Multilateral Trading System and the Developing Countries
A Legal Analysis

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Abstract: The paper attempts to explore the obligations of the WTO members including their legal commitments under the GATS in the multilateral trading system (MTS). The focus is on the global trade agenda of developing versus developed countries. The withdrawal of concessions, bargaining in a multilateral environment, criticism of increased legalisation of dispute settlement, tariff escalation, danger of excessive regulatory overload are highlighted. The paper touches issues which are a cause of dissatisfaction for developing countries. Some suggestions have been brought forth, along with an analysis of what are the institutional features of the present trade regime which can help or hurt the interests of the developing countries. An important issue which has to be handled is the escalating tariffs which take away the incentives of the developing countries to specialize in higher value added segments of the production chain. The paper concludes that WTO is going through a challenging period of integration of the developing countries as theses countries are dissatisfied with the way their issues are addressed.

Keywords: MTS, WTO, GATT, developing countries, legal issues, liberalisation

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Introduction

It is commonly accepted that “increased trade is essential” for developing countries to fully benefit from increased globalization of product and financial markets (United Nations [2001]). Despite the importance of successfully integrating developing countries into the world economy, there has always been an active debate on the pace, method and institutional framework to achieve these goals. An important milestone in the debate was reached when a large number of developing countries actively participated in the Uruguay Round negotiations of General Agreement on Tariffs and Trade (GATT) and signed the agreements. Since then, many other countries joined the World Trade Organisation (WTO), agreed to implement many reforms and committed to make the rule-based multilateral trade regime a cornerstone of their development process.

This commitment is stated clearly in the opening sentences of the Doha Ministerial Declaration: “The multilateral trading system embodied in the WTO has contributed significantly to economic growth, development and employment throughout the past fifty years. We are determined, in the light of the global economic slowdown, to maintain the process of reform and liberalization of trade policies, thus ensuring the system plays its full part in promoting recovery, growth and development.” (WTO [2001]). However, the Doha Declarations could not conceal the complaints among the developing countries that the promises of the Uruguay Round were not fulfilled.³

The Doha Ministerial Declaration repeatedly stresses the commitment to WTO “as the unique forum for global trade rule-making and liberalization.” For the global commitment to economic integration, trade liberalization and especially to the WTO to continue, it is imperative to have a clear understanding of what institutional features of the present trade regime can help or hurt the interests of the developing countries. This is especially important today since “the majority of WTO members are developing countries” and the ministers in Doha were clear on their desire to “place developing countries’ needs and interests at the heart of Work Program adopted in this Declaration” (WTO [2001]). As the debates leading to the Cancun meetings show, the development concerns may easily become the main obstacles in front of the multilateral trade liberalization efforts.

³ The events and discussions surrounding and following the Seattle and Doha Ministerial Conferences are illustrations of this dissatisfaction
So, what is the “global trade system”? According to Whalley [1996], “when applied to global trade arrangements, the term system⁴ implies a coordinated and well-organized set of rules and institutions that oversee and regulate world trade.” Upon close inspection, we see that the current global trade system is not a monolithic structure but is comprised of several overlapping and, in certain ways, conflicting pieces. The overarching piece of the system is the GATT/WTO framework that has been shaped during 55 years of continuous negotiations over trade liberalization as well as over new rules and laws that govern the framework itself. The second piece is composed of bilateral and regional agreements (such as free trade areas and customs unions) that increasingly include “deeper” measures of political and economic integration such as monetary, fiscal environmental and even military policies. The third group includes special sectoral or unilateral arrangements such as the Multi-fiber agreement (MFA) for textiles and apparel, voluntary export restraints, certain preference programs for developing countries (such as the Caribbean Basin Initiative, AGOA, Lome /Cotonou convention).⁵

The GATT/WTO is a rather unique institution, especially compared to other post-war multilateral institutions, in terms of the way it operates and is perceived in the world. For example, one of the most important successes of the post-World War II international economic architecture has been the universal acceptance of the legitimacy of the GATT/WTO regime as “the” trade regime by most countries regardless of their income levels, political orientations or geographic locations. That is why membership in the WTO is a key issue for most countries, including China and Russia, as part of their overall economic programs. The legitimacy of the WTO as the main forum to address global trade issues is based on three premises – fairness, expressed through the Most Favored Nation (MFN) clause, legality, protected through the Dispute Settlement Procedures, and reciprocity, the driving engine of post-war trade liberalization.⁶

As stated above, some of the arguments against of the multilateral trade regime are based on its perceived failures in protecting the interests of the developing countries. And these criticisms, in return, are deteriorating the legitimacy of the GATT/WTO regime. Hoekman [2002] argues that

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⁴ Original italics
⁵ Whalley [1996] actually includes certain policies that have trade implications as the fourth subsystem. Examples are competition, investment and environmental policies
⁶ The fact that all other pieces of the global trade system (regional agreements or the MFA regime) have to be “approved” by the GATT/WTO regime to earn their own legitimacy (even if they sometimes conflict with GATT’s principles) is an indicator of the authority of the GATT/WTO in the global trade system
its “development credibility” needs to be enhanced for the Doha Development Agenda to reach its goals. Currently, we are at a critical stage where the momentum to go forward with trade liberalization is being challenged. Interestingly, WTO has also established a Panel on Defining the Future of Trade in April 2012 to examine and analyse challenges to global trade opening in the 21st century. Unless the concerns of the developing countries are adequately addressed, the historic process of trade liberalization may be derailed.

