative advantage could erode the gains from trade over time, particularly for the developing countries that often suffer from more volatility and adverse movements in their terms of trade.<sup>8</sup> (See Cashin and Patillo 2000 and Maizels 2000.) In addition, trade among non-equals (i.e. producers in developed vs. developing countries) can lead to such adverse outcomes such as the decimation of entire industries in some developing countries. Similarly, simply expanding the realm of free trade has, in many cases, resulted in an actual increase in poverty and environmental degradation, and in an adverse impact on women and food security across the developing world, undermining efforts to achieve sustainable human development (McCulloch et al 2001, Panos Institute 2001 and Third World Network 2001).

Where it is feasible, there is clearly a justification for policies to enable the players to become more equal. For instance, there is a need to enable developing countries to enhance their producers’ ability to compete in world markets. The last point is especially compelling when one considers that even primary exports from developing countries still face numerous barriers in developed countries’ markets.<sup>9</sup> Even more troubling, some means of protection actually create a bias against the processing of primary products, by applying higher tariff rates for higher levels of value-added processing. For instance, developing country exports of chocolate to the developed countries often face tariff barriers that are up to eight times higher than those that apply to unprocessed cocoa (UNCTAD 2000b). Such elements in the multilateral trade regime contribute to the factors that lock-in the developing countries’ comparative advantage in low value-added products, seriously impeding development efforts.

An additional yet equally important concern is the adjustment cost related to trade liberalization. Free trade dictates that the forces of competition bring about the efficient market outcome, but among unequal competitors, the relative costs of adjustment differ significantly. Potentially displaced workers in the US, for instance, face more opportunities to move out of uncompetitive sectors, compared to displaced farmers in

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<sup>7</sup> We use our notion of “fair trade” strictly in the context of how the multilateral trade regime incorporates the developing country realities of costly short-run adjustment and long-run dynamic comparative advantage.

<sup>8</sup> Several reasons contribute to increased vulnerability and volatility from terms of trade shocks, but one of the most important reasons for developing countries is their heavy reliance on primary goods exports.

<sup>9</sup> In short, even their static comparative advantage is suppressed.

Africa.<sup>10</sup> Adjustment is typically more protracted and costly in the developing world for the obvious reason that there are fewer resources to help facilitate such adjustment. Another facet of these adjustment costs deals with the implementation of trade related regulations and reforms (i.e. import licensing procedures, customs valuation, sanitary and phytosanitary standards, trade-related legal reforms). With many compliance measures emanating from the developed world that already have these in place, this implies a larger burden on the countries with meager resources. This further justifies the argument to place more consideration on the inherent inequality in capacity across countries.

Hence, in the construction of the trade regime, a better balance must be struck between free trade and fair trade, in order to make this GPG beneficial to all countries. Such a balance must necessarily be determined by all participants in the trade regime, and must be fair and just, *ex ante*. Only from such can we even begin to consider the eventual outcome of trade to be balanced and fair. However, under what conditions will a balance between free and fair trade be accomplished?

## **II. Is there a balance?**

If one follows the policy statements in international organizations, including the WTO, one would expect that the international community has selected a balance that proactively generates development and “fosters an enabling environment for growth” (UN 1997). In fact, trade liberalization has constantly been sold to developing countries as one of the lynchpins of successful development policy, and part of an approach more commonly known as the “Washington Consensus.”<sup>11</sup> However, upon closer examination, a disconnect between rhetoric and actual policy on these issues becomes evident. Camdessus (2001: p.368) writes: “In the Bretton Woods framework, governments reduced significantly the debt of thirty-five or forty heavily indebted poor countries. Yet these same governments have failed - in the framework of the World Trade Organization (WTO) - to launch a trade round to eliminate trade barriers for heavily indebted countries. Unless reversed, this failure will mock the decision on debt.”

The question of balance between free trade and fair trade is therefore a pressing one. In what follows, we analyze imbalances in the regime in two ways. In one, we examine three key agreements (i.e. those on intellectual property, textiles, and agriculture) negotiated in the Uruguay Round, in order to ascertain any imbalances in the way they were constructed. In the other, we examine the expected quantitative impact of the regime. Both methods indicate that the multilateral trade regime is imbalanced in terms of benefits and costs.

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<sup>10</sup> In the US, dislocated workers are offered job training and social safety nets in order to adjust out of uncompetitive sectors. In addition, firms are also given support to enhance their competitiveness in world markets. See the trade adjustment assistance (TAA) program of the US Department of Commerce [<http://www.taacenters.org/>] and Department of Labor [<http://www.doleta.gov/programs/factsht/taa.htm>].

<sup>11</sup> Rodrik (2001) outlines the components of the “Washington Consensus” as: fiscal discipline, reorientation of public expenditures, tax reform, financial and trade liberalization, openness to direct foreign investment (DFI), privatization, deregulation, and securing property rights.

## II.1 Imbalances in the regime

Negotiations in the Uruguay Round centered on increasing market access for developing countries in protected developed country agriculture and textiles markets in exchange for trade agreements in intellectual property rights, services, and investments, all of which primarily benefited developed countries through increased rents and market access (Ostry 2000a). The idea behind this “grand bargain” was that member countries could trade off costs of one agreement with benefits gained on another. However, it was an inherently unequal exchange. While both developed and developing **countries benefit from** lower protection in the developed countries, agreements on intellectual property, services and investment do not unambiguously promise efficiency gains for the developing countries. In fact they generate both large wealth transfers and adjustment costs that are asymmetrically distributed (Panagariya 1999).

This raises serious questions about the net benefits for the developing countries in the multilateral trade regime, constituted largely by the agreements in the Uruguay Round. A comprehensive evaluation of its development impact has yet to be made despite its clear necessity. While such an evaluation is beyond the scope of this paper, our contribution lies in examining the three key trade agreements for the developing countries: the Agreement on Trade Related Intellectual Property Rights (TRIPS), the Agreement on Textiles and Clothing (ATC), and the Agreement on Agriculture. We examine each of these agreements, in order to determine whether or not each, individually, are balanced in potential benefits and costs for developed and developing countries.

