CHAPTER 4
REFORMS TO THE GLOBAL GOVERNANCE OF TRADE

This chapter applies chapter 3's suggestions for human development–oriented trade to today's multilateral trade regime. The chapter analyses pressing issues and challenges for the global governance of trade and offers recommendations for improving it consistent with human development objectives. In addition, the chapter analyses regional trade agreements and makes suggestions for their evolving relationship with the multilateral trade regime.

CHANGES NEEDED IN THE GLOBAL TRADE REGIME

Widespread perceptions that the multilateral trade regime urgently requires reform have placed it under constant scrutiny since the 1999 WTO ministerial conference in Seattle, Washington (US). Because the regime is governed by a young, one-country one-vote, member-driven organization in which most members are developing countries, serious reform should be achievable. But what should it involve?

The 'single undertaking' mandate of the World Trade Organization (WTO) compels members to accept a wide range of agreements in one package—making it a unique mechanism among multilateral organizations (see chapters 2 and 3). Although the single undertaking has provided some benefits to developing countries, it could do far more for human development if it ensured that trade rules and obligations reflected all countries' interests and incorporated human development objectives. More effective and meaningful special and differential treatment could help achieve this goal.

Special and differential treatment

Special and differential treatment focused on human development should be driven by two assumptions. First, different countries have different initial conditions. Second, different countries have different capacities for effective integration with the global economy—and among countries with similar capacities, reciprocal trade liberalization can bring significant gains.

Effective special and differential treatment would give developing countries space to implement policies that promote human development. It would also provide

secure, preferential market access to support policies aimed at deriving human development benefits from international trade. The principle of special and differential treatment was reaffirmed at the 2001 WTO Ministerial Conference in Doha, Qatar—giving the international community an opportunity to achieve these goals.

Still, clear consensus on special and differential treatment is needed to ensure that trade agreements support human development. Thus it is hoped that the next WTO Ministerial Conference, in September 2003 in Cancun, Mexico, will generate a declaration on special and differential treatment and human development. This declaration could cover policies related to education, technology transfer, environmental protection, gender equality, cultural integrity and diversity, universal health care, universal access to energy and the right to use traditional knowledge to promote human development.

Such a declaration would mean that special and differential treatment becomes accepted as a general rule rather than as an exception or special case—an extremely desirable outcome regardless of whether the declaration emerges. Special and differential treatment should also be made unconditional, binding and operational, with countries able to suspend certain WTO commitments if they can show that doing so is necessary to achieve human development goals. Acceptance of this approach will require greater flexibility in the practical workings of the single undertaking.

Countries should be grouped by their level of human development, with reciprocal commitments within groups and asymmetrical relationships between them. A country's graduation from one group to another should be based on clear, objective criteria such as comprehensive indicators of human and technological capabilities or the achievement of specific Millennium Development Goals. Commitments made at the Third UN Least Developed Countries Conference in 2001 should be given contractual status in the WTO as a way of helping these countries achieve these goals.

Governance structure

The WTO's formal governance structure is the most democratic of all multilateral organizations and so requires no major changes. But the structure should allow for more effective organization and participation by coalitions of developing countries. In addition to formal subregional groups of developing countries—such as the Association of South-East Asian Nations (ASEAN) and members of the Southern Common Market (Mercosur)—and broader regional groups—say, the African group—ad hoc alliances formed on the basis of common interests or development levels (or both) can be effective. Examples include the Like-Minded Group and Least Developed Countries Group, which bring together developing countries, and the Cairns Group, which brings together developing and industrial countries to discuss access to agriculture markets.

These and similar groups should be supported and allowed to participate more formally in WTO negotiations (see Schott and Watal, 2000; and Das, 2000).

Drawing on different groups for different negotiation areas would likely be the most appropriate and effective approach—and would leave open the possibility of alliances between developing countries as well as between developing and industrial countries. Such alliances would not substitute for individual country participation and voting in the general council or at ministerial meetings. They are proposed primarily to break the governance impasse increasingly generated by informal meetings on specific issues and agreements, where consensus is reached behind closed doors. This informal consensus process has become far more influential in WTO decision-making than formal processes.

Agenda

The global trade regime's agenda is full, and many reforms are needed in the global governance of trade and in specific agreements and issues on which negotiations have concluded or just begun. So, regardless of their merit, the regime's agenda should not be overburdened with new issues at this time.

Moreover, the regime's agenda should be limited to trade issues that are purely multilateral and that require multilateral agreement. It should not be used as a tool to force agreement on a much larger normative agenda and range of issues.

Dispute settlement

The WTO's dispute settlement mechanism is central to the trade regime's system of governance and is in many ways a marked improvement over the mechanism used under the General Agreement on Tariffs and Trade (GATT). The current mechanism is more time-bound, predictable, consistent and binding on all members. But it is also subject to narrower, more legalistic interpretations—though the Doha declaration on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and public health provides a precedent to change that.

Despite the dispute settlement mechanism's positive features, important changes are required in its rules and functioning. This is partly because of the widespread perception that trade sanctions are an acceptable way—and the only effective way—to enforce international commitments. This perception has inspired initiatives to extend the trade regime's agenda to areas of international economic interaction far beyond cross-border trade in goods. Changes are vital in this context because an offended party's ultimate recourse in a dispute is trade retaliation against major trading powers—placing developing countries in a weak position because their threat of retaliation is rarely credible. Proposals have been made to correct this inherent imbalance.