The first criticism is that market access promises to developing countries during the Uruguay Round never materialized. The developed country protectionism in agriculture and textiles & apparel are the best-known examples in this category. Furthermore, antidumping actions are becoming effective protectionist devices in markets which developing countries manage to successfully penetrate. The second one is related to special and differential treatment (SDT) of developing countries. Most important SDT provisions allow developed countries to grant preferential access to their markets to the exports of developing countries such as the Generalized System of Preferences. However, these are “best endeavor” provisions and are neither guaranteed nor protected under the WTO law. Developing countries are demanding them to be more extensive and automatic. Third category includes the technical and financial difficulties associated with the implementation of the Uruguay provisions. Many countries are claiming that they lack adequate capabilities to perform their obligations. There are many other discussions such as the ones related to dispute settlement, services trade and competition policies etc.

All of these issues foster the perception that the global trade agenda is tilted against the interests of the developing countries. One of the main themes in this paper is that the GATT/WTO with its established principles for conducting negotiations, implementing the agreements and resolving disputes is the best platform to protect and promote the interests of developing countries. The further we move away from the WTO as the main forum to address trade–related issues and disputes, the more difficult it becomes to reach the development goals and solve the problems listed above.

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7 As per the WTO web site, this Panel was created in response to Director-General Pascal Lamy's suggestion at the WTO's 8th Ministerial Conference in December 2011 that the profound transformations in the world economy require the WTO and the multilateral trading system to look at the drivers of today and tomorrow’s trade, to look at trade patterns and at what it means to open global trade in the 21st century, bearing in mind the role of trade in contributing to sustainable development, growth, jobs and poverty alleviation
Basic Principles of GATT/WTO Regime

In this section, we briefly go over the main principles of GATT/WTO regime and identify how they reinforce each other. Their relevance and importance for developing countries is analyzed in the following sections.

The success of the GATT in terms of achieving its intended goals at its inception is captured by the simple fact that average tariff rates have been reduced from 40% in 1947 to 4% in 1994 (Staiger [1995]) while most quantitative barriers have been removed\(^8\). During the same period, world trade has increased more than 20-fold, much faster than income levels. One of the main sources of the success is the way GATT negotiations were conducted, as a “market” for market access, especially during the initial rounds. Governments, motivated by mercantilist preferences due to protectionist pressures at home, come to GATT negotiations to swap market access concessions with their trading partners. This voluntary exchange of concessions creates welfare gains for the participants like any other market would. It is crucial for developing countries to never forget that this negotiation and reciprocal concession mentality is the defining feature of GATT/WTO.

Trade liberalization is a natural outcome of this negotiation process. It is otherwise rare that a country (especially among OECD countries) will voluntarily lower its barriers below a certain level without reciprocal concessions from a trading partner. As a result, if a country is the main exporter of a product in the world but does not participate in GATT, it is unlikely that the participating importers will voluntarily implement significantly lower trade barriers on this product. Another example may be a GATT-member small country that is the largest producer and exporter of a single product but is not a large importer of other countries’ products. Therefore, it does not have much to offer in terms of market access to its trading partners which make it difficult for this small country to obtain trade concessions on its export product.

The first role of GATT is to provide the opportunity for the interested countries to negotiate and coordinate their trade policies efficiently so that economic and political externalities are internalized. (Staiger [1995] and Ethier [2002]). Since efficiency increases in a market with the number of participants and number of traded goods (different market access concessions in this

\(^8\) There are some notable exceptions to this in the developed countries such as the MFA and quotas on agricultural products. These are analyzed in detail in following sections.
case), there are obvious benefits to conducting multilateral negotiations with ever increasing number of countries. The second role is to establish the rules and legal principles under which these negotiations are conducted and the resulting agreements are enforced. The key principle in operation is non-discrimination, expressed through the Most Favored Nation (MFN) clause. MFN states that an importing country can not discriminate between (similar) products from different countries and has to apply the same tariff and other national restrictions on them. A related concept is the National Treatment rule which prohibits discrimination between domestic and foreign goods (once the customs duties are paid.)