### II.1.1 The TRIPS Agreement

The TRIPS Agreement was introduced in the Uruguay Round to establish a common standard of intellectual property rights across all countries. Under TRIPS, member nations agreed to provide common standards for protection of all intellectual property<sup>12</sup> applying to all technologies in products and processes, with the aim to balance innovation with transfer and dissemination of technology to the mutual advantage of producers and users in a manner conducive to social and economic welfare (Parts I and II, Articles 1-40). It defined the broad civil and administrative procedures for enforcement of intellectual property rights (Part III, Articles 41-61) and in return, provided for transitional arrangements, technology transfers and technical cooperation for the least developed countries (Parts IV, V, VI and VII, Articles 62-73).

The TRIPS Agreement was strongly opposed by developing countries for three reasons. First, the concentration of research and development activities in the developed countries meant that a stronger international patent regime would transfer rents from developing countries to developed countries. Second, stronger patents would increase the end consumer price of their applications, making these products harder to access for

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<sup>12</sup> These included copyrights, trademarks, geographical indicators, industrial designs, integrated circuits, patents and trade secrets.

consumers with low purchasing power. Third, many developing countries had an established tradition of collective as opposed to individual ownership patterns, especially for indigenous knowledge, which was fundamentally contrary to the TRIPS model.

Furthermore, the content of the agreement was also contentious. The provisions that were beneficial to technology producers (read developed countries) like scope of intellectual property rights or IPRs (i.e. all products and processes in all technologies), the length of patent protection (i.e. 20 years), the scope of exceptions allowed (i.e. very limited to specific cases) and the legal compliance required from domestic patent laws in member countries, were all **binding** provisions. Non-compliance with these provisions was tantamount to a breach of the agreement and could be challenged under the dispute settlement mechanism.

On the other hand, provisions that were beneficial to technology consumers (read developing countries) such as technology transfer and technical cooperation were **non-binding** provisions. In other words, non-compliance with these provisions invoked no penalty at all. There were also significant short-term costs of compliance for the developing countries that were mainly rule-takers in the process. These costs involved, among others, setting up an appropriate patent office, training personnel, and creating mailbox provisions for exclusive marketing rights. All these constituted an immediate outflow of their already scarce resources. Therefore, despite the stated objective of balancing the needs of producers and consumers, the TRIPS agreement was biased in favor of the technology producing developing countries in its design.

Finally, one potential long-term implication of the TRIPS Agreement is that by protecting the rights of technology producers at the expense of technology consumers, it can lock developing countries into a state of 'perpetual catch-up' where it becomes even more difficult for them to develop technological capabilities. This was the main fear of developing countries at the time of the negotiations (CUTS 2001), and the design of the agreement only reinforced that concern.

### **II.1.2 The Agreement on Textiles and Clothing (ATC)**

The Agreement on Textiles and Clothing (ATC) emerged in response to the post second world war protectionist Multifiber Agreement (MFA) regime of developed countries to textile and clothing imports from the developing countries. Specifically, the ATC phased out the MFA in four tranches over a 10-year period (in 1995, 1998, 2002 and 2005) which would cover 16%, 17%, 18% and 49% of imports of all categories of textile products (i.e. tops/yarn, fabrics, made-ups and clothing), with the liberalization process being binding and final (Spinanger 1998).

The ATC was an important step in making the trading regime consistent with its own stated goals of sharing the gains from access with all members. However, the developed countries succeeded in negotiating a phased liberalization for textiles and clothing. This meant that the gains from market access for developing countries were backloaded until ten years after signing the agreement. The agreement also focused on

overall import shares of textile and clothing products rather than elimination of specific quotas, giving developed countries the freedom to selectively liberalize without violating the agreement. In fact, it was possible to liberalize products in the first three tranches that were not even protected under the MFA. By reducing tariffs on these products, developed countries conceded little in terms of market access to developing countries.

The Agreement also included safeguard provisions (Article 6) that sanctioned the use of “transitional safeguard” measures to restrict imports if domestic industry faces “serious damage or actual threat thereof.” Therefore, despite the objective of providing market access to developing countries, ATC retained clauses that protected domestic industries in developed countries, and could potentially restrict market access for at least nine years. Benefits from the ATC were therefore watered down.

### **II.1.3 The Agreement on Agriculture**

The Agreement on Agriculture was the first international attempt to reform agricultural trade policies. High protection of the agricultural sector in the pre-WTO decades led to depressed prices in the world economy, owing to artificially depressed demand. Hence, farmers in developing countries in particular stood to gain significantly from agricultural liberalization. Under the agreement, tariffs on agricultural products were to be reduced (i.e. 36% for developed countries over six years and 24% for developing countries over ten years) to improve market access, and protection in the form of export subsidies as well as domestic producer subsidies or Aggregated Measure of Support (AMS) was to be reduced (i.e. 20% for developed countries and 13.3% for developing countries).

The subsidies exempted were those that constituted direct payment under production-limiting programs and those that did not ostensibly affect production (or that could be justified by environmental and public good rationales).<sup>13</sup> Also, government assistance programmes that encourage agricultural and rural development in poor countries, and subsidies that were a small proportion of total output (i.e. 5% or less in the case of developed countries and 10% or less for developing countries) were also exempt from reductions. While the agreement laid down a specific and substantial agenda for increasing market access and correcting for distortions, the built in exemptions weakened the agreement considerably. Specifically, the exemptions gave member nations the flexibility to reduce the mandated subsidies and at the same time, to increase the exempted subsidies, thus undermining the aim of reducing overall domestic support.