In addition, mechanisms are needed to ensure that all countries honour WTO rulings. Such mechanisms could include requiring financial compensation from and levying penalties on countries that delay implementation of a dispute settlement ruling (until the offending measure has been removed). Consideration should also be given to a collective action clause, to be invoked when powerful members refuse to implement dispute rulings.

The proposal for a collective action clause would have to examined carefully before being endorsed. But a less bold approach—requiring the defaulting country to pay by implementing additional concessions (lowering tariffs or otherwise opening markets) or providing cash compensation—would be much harder to enforce because it would require the cooperation of the defaulting country. Such cooperation is unlikely since its absence would trigger action in the first place.

Decision-making

Formal voting never occurs in the WTO: all decision-making is based on consensus. There is an urgent need to review the workings of the consensus principle, which was adopted mainly to prevent large economic powers from being outvoted on issues where they cannot accept the will of the majority. Important changes could include increasing the size of the quorum required for decisions and allowing countries without representation in Geneva to participate through video-conferencing or other arrangements.

In addition, voting could be encouraged for some types of decisions (governance, budget, management and administrative issues), including by mail or electronically, especially for members without Geneva representation. While such changes may delay some decisions, they should lead to better-informed decisions—more genuinely owned by the majority of members and so more sustainable.

In addition, developing countries should use the consensus principle more actively to reach agreement on issues important to them before entering into detailed negotiations involving reciprocal trade-offs. The Doha declaration on TRIPS and public health shows what is possible when this approach is taken.

Relationship with regional trade agreements

WTO rules should provide the limits and boundaries for the scope and nature of regional trade agreements. But first, WTO rules need to be made more flexible and more friendly to human development. In particular, WTO rules should provide sufficient scope for addressing the development concerns of its members as well as non-members that are members of regional trade agreements. When such agreements involve both developing and industrial countries, they should allow for less than full reciprocity in trade relations between the two. In addition, regional agreements that are or intend to become 'WTO plus'—that is, having obligations that are broader, more stringent and less flexible than the WTO's—should be made WTO compatible.

External transparency

The WTO needs to increase its external transparency and public accountability—especially to civil society organizations and to small countries that do not have missions in Geneva. Its intergovernmental nature may preclude a formal decision-making role for civil society organizations and the private sector in its governance and dispute

processes. Still, the UN, World Bank and other intergovernmental organizations offer lessons on how to promote participation by civil society organizations. Such participation would likely be beneficial for both human development and developing country concerns.

National ownership

In both industrial and developing countries, no amount of reform to the multilateral and regional trade regimes can substitute for increased national ownership and better national governance of trade policy-making. Thus the challenge is not only to make global governance fairer but also to give voice to vulnerable groups—including women—not effectively represented by their governments at the national and international levels. This lack of voice is inextricably linked to the issue of national ownership and actively undermines it. Broadly based participation and ownership at the national level, involving discussions among parliamentarians, civil society organizations, community groups and the private sector, should be encouraged and supported. Engendering such broadly based national ownership can contribute significantly to long-term human development.

Background analysis and additional issues

The reform proposals above are based on detailed analysis of the issues and challenges confronting the global governance of trade. The rest of the chapter elaborates this analysis.

Mandate

Views differ on the future evolution of the multilateral trade regime. For some the next round of trade negotiations should simply be a continuation of the Uruguay Round, aimed at tightening its obligations and making them more intrusive—as well as extending them into new areas. For others the negotiations should be corrective, making the regime more supportive of development efforts.

As noted, the WTO's single undertaking obligates members to accept multiple agreements as one package, making it a unique mechanism among multilateral organizations. The International Monetary Fund (IMF), for example, does not require member countries to adopt a particular exchange rate system. Similarly, countries are allowed to sign human rights treaties and conventions separately and individually.

At the domestic level the single undertaking has considerably reduced developing countries' flexibility in choosing which agreements to sign—limiting their development policy options to those compatible with the rules and agreements of the global trade regime. From a human development standpoint this approach also increases the need for and urgency of designing and implementing governance processes in a genuinely democratic, participatory and inclusive manner, bearing in mind the realities of developing countries.

Yet it is only because of the single undertaking that developing countries have become major shareholders in the multilateral trade system (Delgado, 1994). The implications of this change are only beginning to be realized by the world's major powers. The single undertaking will likely increase developing countries' bargaining power in some traditional trade areas of great interest to many of them, such as agriculture and textiles and clothing. Still, to maximize human development possibilities, the mechanism must allow greater flexibility. This can be achieved if it allows a modified 'positive list' approach in future agreements—similar to that in the General Agreement on Trade in Services (GATS)—and, ideally, in some existing ones (such as the Agreement on Agriculture) as a result of ongoing reviews.