The concept of non-discrimination has obvious economic benefits as it guarantees imports come from the most efficient supplier. However, a more important benefit is the sense of “fairness” and legitimacy it creates among the participants, as mentioned in the introduction. The sense of legitimacy encourages participation and it is the main contributor to the emergence of GATT/WTO as the forum to address all trade-related issues in recent decades as the tariffs ceased to become the main obstacle to liberalization.\(^9\)

The next key function of the GATT/WTO is to make sure countries abide by the market access commitments they made and do not completely withdraw from the regime in case the commitments turn out too burdensome. At the same time, it is important to deter attempts to renege on promises under false pretenses. This is a rather complicated process. To solve the former problem, it contains permissible exceptions so that countries can withdraw concessions under unforeseen contingencies, such as balance of payment crisis. On the other hand, there is a sophisticated dispute settlement mechanism so the disputes do not lead to trade wars and endanger the system. There is a large body of literature analyzing the effectiveness of the dispute settlement mechanism in the GATT/WTO (see Reinhardt and Busch [2002] for an overview). However the fact that the compliance rate by the parties found to be guilty is quite high (although not 100%) is indicative of the importance of the mechanism. The presence of a credible dispute settlement mechanism increases the effectiveness and efficiency of the initial agreement as countries are more likely to agree to more significant commitments knowing the other side is more likely to abide by its obligations. Each one of the principles and practices

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\(^9\) These include trade-related intellectual property rights (TRIPS), trade-related investment measures (TRIMS), anti-dumping and competition policies.
identified above, (reciprocity, non-discrimination and dispute settlement), individually contribute to the effectiveness and success of the GATT/WTO regime.

Another important feature is how these principles reinforce each other. For example, through the MFN principle, reciprocal concessions are extended to other members who contribute to further liberalization. Knowing that market access is non-discriminatory also increases the efficiency of the initial negotiation (Staiger [1995]) and countries are more likely to make larger commitments in the initial negotiations if they know there is an efficient and credible dispute resolution mechanism. Moreover, the presence of non-discrimination principle increases the credibility of the dispute resolution process.

There are other key GATT principles which have been instrumental over the last five decades. One is the insistence on tariffication of non-tariff barriers (especially quantitative restrictions). Transparency of the individual trade policies makes negotiations and liberalization easier. Another one is the consensus approach in many decision making processes from tariff reductions to dispute settlement cases. In tariff negotiations, the gains and concessions of all countries are closely linked. So it is necessary to have everybody’s approval for the final agreement. In dispute settlement cases, the consensus approach increases the legitimacy of the decisions. That is why we commonly see countries “not” blocking decisions against them under the old GATT regime when they were allowed to do so (Reinhardt and Busch [2002]). Finally, there is the reliance on member countries’ delegations (more than the professional staff) for the operations of the WTO. The committees and other decisions making bodies are headed by delegations of the member countries while the professional staff have a more “advisory role.” In other words, WTO is a member-driven organization which is consistent with the principles we identified above.

No institution is perfect and can solve all ex ante and ex post problems. GATT/WTO is no exception and has many features that require improvement. However, member countries created a rule-based international trade regime through the GATT/WTO that managed to increase global trade rapidly, lower barriers significantly and avoid serious trade wars of the sort we witnessed in the interwar era. This is even more impressive once we take into account that GATT/WTO has

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10 A less known fact is how small the WTO secretariat staff is. The current total is 550 according to the official website.
no specific enforcement powers, “no jailhouses, no bail bondsmen, no blue helmets, no truncheons, no tear gas” (Bello [1996]) to use against violations of commitments.

**The Importance of Multilateral Trade Regime for Developing Countries**

In any discussion of growth and development issues, the importance of certain macroeconomic and social policies needs to be emphasized. For example, one key to economic growth is to provide the right environment for both domestic and foreign investment. Towards that goal, a government needs to protect property rights and create a stable macroeconomic environment through responsible and stable fiscal, monetary and foreign exchange policies. Furthermore, it is necessary to have a transparent legal and political regime as well as an effective education system for long-term growth. Without these and other numerous policies and institutions in place, trade liberalization can not deliver miracles (Rodrik [2001]). On the other hand, successful trade liberalization is likely to reinforce the effects of these other domestic policies.

**The value of commitment**

A critical issue in the development and growth context is the credibility and durability of reforms. Regardless of the income level of the country, any reform program has distributional consequences, and therefore is likely to create a certain level of domestic opposition. Although reforms may have overall positive effects; interests groups who oppose reforms may be powerful enough to defeat them. This becomes a more serious problem in developing countries which tend to have less transparent, more corrupt political institutions and suffer from wide-spread rent seeking behavior. Trade policy is especially vulnerable to such threats since excessive protection generates economic gains captured by a range of influential groups at the expense of the public and long-run economic welfare. Furthermore, the beneficiaries of protection are generally more organized compared to the opponent (consumers and exporters) who creates a political bias against liberalization\(^{11}\). In short, trade liberalization in a developing country can be derailed or overturned relatively easily.