To summarize, these agreements - TRIPS, ATC, and the Agreement on Agriculture - provide clear examples of the imbalances in the key components of the trade regime that were negotiated in the Uruguay Round. Individually, these agreements have either been emasculated (so that developed countries minimize their concessions) or have been inherently structured with a developed country bias. These have already started to translate into heavily imbalanced outcomes, as we shall now show.

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<sup>13</sup> These are known as the ‘blue box’ and ‘green box’ exemptions respectively (Hoekman and Anderson 1999).

## II.2 Imbalances in the outcomes

There is a general sentiment among developing countries that they have been severely short-changed in the Uruguay Round of negotiations. In the words of Prime Minister Atal Behari Vajpayee (2001) of India: “Globalization has constrained developing countries in mobilizing public resources for poverty alleviation. [...] This is also why we have argued strongly that implementation issues should first be resolved before we try to widen the WTO agenda further. Our public is unwilling to accept another post-dated cheque, when an earlier one has bounced.”

Indeed, there is some empirical substance behind this sentiment. Whether one views individual agreements (section II.2.1) or over-all international trading patterns (section II.2.2), developing countries’ net gains from the trade regime are still unclear.

### II.2.1 Outcomes of specific agreements

We return to the trade agreements discussed earlier, in order to examine the veracity of this sentiment. While it is too early to measure exact actual gains, partial outcomes, and projections have been reasonably consistent across different sources and present a fairly consistent picture. (See World Bank 2001, Hoekman and Anderson 1999, UNCTAD 1996, Harrison et al 1996 and Francois et al 1996.)

**TRIPS.** Most developing countries were able to postpone the implementation of the TRIPS agreement until January 1, 2006 during the 4<sup>th</sup> Ministerial Conference held in Doha in November 2001.<sup>14</sup> While the full implications of the TRIPS agreement, in terms of access to technology, transfer of rents, change in prices of patented products etc. will become apparent much later, some estimates of potential outcomes are already available. These estimates can be analyzed in terms of rent transfers on patent rights, price increases, and administrative costs of implementing the agreement.

1. **Rent Transfers:** Developing countries hold less than 2% of patents worldwide (UN 2001). The World Bank estimates that if TRIPS were fully implemented, net rent transfers to 9 major technology-creating countries (i.e. USA, Germany, Japan, UK, Australia, France, Switzerland, Netherlands and Ireland) alone would amount to approximately US\$41 billion (in 2000 dollars) per annum (World Bank 2001).<sup>15</sup>

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<sup>14</sup> The least developed countries have received a longer transitional period until 2016.

<sup>15</sup> Based on World Bank calculations for a sample of 26 countries. It should be noted, though that some of these rent transfers could come from other developed countries. However, it is reasonable to assume that the bulk of these transfers are likely to come from countries that are net technology consumers i.e. developing countries. [Source: *Global Economic Prospects 2002*, World Bank 2001, p 133, table 5.1.]

**2. Price Increases:** Patented products have proven to be significantly more expensive than their generic counterparts. Research in the pharmaceutical sector has illustrated this price difference. The impact of patents on drug prices range from 12% to 68% once TRIPS is implemented (Fink 2000, Watal 2000, Lanjouw 1997, and Subramanian 1995).<sup>16</sup> The case of antiretroviral (ARV) drugs is a particularly striking example. Patented ARV drugs sell at US\$10,000-12,000 in the developed markets as opposed to their generic versions, which now sell for US\$350 in developing country markets.<sup>17</sup>

**3. Administrative Costs:** To develop a patent system in compliance with TRIPS, the short-term costs of setting up the system, training personnel and creating the capacity to manage records are significant. UNCTAD (1996) estimates that upgrading, training and administrative costs for selected countries could vary from US\$250,000 to US\$1.2 million.<sup>18</sup>

**Agreement on Textiles and Clothing.** Developed countries have ensured that the ATC has not been implemented in its intended manner. While they have adhered to the deadlines set for the phase-out, the actual products on which restrictions are being phased out have been selected so that the most sensitive products have been back-loaded. There has been relatively little liberalization in product lines of direct relevance to developing countries. Upto 2000, the products liberalized by the US and EU represent 5% and 6% of total textile and clothing imports.

On the other hand, even with liberalization, gains for many developing countries remain uncertain and highly variable. Francois et al (1996) projected annual gains that ranged from US\$ 63.5 billion to US\$4.9 billion in 1992 dollars for developing countries.<sup>19</sup> Harrison et al (1996) showed that these gains were likely to be concentrated on a few developing countries (i.e. China, Indonesia and South Asia). Latin America and Sub-Saharan Africa were likely to lose 0.08% and 0.51% of their GDP respectively.<sup>20</sup> The

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<sup>16</sup> This was based on increases in the patentable segments of drug markets for select countries. These specific studies were conducted for Argentina and India using detailed price data (WTO 2001).

<sup>17</sup> While only the issue of public health and access to affordable medicines has received much attention, similar price increases can be expected in other product categories as well.

<sup>18</sup> Finger and Schuler (2001) provide much higher estimates for broader UR compliance costs, reaching up to US\$150 million *per country*.

<sup>19</sup> Francois et al model tariff reduction on industrial products, liberalization of industrial non-tariff barriers including elimination of MFA, reductions in agricultural export subsidies and imposition of minimum market access commitments in agriculture. They compute gains under differing assumptions, including increasing returns to scale (IRTS) and constant returns to scale (CRTS), as well as fixed vs. endogenous capital stock and savings rates. The developing countries included are China, Korea, Indonesia, Malaysia, Philippines, Singapore, Thailand, Hong Kong, Taiwan, Bangladesh, Nepal, Pakistan, India, Bhutan, Maldives, Sri Lanka, all of Latin and Central America, all of Africa and the Middle East, Armenia, Azerbaijan, Belarus, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, Russian Federation, Slovakia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Turkey.