At the international level the extended coverage of multilateral trade rules has encroached on other international forums and organizations. For example, the TRIPS agreement has made the WTO an enforcer of instruments created by the World Intellectual Property Organization (WIPO). It has also created an undefined border with the Convention on Biodiversity. Similarly, the GATS threatened the cultural domain of the United Nations Educational, Scientific, and Cultural Organization (UNESCO), provoking a last-minute crisis in the Uruguay Round. The GATS also established disciplines in areas where the International Telecommunication Union (ITU) had been sovereign. So far attempts have failed to make the WTO the enforcer of International Labour Organization (ILO) conventions. And the International Civil Aviation Organization (ICAO) has been able to protect its territorial integrity largely because that set-up suited the major powers.

The WTO's mandate has also created problems of policy coherence between multilateral organizations. In some cases the WTO can be seen as an enforcer of IMF and World Bank loan conditions. But in other cases WTO rules (such as on tariff levels) are less stringent than IMF and World Bank loan conditions attached to structural adjustment programmes. There is also a lack of clarity between whether, in cases of conflict, WTO disciplines will prevail over those of multilateral environmental agreements and the Convention on Biodiversity.

The multilateral trade regime's broad mandate is a result not of trade's supremacy over other interests but of the view that trade sanctions are a credible enforcement mechanism. As a result the trade regime has a mandate to discipline much more than global trade. Indeed, it is becoming the main mechanism for global governance. Against this background the Doha declaration on TRIPS and public health is a major breakthrough, because for the first time the international community formally recognized that multilateral trade agreements could undermine human development and harm people's lives.

Special and differential treatment

Developing countries have been trying to make the international trade system more consistent with their needs and aspirations since the 1947–48 Havana Conference. Special and different treatment seeks to compensate developing coun-

tries for their inherent disadvantages relative to industrial countries in drawing equal benefits from the trade system. The Doha declaration resurrected the principle of special and differential treatment, and efforts are being made to establish an approach that addresses the real needs of developing countries. In addition, inspired by the flexibility built into the General Agreement on Trade in Services (GATS), developing countries are seeking to establish structures that bias multilateral trade agreements towards development. Rather than being seen as an (often temporary) exception, special and differential treatment should be considered an essential part of multilateral rights and obligations.

Few WTO provisions for special and differential treatment are phrased in contractual language, making them difficult to operationalize. (See annex 2.1 for exceptions from WTO commitments for developing countries and annex 2.2 for special WTO provisions for the least developed countries.) In most cases special and differential treatment is conditional on negotiations for extended transition periods and on industrial country discretion. Moreover, such treatment is subject to costly, time-consuming litigation. Developing countries have suggested that all non-contractual provisions for special and differential treatment be converted into binding obligations or deleted because there should be no non-contractual language in WTO agreements. Non-contractual language conveys the impression that multilateral agreements are development oriented—even if that is not the case.

For these and other reasons the design and implementation of provisions for special and differential treatment have been a matter of serious concern for developing countries. When measured against the elements needed for effective and meaningful special and differential treatment, the provisions fall short in several ways:

- WTO agreements state that governments can take action against imports that cause injury, prejudice or damage to domestic industries—regardless of whether or not it is the result of unfair practices by governments or traders. Such safeguards (often called 'trade remedies') strongly bias domestic investigations in favour of import-competing groups who petition for import relief and are its main beneficiaries. Thus such safeguards are vulnerable to misuse[1] and do not fulfil their purpose of providing policy space. Injury has to be established as a prerequisite for such action, but the criteria for injury have been designed to address the complaints of domestic producers. These criteria include such factors as profits, losses and changes in sales, and do not consider human development indicators. Such indicators should be included in the injury criteria or be used in parallel when resort is made to such 'trade remedies'.
- The policy space provided is primarily in the form of different tariff and subsidy targets, greater flexibility in meeting commitments and special provisions for the least developed countries. But all these mechanisms aim at increasing adherence to the specific policies implied by the agreements. They do not allow developing countries to design possibly more appropriate and relevant policies. As a result developing countries are often forced to place WTO obligations above development priorities.

- The provisional aspects of measures for special and differential treatment imply that countries constantly need to renegotiate extensions. Extensions, if granted, are political decisions based on asymmetric bargaining power. They are not determined by any rigorous estimation, based on human development or economic criteria, of how long countries will need to be allowed to use a particular measure or how long it will take them to graduate from it. As a result developing countries often bargain away other important concessions to get extensions on transition periods or other measures that were inadequate to begin with.
- Since 1995 developing countries have faced increasingly tough conditions for WTO accession. Beyond specific concessions and commitments on goods and services, they have been forced to accept plurilateral agreements as well as less flexibility in the use of investment performance requirements.[2] In some cases entirely new obligations—such as on energy prices—are being sought. These 'WTO-plus' conditions often deny developing countries the special and differential treatment enjoyed by members that joined when the WTO was created. Given that many aspiring members are least developed countries, more stringent terms of accession are especially contrary to the principle of special and differential treatment (UNCTAD, 2002). Terms of accession should not deny new members the means of promoting human development, especially when such means are available to existing members.
- Regional trade agreements have proliferated since 1995. A growing number of these agreements include 'WTO plus' aspects—particularly recent agreements between industrial and developing countries. The major powers often see regional agreements as a way of setting precedents for negotiations of similar provisions at the multilateral level. Developing countries, meanwhile, are trying to ensure that regional agreements reflect the principle of special and differential treatment articulated at the multilateral level. WTO rules on regional trade agreements must be clarified to ensure that developing countries enjoy the same rights to special and differential treatment at the regional level as at the multilateral level and that such provisions draw on human development criteria.