One of the key benefits of an international trade agreement and especially membership in the WTO is the commitment mechanism they provide to the government against domestic pressures. Using international obligations and reputations as a legitimate excuse, the government can “stand

\(^{11}\) We should note that the same problem also exists in developed countries. So the arguments in this section apply to them as well.
up” against the demands for protectionism and claim that its hands are “tied.” The increased credibility of trade reforms, of course, discourages wasteful rent-seeking activities. Resources can flow out of protected sectors into export sectors which gives further momentum to growth.

Some of the critics maintain that the pace and degree of liberalization demanded by the multilateral trade agreements from the developing countries are not compatible with their development needs. Developing countries should have the right to design their own programs and withdraw commitments without any obligations in the presence of economic and social problems (Third World Network [2001]). These issues became more important due to the “Single Undertaking” principle of the Uruguay Round where member countries had to accept either all or none of the provisions. As it became evident afterwards, most of these obligations imposed serious burdens on many developing countries, especially with respect to their technical capabilities to implement reforms (Finger and Schuler [2000]). The essential issue is to be able to differentiate real difficulties with liberalization from political demands for protectionism by interest groups. This problem is closely related to the standard “rules vs. discretion” dilemma which is extensively studied in the literature in many different contexts. The main conclusion is that it might be better to stick with a rule and give up the chance to use discretionary policy later on when discretion can also be used to against the interests of the public.

Withdrawal of the concessions are allowed under the WTO rules under certain circumstances as long as the injured partners can also withdraw equivalent concessions to compensate for their losses. This mechanism permits the withdrawal of really burdensome concessions while discouraging opportunistic protectionist behavior. The problems related to the pace and degree of implementation of trade reforms in developing countries can be addressed through the same mechanism. Countries who wish to slow down their liberalization process and cancel some of their concessions may do so as long as they give up some of the benefits they obtained and trading partners are “appropriately compensated.” Potential conflicts can be addressed through the dispute settlement mechanism if there is concern that the withdrawal is not warranted. However, politically motivated withdrawal of concessions is likely to hurt the country in question more than anybody else. In short, by increasing the cost of withdrawal of concessions, GATT/WTO commitments serve the long-term interests of the members. They provide certainty and reliability in the economic environment which is especially essential to attract and maintain investment.
Nevertheless the technical and financial difficulties faced by the developing countries in terms of fulfilling their WTO commitments are real and there are serious capacity building challenges. These concerns need to be adequately addressed during the negotiations and this is one of the most important areas where other development agencies (World Bank, UNCTAD etc) can play a significant role.

**The Value of Bargaining in a Multilateral Environment**

Countries differ in terms of their economic size, level of development and volume of trade. These factors naturally affect trade negotiations whether these are conducted on a bilateral, regional or multilateral basis. The asymmetries in bargaining powers influence the negotiation outcomes which may favor larger countries. Small, developing countries with concentrated product portfolios and few export markets tend not to have much bargaining power. Therefore they may be less likely to obtain market access concessions on their exports.

An important advantage is that the multilateral system increases the bargaining power of developing countries relative to a developed countries since it enables them to negotiate as a block. During negotiation rounds, many different coalitions are formed, mostly depending on the issue. For example, the Cairns group representing agricultural exports has been quite effective and long lasting. Similarly, developing countries coordinate their strategies on many issues that affect them. It is less likely that countries will be more successful in resolving their disputes and obtaining bigger concessions through unilateral actions or outside the WTO.

We should note the importance of the non-discrimination principle and the MFN clause which increases the likelihood of coalition formation among smaller and weaker countries. Since the benefits (such as obtaining market access concessions from a large country) accrue to all countries through the MFN clause, the interests of all exporters are aligned in negotiations. The inability of an importer to discriminate between them encourages exporters to act and negotiate as a block.

**The Value of Legalization and Rule-Based Regime**

In the initial GATT rounds, the emphasis was on elimination (and tariffication) of quantitative restrictions and lowering of tariffs. There are notable exceptions in some sectors but, the general consensus is that negotiations have been successful in reducing tariff barriers. Tariffs on most
products are fairly low with an average of 4% in most developed countries. As tariffs ceased to be the main policies of protection, the negotiation agenda moved towards more challenging items. Some of them are non-tariff barriers, inclusion of previously excluded sectors (e.g. agriculture, services), certain domestic policies that have trade implications (taxes, subsidies) and other trade related issues (intellectual property rights, standards). The inclusion of more complicated issues on the negotiation and implementation agenda led to increased “legalization” of the system. Dispute settlement has been the area with the most extensive developments with explicit procedures, rules and decision making processes. Furthermore, many Uruguay Round Agreements (TRIPS, GATS, SPS) contain detailed rules and regulations.

The process of increased legalization has been criticized for many different reasons. Some argue that GATT/WTO is based on bargaining and flexibility with conflicts being resolved through negotiations. Increased legalization can weaken this source of strength and effectiveness (Sally [2003]). On the other hand, increased legalization requires “armies of high-fee lawyers.” Higher financial cost of dispute tilts the field in favor of the wealthier countries who can afford it. Furthermore, litigation allows increased influence by organized interest groups in developed countries, sometimes at the expense of developing countries (Third World network [2001]).