<sup>20</sup> Developed countries gain from eliminating quota rents and from efficiency gains due to reduced production and lower costs. The gains increase with higher demand elasticity. Some developing countries would gain from being the most efficient producers at the expense of other marginally inefficient

ATC highlights the adjustment costs that many developing countries will bear once their export markets turn to more efficient producers.

**Agreement on Agriculture.** Total support to agriculture in the high-income countries for 2000 was estimated at US\$345 billion, and 60% of total subsidies are now those exempt from reduction in the agreement.<sup>21</sup> At the same time, the greatest gains for developing countries are clearly from agricultural liberalization in developed countries. However, the Francois et al study estimates modest gains from agricultural liberalization, as they predicted - correctly as it turns out - that market access would not go beyond minimum commitments. The projected annual gains for developing countries range from US\$6.16 billion to losses of US\$0.4 billion in 1992 dollars. In a more optimistic recent study, the World Bank (2001) estimates that complete liberalization, *over and above that in the Uruguay Round*, can lead to additional income in 2015 of US\$142 billion (in 1997 dollars) for low and middle-income countries.<sup>22</sup> The incomplete implementation of the agreements on agriculture and textiles and clothing has had a high opportunity cost for developing countries in terms of lost markets and foregone earnings.

**Partial calculus of developing countries' net gains: A bounced cheque?** A simple back-of-the-envelope calculation demonstrates that the projected outcomes from the Uruguay Round did not necessarily envisage a net gain for the developing world. The rent transfers to technology exporters as a result of the TRIPS Agreement are expected to be about US\$33.3 billion a year in 1992 dollars.<sup>23</sup> This *excludes* the additional costs of price increases and implementation. To balance these costs, developing countries had bargained for more market access. The projected total annual gains range from US\$124.8 billion to US\$12.5 billion for developing countries. In the worst case scenario (i.e. based on a constant returns to scale model and fixed technology assumptions) developing countries suffer *annual losses of US\$20.83 billion*. Furthermore, even if developing countries gained overall, these gains are likely skewed in distribution as most of the gains go to relatively more competitive countries in East Asia, leaving the least developed countries with meager projected gains - if any - from the Uruguay Round.<sup>24</sup>

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producers. More recent work estimates annual efficiency gains for the EU (i.e. production efficiencies and elimination of quota and tariff rents) at US\$20 billion (Spinanger et al 2000).

<sup>21</sup> Source: <http://www.oecd.org>

<sup>22</sup> *Global Economic Prospects 2002*, p.171, table 6.1.

<sup>23</sup> Authors' calculations based on US\$41 billion in 2000 dollars and using an average US inflation rate of 2.6% per annum.

<sup>24</sup> East Asia and China account for 40% of the gains at the high end under IRTS and CRTS assumptions. Harrison et al (1996) and Page and Davenport (1994) also observe that developing country gains are mostly concentrated on a few countries.

**Table 1: Projected Gains from the Uruguay Round  
for Developing Countries (in US\$ 1992 billion)**

	Textiles		Agriculture		Total***	
	High*	Low**	High	Low	High	Low
<b>IRTS</b>	63.5	35.9	4.7	3.1	<b>124.8</b>	59
<b>CRTS</b>	12.7	4.9	6.16	-0.44	46.7	<b>12.5</b>

Source: Francois et al (1996: Tables 9.10 and 9.11, pp280-283)

Note: \*High: endogenous capital stock and savings rate

\*\*Low: fixed capital stock and savings rate.

\*\*\*Total includes reforms in non-agriculture primary products, other industrial goods, agricultural goods and textiles.

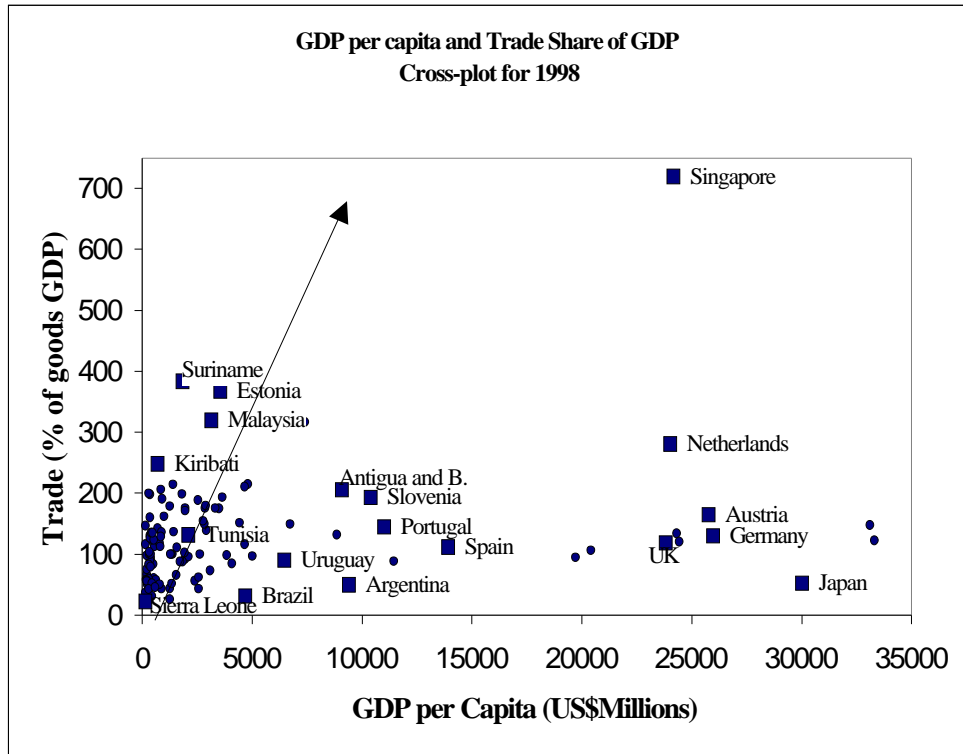
Though obviously very broad approximations, these figures nonetheless reveal the simple truth that the developed countries are expected to benefit greatly due to reform in the area of intellectual property rights. Furthermore, the Uruguay Round promises of market access for the developing countries have not yet been realized. Sectors that potentially benefit developing countries have remained closed, as developed countries often maintain subsidies and tariff peaks precisely in those products where developing countries are most competitive (Finger and Schuknecht 2001). And even in the ATC where developing countries as a group derive positive gains, much of the gains are expected to benefit very few of these countries. Hence, for many developing countries, the “grand bargain” of the Uruguay Round entailed high costs of compliance and minimal benefits by way of market access. This provides seminal evidence of imbalanced trade outcomes from the agreements contracted in the Uruguay Round or malprovision in the multilateral trade regime.