There are also examples of areas where the major trading countries will likely try to further reduce the flexibility of developing countries through future trade negotiations. Thus it is essential that future multilateral and regional trade negotiations recognize the legitimacy of human development considerations.

A world trade system committed to addressing human development concerns would consider it legitimate to extend asymmetrical rights and obligations to developing country members through special and differential treatment. Such a system would also accept human development considerations as legitimate criteria for trade measures. Establishing special and differential treatment will contribute to a stable world trade system as well as create a larger, more effective market for goods and services, benefiting all people. Without such positive discrimination, economically poor and politically weak countries will never be able to compete

fairly and equitably with industrial countries. Accepting this line of reasoning also requires much greater flexibility in the workings of the single undertaking.

Thus WTO members should build on the Doha affirmation of special and differential treatment, and use it to help achieve human development goals. Special and differential treatment should not be seen only as a compensating tool to help developing countries integrate with the global trade regime—it should also be seen as an input to countries' development.

- *Special and differential treatment as a rule.* When classifying countries and establishing their eligibility for special and differential treatment, WTO agreements should consider their human development indicators and human development index (HDI) rankings—and assess the gaps between their human development indicators and the indicators used to measure progress towards the Millennium Development Goals.[3]
- *Unconditional, binding and operational provisions for special and differential treatment.* Provisions for special and differential treatment should be unconditional and non-negotiable. In other words, the extension of transition periods and use of more binding commitments for special and differential treatment should be based on objective assessments of economic and human development needs—not on a bargaining process in the single undertaking framework. Non-mandatory provisions should be made mandatory, and all provisions for special and differential treatment should be phrased in contractual language.[4]
- *Reactivation of provisions on government assistance for economic development.* Article XVIII should be revisited, and human development criteria should be incorporated. This move would give developing countries more flexibility to suspend WTO obligations if necessary to meet their development challenges. The right to exercise this option should be limited by the need for internal and external validation, based on an objective assessment of needs, and require widespread deliberation at the national level.[5]
- *Thresholds and incentives for graduation.* Thresholds to determine whether countries should lose eligibility for special and differential treatment should be based on comprehensive indicators of human and technological capabilities or on the achievement of specific Millennium Development Goals.[6] A credible, independent monitoring authority should assess these indicators periodically and report to member nations. Further, using several levels of gradation, countries should move from more to less comprehensive provisions for special and differential treatment—with an eventual phase-out if warranted by objective criteria.
- *Generalized System of Preferences and other preferential schemes as part of the WTO mandate:* Preferential schemes should be part of formal mechanisms for special and differential treatment, and their coverage, scope and duration should be determined through objective assessments rather than as a result of bargaining or unilateral decisions by the preference-giving country. Specifically, the Generalized System of

Preferences should be grandfathered, and commitments made at the third UN conference on least developed countries should be given contractual status in the WTO.

Governance structure

Governance of the global trade regime is often assumed to be synonymous with governance of the WTO. But this assumption does not take into account the large and growing number of regional trade agreements, forums, ongoing negotiations and arrangements. Some of these are inter-regional (the Asia-Pacific Economic Cooperation forum, the Free Trade Area of the Americas), and individually include almost all the world's major trading nations. A brief analysis of regional trade agreements, especially their governance dimensions and human development implications, is provided in annex 4.1.

Because there is considerable overlap between the coverage of regional trade agreements and the multilateral trade regime, there is an urgent need to ensure that their rules are compatible. But members of some regional agreements consider them more development-friendly than WTO agreements. So, to achieve compatibility, WTO rules will need to be made more flexible and human development friendly.

The WTO's governance structure provides developing countries with unique opportunities in a global forum for economic governance. Their potential leverage was most evident in the late 1990s contest for leadership of the WTO secretariat, when it was clear that if a vote were taken, the candidate supported by the majority of developing countries would win. This situation forced a compromise that entailed the selection of both finalists for three-year terms, rather than a single winner for four years.

Still, governance problems have arisen—mainly because informal consensus building has become much more influential in WTO decision-making than formal processes. As practised, the principle of consensus decision-making consistently works in favour of the main industrial countries (EU members, Canada, Japan, the US) rather than the overwhelming developing country majority.

Agenda

During the Uruguay Round developing countries agreed to include the TRIPS and GATS agreements under the single undertaking in exchange for commitments from industrial countries on increased market access for agricultural, textile and clothing products. This arrangement shows the extent of the paradigm shift in the global trade regime. Shukla (2000, p.31) put it succinctly when he wrote, 'while the WTO Agreement furnished the legal and institutional infrastructure of the paradigm shift, TRIPS and GATS provided its architecture, with the TRIMs [Trade-Related Investment Measures] Agreement the blueprint for its future structural expansion.'