These arguments tend to overlook how trade negotiations would be shaped and disputes would be resolved in the absence of a rule-based and legalized regime. In the previous section, we argued that bargaining power is rather important in trade negotiations and in enforcement of agreements. Smaller and poorer countries are at a natural disadvantage in this regard. Like in any other environment, well established, credible and efficient legal rules benefit all members, especially the weak ones.

Developing countries benefit from the legalization of the WTO regime in many different ways. First, legalization increases the credibility and legitimacy of the institutions and the decisions made there. It becomes more difficult for firms or interest groups in a country to demand protection against foreign competitors when a WTO panel rules against it.

The government, due to concerns based on reputation and legitimate retaliation, is going to be more reluctant to acquiesce to such pressures. If there was a credible retaliation threat from the trading partner, WTO’s extra enforcement might not be necessary. However, if the other country
is a developing country with limited retaliatory power, WTO’s additional influence might make a difference.

Furthermore, the increased transparency of the dispute resolution processes strengthens the effectiveness of the system since “international reputations” can be tarnished more easily. Finally, the respect for rule of law in most developed countries further increases the legitimacy and power of decisions in the WTO.

As we argued in earlier sections, the higher expectations that promises are going to be kept and cheaters are exposed, amplifies the level of liberalization commitments in the negotiation stage. And all members benefit from lower barriers through the MFN clause.

The increased costs of litigation and compliance with complex legal requirements can pose real challenges for the developing countries. Again there is an important role to be played by other multilateral agencies. Also, institutions such as the Advisory Center on WTO Law (ACWL) which provides free legal services to least developed countries play a valuable role. Better understanding of the WTO law and more active participation by the developing countries can only increase the effectiveness of the WTO as an institution.

ACWL's basic mission is to ensure that these Members of the WTO have a full understanding of their rights and obligations under WTO law and an equal opportunity to defend their interests in WTO dispute settlement proceedings.

**The Challenges for the Developing Countries**

Some of the key challenges for the developing countries in the multilateral trading system regime include:

*Implementation and Participation Costs*

The global trade system poses numerous difficulties and handicaps for the developing countries. As mentioned above, an important challenge is the technical and financial difficulties associated with participating in the WTO, implementing trade reforms as well as pursuing disputes. Some of them are actively participating in the WTO activities after the Uruguay Round. These are middle income countries which already have or are building significant global presence in certain markets. On the other hand, a large number of small and least-developed countries lack effective presentation in the WTO with no permanent representatives in Geneva in most cases.
"Trade Challenges for Developing Countries: Preparations for the New Round," by Prof David Robertson of the Melbourne Business School, argues that instead of relying on the various mandated reviews of the WTO agreements, developing countries can deal with their 'justifiable concerns' better in a new round, where 'opportunities for trade-offs and reciprocity are greater.'

Another issue closely related to implementation costs are the difficulties associated with behind-the-border reforms. Some of these are transportation, finance and other legal and regulatory policies that are vital for trade reform to succeed (Hoekman [2002]). Most of the improvements in these areas should be part of an overall development strategy and should be implemented along with trade reform.

The “development challenges” faced in the WTO can not be fully resolved without full participation of all developing countries in the regime. Therefore, it is important to provide the necessary technical assistance for capacity building and implementation in these areas. Developed countries need to realize that such assistance is in their long-term interest since economic growth in developing countries benefits the trading partners as well. Furthermore, active participation of developing countries in the WTO and their implementation of WTO agreements increase its legitimacy and effectiveness which, in turn, provides momentum for further liberalization.

The Danger from Regional and Unilateral Arrangements

Borrowing Bhagwati’s terminology, some economists believe regional agreements are “stumbling blocks” while others think they are “stepping blocks” to global free trade. Regardless of the academic debate, regional agreements proliferated over the last two decades, with a powerful surge during the Uruguay Round negotiations. A WTO report lists more than 170 regional agreements with many developing countries as members. Some of the regional agreements play significant roles in the overall development strategies of developing countries. Prominent examples are Mexico in the case of NAFTA, Brazil and Argentina in Mercosur and ex-Eastern block countries in the case of their various agreements with the European Union.

Another program that has increased in popularity is unilateral preferences. These are sometimes referred to as Special and Differential Treatment (SDT) programs and are variations of the older Generalized System of Preferences (GSP). However, some of the issues related to SDT programs are similar to the ones posed by regional agreements which lead us to mention them in this
section as well. As opposed to regional agreements which are reciprocal and are required to cover “substantially all trade”, SDT programs are unilaterally granted by developed countries on a select list of exports from developing countries. Each donor country administers its program as it desires with full discretion over the eligibility criteria, preference margin and product coverage. In the last decade, the US implemented regionally targeted programs such as the Caribbean Basin Trade Partnership Act (CBTPA), African Growth and Opportunity Act (AGOA), and Andean Preferences in addition to the standard GSP program. The European Union also operates various programs with Lome/Cotonou convention being the most well-known.