## II.2.2 Imbalances in trading patterns and vulnerability of developing countries

In addition to the evidence of malprovision just presented, we also find evidence that this GPG is underprovided. A brief analysis of current international trading patterns reveals that the developing countries often find themselves in a vulnerable situation; yet few safeguards have been created for these countries in the context of the multilateral trade regime.<sup>25</sup> The process of trade liberalization since GATT-1947 - often discontinuous for individual countries but pursued aggressively in the last two decades by all developing countries in general - has created the conditions for marked vulnerability to global economic business cycles. As Figure 2 indicates, many developing countries have already liberalized substantially, evidenced by high trade shares with respect to their GDP.

<sup>25</sup> Some of these safeguards have been provided bi-laterally such as in the US Trade and Development Act of 2000.

**Figure 2**



*Data sources: World Development Indicators and UNCTAD Handbook of Statistics*

This is a trend that can be expected to continue in the context of expanding membership in the WTO as well as further implementation of commitments to its rules. What is worrisome is that developing countries, are exposed to more trade shocks - implied by the relatively higher variance of the growth rates of their terms of trade (Table 2).<sup>26</sup>

**Table 2: Variance in the Growth Rates of the Terms of Trade, 1980-1997**

VARIANCE	REGIONS AND GROUPS
0.0030	All Developing countries
0.0025	All heavily indebted countries
0.0021	All least developed countries
0.0008	All Developed countries

*Source: UNCTAD Handbook of Statistics 2000*

Linked to the earlier discussion on the dynamic gains from trade (section I.2), the vulnerability of developing countries is even more clearly seen when one examines the direction of their terms of trade over time. Using annual UNCTAD (2000a) data from 1980 to 1997 for a sample of 97 developing countries and territories, we examine the

<sup>26</sup> The so-called "net barter" terms of trade (NBTT), defined as the ratio of the export unit value index to the import unit value index.

trend coefficient after running ordinary least squares on the terms of trade against a constant and an annual trend variable. The regression results indicate that 59 countries and territories possess a negative and statistically significant (i.e. 5%) trend coefficient for their NBTT. Of these:

- 22 belong to the least developed group (total of 48),
- 9 belong to the heavily indebted group (total of 17); and
- 26 belong to the low-income group (1995 GDP per capita below US\$800, total of 66).<sup>27</sup>

Furthermore, of the 39 African countries included in the sample, 27 exhibited a statistically significant and negative trend. All these numbers indicate the serious vulnerability of developing countries - particularly those in the Africa region - and we note that all the numbers probably underestimate the true levels, since only about half of the 186 developing countries and territories in the complete UNCTAD list have been examined. Standard economic trade theory dictates that such a pattern necessarily shrinks their gains from trade, as their producer surplus from exports and consumer surplus from imports shrink.

It is important to note that these imbalances in trading patterns need not have been caused by any of the imbalances in the regime or the agreements. The problem arises, however, when the regime fails to adequately incorporate measures that effectively deal with these vulnerabilities, revealing an issue of underprovision of this GPG. Moreover, to the extent that these developing concerns were not and still are not adequately reflected in the design of the trade regime (and in its underlying decision making process), then this also manifests as further proof of malprovision. There is a bias in the trade outcome and in the decisionmaking process that largely determines it. Therefore, appropriate reforms must be directed at both the underprovision and malprovision of this GPG.

### **III. Reforms: Making the trade regime a GPG in form and substance**

What these imbalances have demonstrated is that the multilateral trade regime is fast advancing as a GPG in form, but lagging in its development as a GPG in substance. To be specific, there has been an over-emphasis on “leveling the playing field,” with insufficient accommodation for the development goals of the developing countries. From a GPG perspective, reforms must focus not only on the actual imbalances themselves (i.e. by correcting the underprovision), but also the decision making process that generated these imbalances in the first place (i.e. by correcting the malprovision). The next section focuses on examples that clarify three broad areas of reforms for this GPG: rebalancing the “grand bargain,” reforming the decision-making process that underpins it, and ensuring more coherence with development.

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<sup>27</sup> All groupings are defined in UNCTAD (2000a), pages viii to x. Sample selected based on data availability.

### III.1 Rebalancing the “grand bargain”

As discussed in section II, many imbalances in the trade regime result from missing components and mechanisms. The results of the grand bargain were loaded against the developing countries that ended up trading costly structural reforms in exchange for mere promises that have yet to materialize. A reasonable starting point in the effort to rebalance the trade regime, would be to phase-out agricultural subsidies and to strengthen special and differential treatment.

***Implementation of agricultural subsidies.*** Developing countries’ exports are heavily concentrated in the agricultural sector, and arguably, so are its present comparative advantages. There has already been much discussion on the benefits to developing countries of further agricultural liberalization in the developed countries, and the challenge is to implement what has essentially been bargained for already. A start has been made with the renewed commitment at the 4<sup>th</sup> Ministerial Conference at Doha, though the European Union ensured that the language was not binding.<sup>28</sup> (See Anderson, Hoekman and Strutt 1999, World Bank 2001 and Ostry 2000a, b.)