The Uruguay Round agenda was shaped by the most powerful industrial countries, especially EU members and the US. And since the WTO's creation in 1995, this already ambitious agenda has expanded. The WTO work programme now includes

working groups on investment, competition policy, trade facilitation and transparency in government procurement (at the behest of the most powerful industrial countries during the 1996 ministerial conference in Singapore), discussions on electronic commerce (resulting from the 1998 conference in Geneva) and working groups on trade, debt and finance; and trade and technology transfer and a work programme on the problems of small economies (resulting from the 2001 conference in Doha). As a result there is a danger that the global trade regime will become overloaded and non-functional (Nayyar, 2002)—undermining efforts to advance human development in developing countries.

Though the working groups created in Doha resulted from developing country demands, such a rapidly expanding agenda creates enormous challenges for developing countries, particularly the least developed ones and small ones. These countries lack the capacity to deal with such a large, diverse, complex agenda in international trade negotiations, particularly since many of the new issues have not traditionally been considered trade-related and many countries have not yet defined their stances on them.

This growing agenda has reduced national ownership of trade negotiations and outcomes, as illustrated by the much smaller role of most national legislative processes—and so legislators and citizens—in setting agendas and making rules on crucial economic and social issues. Legislative issues once decided exclusively in the domestic domain are increasingly influenced by the judicial rulings of WTO panels and its appellate and dispute settlement bodies.[7] To some extent this was the result desired by developing countries, because they wanted stronger multilateral discipline exerted over the leading industrial countries.

Dispute settlement

Fair dispute settlement rules that are multilaterally agreed, consistent and well-enforced are fundamental to good governance of the trade regime and so to human development. Judged by this yardstick, the GATT dispute settlement system does not appear to have worked well—or indeed, at all—for developing countries. This shortcoming appears to have resulted from how the consensus principle worked, though in this case it was not due to the passive consensus fostered by the processes of the general council. Instead, active consensus was the crux of GATT procedures for settling disputes.

Consensus among all members was required to establish the panels that adjudicated disputes and to adopt the reports issued by panels. Thus a party to a dispute could block panel formation or report adoption in much the same way that permanent members of the UN Security Council can block resolutions. This de facto veto power paralysed the GATT dispute resolution mechanism. Not surprisingly, efforts to change it—such as a 1965 joint proposal by Brazil and Uruguay—failed.

So, as noted, the WTO Dispute Settlement Understanding is considered a marked improvement in many ways. It is more time-bound, predictable, consistent

and binding on all members, though it is also more narrowly legalistic than its predecessor. Still, the overall improvements help explain why developing countries that made little use of the GATT dispute settlement system actively participate in the WTO version.

Increased participation can also be attributed to the significance and potential costs of the issues at stake. Whatever the reason, developing countries' dramatically increased use of the Dispute Settlement Understanding indicates that they believe it can be made to work for them. More cases were subject to dispute settlement in the WTO's first 7 years (262 as of 9 September 2002) than in the GATT's 50 or so years (196 cases). Industrial countries still file the majority of cases, including many against developing countries (65 as of September 2002). But between 1995 and September 2002 developing countries filed 48 cases against industrial countries,[8] up from just 40 in the preceding five decades (South Centre, 1999).

Countries have used the dispute settlement mechanism in an attempt to resolve issues of greatest importance to them. For that reason, useful and interesting insights emerge from an analysis of trends in disputes between developing and industrial countries. Developing countries have initiated the most cases against industrial countries under the Agreements on Anti-dumping and Subsidies and Countervailing Measures—reflecting concerns about both market access and domestic policy space (table 4.1). Industrial countries, on the other hand, have initiated the most cases against developing countries under the agreements on Agriculture, Textiles and Clothing, TRIMs and TRIPS—reflecting the issues of greatest importance to them.

The dispute panels and appellate body interpret WTO rules and, given the ambiguity of many of these rules, have in effect been making law. These laws have

TABLE 4.1

WTO-mediated disputes between developing and industrial countries, by agreement category, January 1995–9 September 2002

Category	Initiated by developing countries	Initiated by industrial countries
Agriculture	4	13
Anti-dumping	10	5
Safeguards	5	2
Subsidies and Countervailing Measures	8	4
Textiles and Clothing	4	8
TRIMs	—	11
TRIPS	1	6

Note: Includes only a few of the categories covered or contemplated by the dispute settlement mechanism. In addition, covers only disputes between developing and industrial countries; does not cover disputes between developing and transition economies, between industrial and transition economies, among industrial countries or among developing countries. If a dispute covers more than one category, it is counted in each.
Source: Tang, 2002; WTO data (www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm).

defined the boundaries of domestic policy space and highlighted the intrusions of the dispute settlement system in national affairs (Ostry, 2000b). In this context the Doha ministerial declaration on TRIPS and public health offers useful guidance since it should provide more space for the appellate body to pursue legal interpretations consistent with human development. The declaration can set a precedent for similar approaches on other human development issues, particularly where international consensus has been expressed by a UN body.