Although they are legal under GATT/WTO, regional and unilateral agreements are in clear conflict with the main principle – the MFN clause – since they are inherently discriminatory against the non-members. The implications of proliferation of such agreements for developing countries can be stark. First, small, developing countries who are members in a regional block with a larger, developed country might not have much bargaining power and end up agreeing to terms that might not be in their long term interest. Furthermore, regional agreements, especially customs unions, may take away the policy flexibility which is one of the criticisms against WTO provisions as well (Rodrik [2001]).

Second, due to their legal structure, regional and unilateral arrangements are outside the WTO jurisdiction and the benefits they confer are not protected by the WTO Dispute Settlement mechanism. This is a rather important concern since developing countries lack enforcement and retaliatory power in a trade dispute. For example, GSP benefits can be cancelled at any point by the donor and there is not much the recipient can do in that case. Although some agreements (such as NAFTA) have introduced dispute settlement forums, they are unlikely to have the strength of the WTO.

Third, membership in regional and unilateral programs may decrease the incentives of the developing countries to participate in multilateral negotiations. This effect operates through different channels. In the case of GSP-type preferences, developing countries believe that (i) they can not obtain further market access concessions from developed trading partners, and (ii) they might lose the existing ones they have. In the case of regional agreements, the same concerns apply. In customs unions, small developing countries have little effective say over their own
tariffs anyway. Furthermore, developing countries which are not in regional agreements but are pursuing them, may not want to clash with their future (developed country) partners. Finally, membership in such programs may lead to more protectionist policies due to domestic political economy reasons as Krishna [1998] argue in the case of regional agreements and Ozden and Reinhardt [2002] in the case of GSP.

Fourth, discriminatory programs create strong conflicts of interest among developing countries, between the recipients of the preferences and the excluded ones, since they tend to specialize in similar product categories. This might prevent them negotiating as a block in multilateral rounds against the developed countries’ protectionism. For example, during the Uruguay Round, developed countries agreed to eventually eliminate the MFA which administers their textile and apparel imports through a complex web of quotas and tariffs. Today, more than 25% of US imports of apparel come from Mexico and other countries in the Caribbean and Central America without quotas and tariffs due to the preferences granted under NAFTA and CBTPA. On the other hand, especially the exporters in East Asia face restrictive quotas. Naturally, the preference recipients (and countries who have non-restrictive quotas) will not be very supportive to elimination of the MFA today.

Finally, preferential programs and discriminatory policies may be used as bargaining chips against developing countries in many areas. These can be (i) directly related to WTO such as dispute settlement cases and anti-dumping investigations, (ii) related to trade issues in general such as intellectual property right and competition laws or (iii) unrelated political and military issues. For example, the US removed Pakistan from GSP during the tensions with India over nuclear weapons testing and reinstated in 2002 to receive support in Afghanistan.

*The Danger from an Excessive Regulatory Agenda*

One emerging pattern in the WTO is the inclusion of certain regulatory issues on the negotiation agenda. The signals of this process emerged in the Tokyo Round and it culminated in the Uruguay Round. Competition, government procurement and investment are some of the areas for which initial work has started based on Ministerial Declarations. There are several reasons why these regulatory issues are becoming more prominent. The elimination of tariff and other trade barriers brought attention to regulatory regimes as other sources of market access restrictions. Of course, the governments are now more likely to use these regulatory measures for protectionist
purposes as trade policies become less available. Again a delicate balance needs to be maintained. On one hand, there are benefits of establishing multilateral rules to prevent abuse of such policies to restrict market access. The dispute resolution process can also become an effective tool to establish legal precedence and discourage such behavior. Furthermore, there is the commitment value we identified above. Most of these regulatory reforms face domestic opposition and international commitment and pressure may tip the balance in favor of implementing them. On the other hand, there are two concerns with including them in the WTO agenda. First, in most cases, it is not clear WTO is even the appropriate forum. The difficulty associated with harmonizing domestic regulations is a daunting task which might distract the WTO from its core objectives. It is also not clear how some of the WTO principles, such as reciprocity and non-discrimination, can be implemented in negotiations over regulations. Second, developing countries have diverse needs and circumstance, especially with respect to their development policies. WTO rules on harmonization may impose severe constraints on their ability to effectively implement their objectives. As many conclude, one size might not fit in the case of complicated regulatory rules (Rodrik [2001], Hoekman [2002], Sally [2003], Finger and Nogues [2002]).

Specific Issues
This section goes over some of the issues which are the causes for dissatisfaction among developing countries. Most of them have been mentioned in the previous sections but it is important to review them as they are likely to dominate the trade agenda for the next several years. We also aim to provide suggestions on how to resolve these problems taking into consideration the WTO rules and principles presented.