***Special and Differential treatment.*** Countries at low levels of per capita income were given, depending on the specific agreement, more time for transition, less demanding terms of compliance, and in some cases special assistance. However, the Special and Differential (S&D) treatment clause has not been very effective, due mainly to the vague nature of this concession. Unlike in the GATT, where the S&D status of countries was recognized as a basic feature of the agreement - enabling developing countries the freedom to self-select into or out of agreements that were inconsistent with their development goals - in the WTO, equality of participation is assumed. As a consequence of the single undertaking in the Uruguay Round, all member countries are expected to be capable of adherence to the WTO commitments. The S&D treatment clause is invoked for technical assistance and extended transition periods, rather than built into the agreement design. Consequently, the S&D treatment principle has been extremely weak, and ineffective in the WTO context (Michalopoulos 2000). To fill the gap in this case, one clear reform area would be a serious reevaluation of this principle, in a bid to make it more relevant to the developing countries. Making this principle intrinsic to each of the existing and any future agreements could enable developing countries to take policy decisions more appropriate to their requirements.

However, our earlier analysis of the imbalances reveals that we have only just begun to understand the full extent of the impact of trade liberalization and integration, as well as the central role that the multilateral trade regime has evolved into. For instance, few countries had realistically anticipated how TRIPS might hinder government actions in dealing with public health epidemics like AIDS. Certainly, few anticipated the severity and persistence of adverse terms of trade shocks to the commodity exporting African

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<sup>28</sup> Countries agreed to negotiate to (1) substantially improve market access; (2) reduce, with a view to phasing out, all forms of export subsidies; (3) substantially reduce trade-distorting domestic support, though “without prejudice to the outcome of the negotiation.”

[Source: [http://www.wto.org/english/tratop\\_e/dda\\_e/dohaexplained\\_e.htm#agriculture](http://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm#agriculture)]

countries, many of whose gains from trade have been greatly diminished. A more basic reform in decision-making is required, in order for the trade regime to emerge as a public good.

### **III.2 A more balanced decision making process**

While dealing with these imbalances is important, we have to ask ourselves why these imbalances were generated in the first place. The answer, we believe, lies in the re-evaluation of WTO decision-making at two levels. At one level, improving the developing countries' bargaining capacity could potentially diminish the degree of imbalance in the way the trade regime is constructed, as well as improve the eventual impact of trade on the developing countries. Much of the current discourse on trade has focused on ways to improve the developing countries' bargaining power. (See for example Blackhurst et al 2001 and Shafaeddin 2000.) At a more fundamental level, recasting the trade discourse in the context of a coherent development approach raises some questions about using the bargaining framework to construct the trade regime. We discuss both these levels in the next two sections.

#### **III.2.1 More even bargaining!**

With surprising candor, Ambassador Charlene Barshefsky, US trade representative at the WTO Ministerial in Seattle admitted to the imbalanced decision making at the WTO in a press conference: "The process, including even [in the the 3<sup>rd</sup> WTO Ministerial] at Singapore, was a rather exclusionary one. [...] I don't think that [European Union trade representative] Pascal Lamy can object or would object to the notion that the process has to be transparent and accessible not just to the rich countries, which has always been the case, but to the poor countries, which has never been the case" (Barshefsky 1999: p. 2).

Responding to the imbalanced bargaining power exercised in the WTO is therefore a key area of reform that will bring the multilateral trade regime closer to becoming a GPG both in form and in substance. All developing countries - and some larger ones in particular - can generate more effective bargaining capacity using several cooperative methods:

- *Continue to build alliances*

Given that developing countries are a fairly heterogeneous group, building stronger and larger alliances remains one of the key challenges that they need to face. Alliances amongst several large groups of countries have flourished: the 13 countries in the "like minded group" (LMG), the 14 countries in the Caribbean Community (CARICOM), the 48 countries in the least developed countries (LDC) group, the 78 countries in the Africa, and the Caribbean and Pacific (ACP) Group, are some notable examples. Furthermore, the Group of 77 countries has already demonstrated commendable unity in a host of trade issues. Such efforts need to be continued.

Furthermore, one lesson from the Doha Ministerial is that building alliances amongst developing countries may be bolstered further by building alliances with both Northern and Southern civil society organizations (CSOs). For example, the broad-based support by developing countries, CSOs - and even some developed countries like Holland and Norway - for unambiguous language on the primacy of public health concerns over TRIPS clearly pushed this issue, despite initial resistance by some Quad countries.<sup>29</sup> Such “public interest coalitions” could potentially be built around issues of clear importance to the least developed countries in particular.

An essential caveat for such a crosscutting alliance lies in the extent to which their concerns overlap. Certainly, in issues related to the environment and labor standards the developing countries do not always see eye-to-eye with many CSOs - particularly Northern ones. Yet this only serves to justify more consultations between these two groups. Indeed, looking at trade from a development perspective would make it much easier to find common positions between these groups (Rodrik 2001). In this regard, a unifying framework for cooperation and prioritization of concerns need not be limited within the ambit of the WTO.

Attempting to shoot down all these “birds” (i.e. labor, environment, etc.) with one stone (i.e. trade policy) runs the risk of undermining all these concerns altogether (Bhagwati 1999). Labor issues may be dealt with by the International Labor Organization (ILO), environmental issues by the United Nations Environment Programme (UNEP), and child labor issues by the United Nations Children’s Fund (UNICEF). The key to successfully disentangling these issues is to investigate ways to advance all of them in the appropriate contexts within a coherent and unified development framework.

- *Pool technical expertise*

Regional economic agglomerations present excellent opportunities to pool technical and research expertise to bolster implementation capacity (i.e. pertaining to standards, customs valuation, etc.) but more so to strengthen negotiation positions. The pooling of technical expertise, primarily in the context of regional trade issues, has already begun in many such groups, including the Association of Southeast Asian Nations (ASEAN) and CARICOM. Such forms of technical cooperation could be expanded in order to deal with pan-regional issues.