Even if that were to happen, using the Dispute Settlement Understanding causes problems. Costs are extremely high for all countries—and prohibitively high for the poorest and least developed countries, which have neither the legal expertise required to initiate and sustain cases or the financial resources to pay foreign trade lawyers. The WTO secretariat's provision of legal expertise for countries in this situation suffers from at least two shortcomings: it is inadequate for the huge demand, and the mandated neutrality of its lawyers means that they cannot prepare or conduct cases as assertively as independent, private law teams. This leaves the least developed countries at a major disadvantage against middle-income developing countries as well as industrial ones.

Among other major implementation issues, the most important is the lack of retroactive compensation even if a developing country wins its case. This is particularly damaging to developing countries with low export diversification—most of which are among the poorest and least developed—and can devastate both their export earnings and their market share. A disputed case, even in the stricter and more predictable time boundaries of the WTO system, can take up to two and a half years to conclude. This is likely to have a potentially devastating human development opportunity cost for a small economy that depends on the disputed product—a shortcoming compounded by the lack of concrete or meaningful special and differential treatment in the Dispute Settlement Understanding.

Finally, the inherent power inequity of the system has meant that even when such cases have been launched and won, little in the Dispute Settlement Understanding compels countries to change their laws except the threat of retaliation. While such a threat may be real between roughly equal players, such as the US and EU, none of the least developed countries can be expected to retaliate against any of the major economic powers. But if a developing country loses a case and does not change its legislation, the threat of retaliation is real and often follows.

While the creation of the Advisory Centre on WTO Law—announced in 1999 at the Seattle ministerial conference—has been a positive step, it is extremely modest given the needs. Even if the centre were better resourced, the other problems would remain. Arguably, those problems are far more intractable than the problems the centre was established to tackle.

Notwithstanding procedural and other problems, the asymmetry in economic and political power between industrial and developing countries remains the crux of the problem. In the final analysis, it stands out as the main constraint

to the effective functioning of the Dispute Settlement Understanding. But because this problem extends well beyond the dispute settlement system's functioning, it is unlikely to be dealt with except as part of a solution to the broader governance concerns raised in this chapter.

Decision-making

Transparency means revealing one's actions and decisions consciously, visibly and understandably (G-22 Working Group, 1998). It also implies being open to considering all relevant information. In addition, transparency entails the timely disclosure of all relevant information and supporting materials. Lack of transparency and participation are often symptoms of serious power imbalances between member countries. Taken seriously, transparency represents a profound shift in the distribution of power and the way it is exercised (Florini, 1998).

Since the 1960s developing countries have intensified their efforts to make the multilateral trade regime more consistent with their needs and aspirations. For two decades their efforts focused on the United Nations Conference on Trade and Development (UNCTAD), which was seen as an alternative to the GATT system. But in the 1980s, for a variety of reasons (some of which are described in chapter 2), developing countries shifted their approach to pursuing their interests more directly within the GATT—both through attempts to modify it and by addressing increasingly serious trade problems.

One of the biggest paradoxes, however, is that despite their more active participation in the negotiating process, developing countries remain largely ineffective in ensuring transparency and their effective participation in the world trade regime. In many cases developing countries are unable to maintain or follow up on negotiating successes. They may succeed in listing items of their interest in work programmes and negotiating agendas—only to find that these remain dead letters. In addition, they sometimes find themselves under pressure to forgo the rights they have succeeded in negotiating. For example, they are reluctant to raise applied tariffs to bound rates, though they would be within their rights in doing so.

The most striking example is the TRIPS agreement, through which many countries were placed under strong political pressure to pass legislation that would have impeded their future ability to use the many flexible features contained in the agreement. Most of these have a strong human development component. The declaration on TRIPS and public health was an important step in encouraging countries to avail themselves fully of the flexibility provided in the TRIPS agreement (WHO and WTO, 2002).

Many industrial country members of the WTO have found it difficult to adapt from the 'club' approach to the new scenario where developing countries are full shareholders. This was a major factor leading to the collapse of the Seattle ministerial conference in 1999. A major reason for this is that consensus, as practiced in the GATT, cannot accommodate an agenda as broad and detailed as that of the

WTO—with all its intrusions into the domestic policy realm and the economic and social costs that its agreements entail for developing countries. As a result the democratic deficit inherent in the consensus principle has taken on far greater gravity and urgency. In addition, its deficiencies have aroused public protest. This is due to both the perceived and real domestic impacts of WTO agreements and to the often frustrated efforts of developing country governments to participate more actively in the WTO than they did in the GATT.

The consensus-based decision-making norm is incorporated in article IX: 1 of the WTO. It states that, unlike a process based on formal voting, where the views of the majority are decisive, the WTO consensus approach requires only those present at a meeting (with a quorum, defined as 51 per cent of members) not to object to a decision. This effectively bars developing countries from making full use of their equal status with industrial countries through the one-country one-vote system. It also deprives them of the benefits of formal voting and can work against them even if they hold the majority view on an issue.

Consensus-based decision-making has a positive aspect in that it encourages a process in which members are consulted and their concerns heard before a decision is made. But for a decision to move ahead, it must allow the opportunity, should consensus fail, for the majority to make a decision by voting. If a vote is never taken, the value of the one-country one-vote system is seriously undermined. Under these circumstances consensus can become a means by which a powerful minority can persuade a less powerful majority to concede. When applied to the global governance of trade, this does not reflect a problem with the WTO's formal rules, which define consensus in the traditional manner and provide for voting to take place should it fail. Instead it highlights a problem with the WTO's informal processes and deeply ingrained culture of not voting. Consensus thus practiced also derives from passive rather than active choice and behaviour. The key criterion is a member's presence at a meeting rather then the member's active participation.