Market access, tariff peaks and tariff escalation in developed countries
Some of the sharpest criticisms of developing countries are targeting the trade policies of developed countries. There is extensive analytical and anecdotal evidence showing that trade barriers of developed countries disproportionately target developing country exports. Tariff peaks for products that are important to developing countries are significantly higher than the average tariffs imposed by the developed countries. Most of these tariff peaks are on agricultural products and textiles & apparel. Furthermore, the tariffs of developed countries exhibit strong escalation with significantly higher tariffs on processed products compared to raw materials and
intermediate goods. A schedule of escalating tariffs takes away the incentives from developing
countries to specialize in higher value added segments of the production chain.

One of the important outcomes of the Uruguay Round was the tariffication of non-tariff barriers
in agriculture which led to imposition of relatively high tariffs in these products. Hoekman, Ng
& Olarreaga [2002] show that a significant portion of developing country exports face tariffs
over 15% in the US and the EU. Another outcome of the Uruguay Round was the agreement to
eliminate the MFA quotas by 2005. The process on this front has also been quite slow with
significantly small liberalization so far.

There are several other developments since the Uruguay Round that need to be mentioned. First,
developed countries, especially the US, started to follow a new path in trade policies regarding
textiles & apparel. In 2002, around 25% of US imports in apparel came from Mexico, the
Caribbean & Central American and African countries under preferential programs (NAFTA,
CBTPA and AGOA). As a result, overall apparel imports of the US actually increased
significantly, although the exporters are not necessarily the countries with the highest
comparative advantage (such as South and East Asian countries). These programs have several
advantages for the US. First, they are less threatening to domestic industries and thus face less
political opposition. Second, they can be used as bargaining chips with the recipient countries for
other political purposes. Third, they have strict rules of origin requirements which force them to
use American yarn and fabric. This greatly benefits the domestic producers of these products
who provide further political support. Finally, it prevents the developing countries from
negotiating as a unified block since the beneficiaries of such preferential programs want to see
the continuation of quotas and other barriers against excluded countries.

The agriculture sector suffers from other problems. The most important is the subsidies and other
transfers provided to farmers in developed countries. OECD estimates that transfers to farmers
are around 30% of farm income and total around $300 billion in 2001. Although there are many
reasons behind why agriculture receives such special and inefficient treatment, organized and
concentrated political power of the sector is probably the most important. Despite the pressures
on the developed country governments, especially the European Union with respect to
agriculture, there is little evidence that any progress will be made any time soon.
There is no doubt that agriculture and textiles & apparel are of significant importance to developing countries in terms of achieving their development objectives. Also, liberalization in these sectors would increase the commitment of the developing countries to the WTO. On the other hand, it is difficult to force the developed countries to liberalize their policies in these sectors due to the domestic political pressures they face. Nevertheless, the multilateral forum is still the best appropriate one to pursue these goals.

First, developing countries need to document clearly what they can offer to the developed countries in return. Most developing countries actually apply tariffs that are considerably below the bound tariffs. Lowering these bindings can be a valuable bargaining chip for most developing countries. Second, there are other areas, such as services, in which developed countries are interested. Again, developing countries need to effectively use their concessions in such areas during the negotiations. Third, developing countries need to negotiate as a block. The Cairns group has actually been quite vocal and effective in agriculture and there is no reason why this can not be replicated in other areas. Receiving preferential access through regional and unilateral agreements may be tempting but these are inefficient and harmful in the long run. Fourth, it is as important to pursue a public relations campaign. The economic inefficiencies and costs (both internal and external) of developed country policies in these sectors should be publicized extensively. The developed country governments are very sensitive to the concerns of their constituencies. The consumers, NGOs and potential exporters in developed countries need to be made aware of the costs (such as the fiscal costs) of the policies of their governments. They can be more effective in pressuring their own governments.

The tariffs of developing countries should not be ignored in the process. They impose, on average, higher tariffs and more non-tariff barriers. Interestingly enough, most of the higher tariffs of developing countries target exports of other developing countries (Sally [2003]). The negotiations for the elimination of significant developed country barriers should be conditional on developing country liberalization. This is what reciprocity is all about and it benefits all parties involved.

**Services**

Services trade is one of the least analyzed but potentially most important areas. Their economic importance arises from the fact that services account for 2/3rd of most developed countries’ GNP.
Developing countries have comparative advantage in some labor intensive sectors while developed countries have advantages in areas that require capital and advanced technology. Thus, there is no doubt that liberalization of these sectors can provide significant welfare gains for all countries. However, service liberalization is not as straightforward. Most effective barriers are employed through domestic regulatory measures and we argued earlier how difficult it is negotiate efficient regulatory measures through the WTO. Absence of reliable and meaningful data also makes analysis and negotiation difficult. This is partly behind the failure of the Uruguay Round GATS commitments to go beyond the status quo (Sally 2003]).