Issue-specific agglomerations could also become excellent developing country partners for cooperative research and support for trade negotiations. An example would be the financial support provided by the Organization of the Petroleum Exporting Countries (OPEC) to the Group of 77 in the latter’s efforts to prepare positions on the United Nations International Conference on Financing for Development. Funding from such groups in order to advance broad developing country interests would certainly prove invaluable. In addition, developing country

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<sup>29</sup> Quad countries include the EU, US, Japan and Canada.

governments could help build on synergies developed by non-profit research networks - like Third World Network - that have successfully established some technical capacity to evaluate trade issues.<sup>30</sup>

- ***Exercise leadership***

While many have trumpeted the cause to correct the “democratic deficit” by increasing transparency and participation in the governance of international institutions like the WTO (Helleiner 2001, and Third World Network 2001), little mention has been made of the “leadership deficit” among the developing countries. In order to advance the broad concerns of the developing world, key developing countries must demonstrate support for issues beyond their immediate national concerns. Arguably, this is a small price to pay, in exchange for a more unified negotiating front.

Just as the United States and the European Union (EU) have taken on more of a leadership role in facilitating increased global trade, some of the larger developing countries can also play a similar role in facilitating a more balanced construction of the multilateral trade regime. In this regard, Brazil, India and China are prime candidates for this role, owing to their relative economic and political weight in their respective regions.

It is important to note that all these reforms are not only in the interest of the developing countries, by helping strengthen their bargaining positions. Developed countries should also find these reforms conducive to the construction of a more stable and legitimate trade regime, anchored in a more participatory WTO. The legitimacy of practices such as the exclusionary “green room” negotiations in Seattle (1999) and Doha (2001) will only be increasingly questioned, feeding the already considerable backlash against the effects of - and the policies related to - globalization. In the long-term, more even bargaining is in the interest of all.

### **III.2.2 Even more bargaining?**

Effective bargaining may be a necessary element of international cooperation. Yet one must also recognize the inherent limitations in such an approach. Relying on such a process alone may prove quite detrimental to the balanced and complete development of a broadly beneficial trade regime.

A simple analogy best illustrates our criticism of the bargaining framework. If one examines a highway system - a typical public good - one must note that the choice of whether or not to construct the highway system itself and where to situate it will involve intense lobbying, negotiations, and bargaining in order to maximize the benefit derived from the system. However, after a certain point, mapping the expansion and building the actual system must also involve a fairly objective process. Defining a coherent over-all

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<sup>30</sup> See <http://www.twinside.org.sg/>

plan for an efficient and equitable system over-all must be the counter-balance to the often-uncoordinated nature of the bargaining process. Construction of the trade regime should not be any different. However, it is.

The trade regime is currently constructed through a cross-issue bargaining process, wherein negotiators are invariably locked on to a mercantilist mindset where concessions are “traded” in the process of expanding market access or setting the rules of the game. In fact the WTO, to some extent, can be considered a market for exchanging commitments to liberalized trade (Hoekman and Kostecki 2001). The bargaining and negotiations process has the likely result of an incomplete trading regime, because the agreements and components of the trade system are being developed and bargained for in a piece-meal manner. Often, each agreement is not evaluated and developed as a self-contained and mutually beneficial arrangement. Instead one agreement - with all its flaws - is accepted in exchange for concessions in another agreement, often dealing with a totally unrelated sector. More specifically, there are several reasons to expect that cross-issue bargaining results in the underprovision and malprovision of this GPG.

- ***Bargaining is inherently imbalanced***

Bargaining works best for those who have most to bargain with, immediately placing the developed countries at an advantage. North America, Western Europe, Japan, Australia, and New Zealand alone collectively accounted for 63% of world merchandise trade in 1948, and little has changed since. These same countries accounted for 66% of world merchandise trade in 2000 (WTO 2001). The results of the Uruguay Round of negotiations clearly show how the developed countries were able to extract very costly concessions from the developing countries, notably TRIPS, reforms on trade procedures (i.e. import licensing procedures, customs valuation, etc.), and reforms on regulations (i.e. sanitary and phytosanitary standards, intellectual property law, etc.). It is therefore not surprising that the outcome was stacked heavily in favor of the developed countries.

- ***Perverse incentives in bargaining***

The bargaining framework creates perverse incentives in the conduct of negotiations. Hertel and Martin (2001) argue that in any negotiations to liberalize the agricultural sector, the developed countries will likely keep applied tariffs high, in order to conserve chips to bargain with in the negotiations. This, after all, was the exact same tactic used by the high-income countries when their tariffs on manufactures were being negotiated downwards. It is also likely that developed countries will try to push for more new items in the agenda not necessarily for their own merit, but for eventual *logrolling* to negotiate down counter-demands by the developing countries. Indeed, observers at Doha note that the new Singapore issues<sup>31</sup> - investment, competition policy, government procurement, and trade facilitation - were used ostensibly (together with environmental negotiations) to water down the agricultural subsidy

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<sup>31</sup> Pushed by the developed countries - notably the European Union and Japan - and brought up formally in the first WTO Ministerial in Singapore, 1996.

phase out language pushed by the developing countries.<sup>32</sup> It is difficult to imagine that a unifying development theme will emerge in these negotiations, given such perverse incentives to overload the agenda.

- ***Individual agreements are likely to be flawed***

The process of cross-issue bargaining in the context of a “single undertaking” does not ensure the development of agreements measured on their own merits. For instance, the agreement on agriculture is woefully incomplete to the extent that developing countries’ gains from it in practical terms have been quite trivial. These individually flawed agreements were consciously accepted as pieces of a North-South grand bargain and might on the whole have been perceived to balance out in the single-undertaking framework. But this is questionable, because even using the mercantilist calculus of trading concession for concession, the developing countries ended-up promising to implement reforms that entailed real immediate costs (i.e. TRIPS) in exchange for (unrealized) promises of more market access (i.e. ATC and agriculture) from the developed countries. The grand bargain has created a multilateral trade regime that is imbalanced in benefits and costs.