Many developing countries cannot satisfy even the fundamental participation criterion because they are not present in Geneva. According to Michalopoulos (2000), 64 developing countries maintain WTO missions in Geneva, 26 are represented by missions or embassies elsewhere in Europe and 7 rely on representatives based in their capitals. Of the 29 WTO members that are among the least developed countries, only 12 had missions in Geneva in 1997—all of which had to serve multiple international organizations (Blackhurst, 1997). Given how the consensus principle works, these shortcomings in representation imply exclusion from WTO decision-making and global trade agreement processes for many developing countries—especially the poorest and weakest.

Although the size of developing country delegations in Geneva has increased significantly since 1987, it has grown slower than that of industrial country delegations. Even in 1997 developing country delegations to the WTO averaged only 3.6 people, compared with 6.7 for industrial countries. Moreover, these averages

mask huge variations in the size of both developing and industrial country delegations. Many delegations from least developed countries and small developing countries had just 1 member, compared with 10–15 for middle-income and larger developing countries such as Brazil, Egypt, India, the Republic of Korea, and Thailand.

Many developing countries present in Geneva cannot represent themselves effectively because they have neither the policy research ability nor negotiating capacity that would enable them to do so. Few developing countries can satisfy both the presence and capacity requirements. And those that can will be increasingly hard pressed on the latter given the WTO's expanding agenda and new human resource capacity and presence requirements in Geneva.

Most developing countries—even those with relatively large delegations in Geneva—were radically understaffed before the Doha ministerial meeting given that each year about 1,200 formal and informal meetings occur in the WTO in Geneva (Hoekman and Kostecki, 2001). Since the Doha meeting it is hard to speak of effective Geneva representation even for some larger developing countries. Indeed, given the ambitious agenda and short timeframe agreed for completion, post-Doha negotiations threaten to draw scarce developing country expertise from higher domestic development priorities. And within trade negotiations, the best developing country negotiators will have to devote enormous energy to complex new areas—including the 'Singapore issues' (investment, competition policy, transparency in government procurement, trade facilitation)—reducing the time spent on traditional issues, such as agriculture and textiles, where payoffs are most likely to reduce poverty and advance human development (Winters, 2002).

Ironically, the need for formal consensus has increased the number of informal processes. In preparations for the Seattle conference and at the meeting itself, this led to a multiplicity of now-infamous 'green room' meetings. While this practice dates back to GATT, it took on new meaning in the context of a developing country membership that is trying to become more assertive in the world trade regime. 'Green room' consultations have often substituted for full-fledged negotiating processes. Because these consultations have excluded all but the most systemically important and more assertive developing countries—while including the vast majority of industrial countries, individually or collectively—the involvement of most developing countries has largely been confined to the beginning, when proposals are first tabled, and the end, when the general council makes a formal decision by consensus (Das, 2000). The failure of such consensus building in Seattle was a major reason for that meeting's failure. Though a conscious effort has since been made to avoid such 'green rooms', the 'friends of the chair' process in Doha also suffered from significant shortcomings (Malhotra, 2002).

In addition, the growth of informal processes works against the formal participation of developing country coalitions and alliances in WTO negotiations, reinforcing power asymmetries. This dynamic discourages developing countries from

gathering the strength in numbers they will need to rectify the imbalances that work against them in trade negotiations (Narlikar, 2001; Helleiner and Oyijede, 1998). While capacity and procedural problems remain serious and numerous, the overarching problem is significant asymmetries in the power of member countries and how this is exercised in the broader interests of development.

External transparency

This chapter has focused on the internal workings of the global trade regime, but external transparency has become equally important—especially given the enormous civil society and media attention since the Seattle ministerial meeting in 1999. External transparency has also become important because WTO decisions directly affect local communities and domestic politics. As a result many groups are clamouring for a voice and wish to be treated as stakeholders (Woods and Narlikar, 2001).

Ostry (2000b) argues that demands for democratization of the WTO, especially opening it to civil society organizations, are complex and contentious because of the organization's institutional design. While greater public accountability through information transparency and the sharing of WTO documents is possible—and is taking place through the WTO Web site and other means—developing countries and civil society organizations argue that the organization's procedures should be made more accessible and transparent. The argument is that the formal publication of documents is a poor substitute for actual participation and transparency in meetings (Woods and Narlikar, 2001). But member states find great difficulty in agreeing to more formal roles for civil society organizations within the WTO and its dispute settlement processes.

The US has been the strongest proponent of opening the WTO dispute process to private parties. Private lawyers and environmental, labour and human rights groups from industrial countries have argued that they should be able to present 'friend of the court' briefs and otherwise be party to WTO dispute settlement cases—a position that the US government has sometimes encouraged. But the environmental sensitivities of many disputes in which such private interventions have primarily occurred (such as the shrimp-turtle dispute)[9] have only strengthened developing countries' opposition to interventions by civil society organizations and private actors. These countries emphasize the WTO's intergovernmental nature and believe that its basic character and their role are undermined by such private participation. Given the nature of many of the cases in dispute, many civil society organizations from developing countries also oppose a role for non-state actors in the Dispute Settlement Understanding, though a few support such a role.