The negotiations in services trade are quite different than merchandise trade. The key issues are the coverage of commitments, the transparency of the policies and multilateral disciplines (Hertel, Hoekman and Martin [2000]). The sectoral coverage of commitments with respect to national treatment and market access is one area where negotiations can take place. Sally [2003] argues that developing countries can make concessions in “mode three” of supply (commercial presence) while developed countries can reciprocate by commitments in Mode-4 supply (movement of natural persons). Since these issues are covered in other chapters, we will not go into further detail but simply state that there is room for negotiations and reciprocal concessions to play an important role. However, it is important that concessions are granted on an MFN basis once they are made.

Market access commitments in services can be easily hindered by behind-the-border barriers, and non-transparent regulations. A first step would be a reporting requirement on all measures that affect market access in services. This information can be used as a basis for negotiations and to prevent withdrawal of concessions in later stages. Furthermore, collection and presence of such data would deter protectionist tendencies to a certain extent.

Anti-dumping

Anti-dumping actions became quite popular during the last decade and there is rapidly growing theoretical and empirical research on the subject. The consensus is that they are almost always used for protectionist purposes and rarely have economic rationale behind them. It has been argued that even the initiation of a case tends to curb imports and cause the importing firms to act less aggressively. Some researchers also claim that the ability to file anti-dumping cases induces firms to collude, decreasing the level of competition and hurting the consumer.
Other empirical regularities are that they have been most extensively used by developed countries (the US and the EU) and they disproportionately target developing countries (Michalopoulos [2002]). Part of the problem is that developing countries have little retaliatory power and technical ability to defend themselves in rather complicated legal environments. Another pattern is that some middle-income countries started to use anti-dumping actions more frequently in recent years. Blonigen and Bown [2003] actually find that such potential retaliatory actions discourage the use of anti-dumping suits by developed countries. Finally, although anti-dumping laws are consistent with GATT law, they are in conflict with the non-discrimination principle since the specific companies can be targeted.

The efforts to restrain anti-dumping investigations concentrated on including them in the GATT/WTO, rather than allowing them to operate as unilateral actions. There has been some progress achieved in recent years. For example, a WTO panel decided that the US law allowing the complaining firms to receive the anti-dumping duties collected from the defendants was illegal. Furthermore, many countries file WTO disputes if they believe they were unfairly injured through anti-dumping actions. Bringing anti-dumping laws under WTO jurisdiction, imposing higher legal standards and making them more transparent to the public are probably the best ways to eventually discourage and eliminate anti-dumping laws.

**Regulatory Issues—TRIPS, Investment Rules, Competition Policies, Government Procurement**

In previous sections, we mentioned the difficulties associated with negotiations over regulatory policies even if they are trade related. First, most of the time, it is not clear if WTO is the right forum for these negotiations. Second, it is not necessarily true that all countries should implement same policies. Developing countries’ needs differ significantly and there are valid reasons to grant them policy flexibility to solve their specific problems. Furthermore, it is not even evident that these policies have such urgency for most developing countries that lack necessary resources and human capital to implement such reforms. One the other hand, policy commitments in these areas create obvious benefits to the developing countries themselves. Regulatory measures can be used as effective market access barriers and it is important to eliminate the incentives and opportunities to do so. Among these issues, TRIPS is the most demanding one since it involves the access to essential medicines against diseases such as the HIV. Unfortunately developments have not been promising, especially after the US refused to
sign on to the agreements. The discussions in other areas are still in its infancy and it is not clear how things will progress. The challenges in these areas bring back the doubts on whether the WTO is the appropriate forum to deal with these issues. There does not seem to be easy answer.

**Conclusion**

Three institutions were planned at the Bretton Woods conference: the World Bank, the International Monetary Fund and the International Trade Organization. The United States Congress did not ratify the creation of the ITO so the world trade was governed through a simple agreement, the GATT, for almost five decades, until the World Trade Organization was created after the Uruguay round. However, some would argue that GATT was the most effective institutions to emerge from Bretton Woods. The success of GATT/WTO is based on three principles – its operation as a market for market access, the extension of market access concessions to all members through the MFN clause and the protection of concessions through a highly developed legal structure. The world trade regime and the WTO are probably going through one of their most challenging periods in their history. We are faced with the difficulties related to integration of the developing countries to the trade regime. Many developing countries are quite disappointed with the manner their concerns are addressed in the WTO negotiations.

In this paper, we argued that the rule-based multilateral framework is the best forum to address the concerns of the developing countries. A successful resolution of these difficulties will bring many benefits to both developing and developed countries. First is the obvious benefit of helping developing countries achieve higher growth and prosperity through integration into the world economy. The second is the re-establishment of the “development credibility” of the WTO so that it continues to operate as the main forum for addressing trade issues and liberalization.

**Bibliography**