- ***Coercion rather than cooperation***

The decision making process is characterized more by coercion rather than cooperation, precisely because the regime is often still produced as a club good (i.e. with the disproportional influence of a few members). Not surprisingly, the result for many developing countries in the past few decades of trade liberalization is that they have been placed in a development straightjacket, in so far as they cannot pursue the same development path that the developed - and some of the more successful developing - countries pursued. The reality today is that the trade regime is primarily the developed countries’ system, being sold to the developing world at expensive membership fees. (See Finger and Schuler 2001 and Page and Davenport 1994.)

### **III.3 More coherence with development**

From the preceding section, it is clear that more balanced interaction between the developed and developing countries within the bargaining framework will likely prove necessary, but insufficient in trying to make the multilateral trade regime more coherent with development. We therefore note two broad reforms that could complement the bargaining framework:

1. ***An Integrated Framework:*** Under the aegis of the World Bank, the Integrated Framework (IF) for Trade-Related Technical Assistance to Least Developed Countries was launched in 1996 in order to ensure more cooperation and coordination among key international institutions (i.e. IMF, ITC, UNCTAD, UNDP, World Bank, and WTO). More of the same efforts need to be explored

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<sup>32</sup> Thanks are due to Kamal Malhotra for his observations on this matter.

and expanded; and not just in the area of technical assistance. As mentioned earlier, issues such as those in the environmental and labor areas also need to be fleshed out in a manner coherent with development-friendly trade policy.

2. ***Rawlsian Mechanisms in international trade.*** It would be fruitful to further investigate the feasibility of creating a function in the WTO to identify and work to correct cracks in the system - overlooked or unsuccessfully incorporated into trade agreements - which may prove detrimental to the more vulnerable participants (i.e. nations or regions) and within nations, to the marginalized sectors (i.e. women or economically disadvantaged groups). Such a “Rawlsian mechanism” could effectively complement the bargaining framework by defining some boundaries for competition and bargaining, underlining the primacy of development objectives especially for the least developed countries.<sup>33</sup> This function could conceivably begin in the form of a “Rawlsian trade report,” published annually and in conjunction with trade negotiations, providing a guide on the potential costs and benefits of all items on the negotiating table, and systematically evaluating the evolving impact of international trade on various stakeholders.

An objective analysis of this kind would also draw the regime away from the mercantilist mindset, by allowing member nations to move away from the ‘reciprocity’ principle towards the ‘development’ principle in determining the content of the negotiations. It would allow nations to more prudently judge, at the inter- and intra-national levels, the consequences of different agreements on development goals and assist in the determination of a more coherent fit of trade policy within the overall context of economic development policy.

Furthermore, increased globalization and integration across countries can only mean that trade will have more substantial impacts on environmental, labor, and general development issues. In the interest of maintaining and developing a robust trading system, such a function should ultimately take a more proactive role in guiding the negotiations, debate, and research in trade with an emphasis on, ex ante, providing positive utility rather than, ex post, just controlling or preventing adverse outcomes for developing countries or marginalized groups or sectors. In the context of the WTO, such a function could be given to an independent and autonomous agency comprised mainly of a small group of technical experts that would report directly to the Ministerial Council, very similar to what has been done in the IMF with the establishment of the Independent Evaluation Office (IEO) that reports to the Executive Board.<sup>34</sup>

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<sup>33</sup> The principles of justice as fairness, according to the philosopher John Rawls (1999), are those that would be selected from a detached viewpoint. Rawls argues that individuals are risk-averse and would, if they were not certain about their position in society, opt for a welfare criterion that departs from perfect equality only if the worst-off individual under an unequal utility distribution would be better off than under equality.

<sup>34</sup> For more information, see: <http://www.imf.org/external/np/ieo/index.htm>.

#### IV. Conclusion

The multilateral trade regime is more appropriately seen - and provided - as a global public good, for many compelling economic and political reasons. Yet in its current form, it is quite malprovided as it still maintains many club good characteristics such as high inclusion (i.e. membership) costs, uneven distribution of benefits, and low effective participation in decision-making for a good number of its intended beneficiaries in the developing world. This GPG is also underprovided to the extent that there are many gaps in the regime. The evidence suggests imbalances in some of the key trade agreements, as well as in the over-all sum of agreements.

Construction of the regime should strive for a better balance between free trade and fair trade. The reason behind this is simple. This global public good is provided in the context of two realities: the abolishment of costly protection and the unequal capacities to conduct trade. Two relevant areas of reforms surface: filling the gaps in the trade regime AND reforming the decision-making and bargaining process. These two areas respond to the main themes of underprovision and malprovision respectively.

Traditional trade discourse and debate has often been acrimonious - to say the least - owing mostly to the mercantilist stance taken by all countries taking part in it. While this may have been suitable (or at least unavoidable) in the earlier context of mostly bilaterally negotiated trade agreements involving border issues **or** of the club good that was GATT-1947, the trade regime today is more appropriately provided with enhanced cooperation, given its increased departure from border to deeper integration issues *and* because of the importance accorded to trade in the over-all development process. Although actual trade will necessarily remain competitive in nature, construction of the regime - primarily in the context of an international organization like the WTO - must necessarily take on a more cooperative leaning.

In this context, the bargaining and negotiations process is a poor vehicle from which to ensure a development-friendly trade regime. Our analysis suggests that a combination of a more balanced bargaining and technocratic process may be more conducive to constructing the trade regime as a GPG and bringing about both free and fair trade. Certainly, the significant impact that trade has on developing countries justifies that we bolster the integrated framework (IF) approach and further investigate possible “Rawlsian mechanisms” that prevent adverse outcomes - and even possibly to advance development issues for **both** developing and developed countries. Until such is achieved, there is good reason to doubt whether and to what extent the multilateral trade regime will indeed provide “an enabling environment for development.”

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