Beyond specific disputes, there is a need for the WTO to more actively involve civil society organizations—not least because most multilateral institutions, including the World Bank, increasingly recognize the need to involve such organizations much more actively in their formal processes. In the meantime, civil society

organizations will likely continue to encounter opposition to their arguments that an increasingly interdependent world requires citizen participation mechanisms that transcend national borders, particularly when transnational issues are at stake—even though these organizations are only requesting formal observer status at the WTO.

Most governments will likely continue to argue that civil society organizations should participate in national processes and convey their views through these processes and their elected representatives rather than directly to the WTO. This argument is based on traditional arguments related to accountability, governance and representation. But as UNDP's *Human Development Report 2002* explains, there are good reasons to question the effectiveness and recognize the limits of traditional forms of democracy in ensuring good governance and human development. The interests of countries, as expressed by their negotiators, are not necessarily in accord with the needs of their people or of human development. Governments and political parties rarely win or lose elections on a single issue, and even more rarely on positions taken by their representatives in international economic organizations (Woods and Narlikar, 2001). Moreover, governments are almost always represented in such organizations by professional civil servants, many of whom are bureaucrats or technocrats far removed from the concerns of ordinary citizens.

National ownership

Thus the challenge is not only to make the global governance of trade more fair but also to give voice to vulnerable groups not being effectively represented by their governments at the national and international levels. There is a striking difference between industrial and developing countries in the legislature's involvement in domestic debates on trade. For example, the decision by industrial countries, particularly the US, to seek to extend GATT rules into areas such as services and intellectual property rights can be traced to well-organized lobbies in the financial, telecommunications, pharmaceutical and software sectors. The European Parliament has also been active on some trade issues, such as agriculture. Even so, the pattern of protection in industrial countries reflects the political power of interest groups supported by members of legislative bodies (Vangrasstek, 2001). In some cases where legislatures in developing countries have been alerted to the pressures being exerted by the executive branch to sign WTO agreements, they have responded in a determined manner.

In all countries the severe under-representation of women in decision-making structures and national legislatures probably helps explain why gender issues are rarely taken into account in policy-making on domestic trade issues and multilateral trade agreements.[10] Though a critical mass of senior female policy-makers could result in more systematic consideration of gender issues, a surer route would be to train men—as well as women—to become gender sensitive at all stages of policy design and implementation.

It is especially critical for human development that trade ministries foster the institutional ethos and attitudes conducive to developing gender-sensitive trade policies. It is difficult to develop such policies without having focal points that are responsible for mainstreaming gender within the ministry, reporting directly to the minister, and without an interdepartmental committee on gender that ensures the inclusion of women's concerns.[11]

Many other vulnerable groups in both industrial and developing countries suffer from their lack of an effective voice. As noted, this lack of voice is closely linked to the issue of national ownership. Benefits come from broadly based participation and ownership at the national level, involving legislators, civil society organizations, community groups and the private sector in structured, multistakeholder dialogues. Moreover, if civil society organizations and vulnerable groups believe that governments take their concerns seriously, they will ease their demands to participate in multilateral forums such as the WTO.

Such ownership should also strengthen the hand of developing countries in trade negotiations, because they will be able to show organized support at home for trade negotiating positions intended to foster human development. This will allow them to better withstand pressure to capitulate, leading to fairer trade agreements. So, engendering broadly based national ownership can contribute significantly to long-term human development outcomes.

An effective, independent secretariat

Relative to members, secretariats of member-driven organizations generally have limited power. Though this feature has mainly positive implications, there is also a downside: secretariats have limited capacity to provide support, especially to countries that need it most. The WTO secretariat, for example, provides members with little support for the costs of representation and of policy research and analysis. As a result the unequal policy research and analysis capacities of industrial and developing countries outside the WTO are replicated and reflected in its negotiation and decision-making processes (Narlikar, 2001).

In addition, some developing country delegations have questioned the objectivity of some secretariat staff. This problem worsened during preparations for the Seattle and Doha ministerial conferences because of the secretariat's advocacy for a new round of trade negotiations despite members having reached no consensus on the issue. Indeed, many developing countries strongly opposed a new round.

These concerns have made many developing countries reluctant to enhance the role of the WTO secretariat—even though doing so could increase its capacity to respond to their analysis and capacity development needs. Many developing countries have complained that the technical assistance provided by the secretariat focuses on integration with the world trade system and compliance with its agreements, with little attention paid to the agreements' development costs and benefits and to the opportunity and other costs of complying with them.

Stronger mechanisms for evaluation, monitoring and compliance by WTO staff could help solve part of this problem. The secretariat recognizes that such mechanisms are weak—for example, there has been little evaluation of WTO staff (Woods and Narlikar, 2001). But even if such mechanisms were improved and resulted in better-designed technical assistance, a number of broader development concerns would likely persist.

More work is needed to fill this gap, and the United Nations Conference on Trade and Development (UNCTAD) and United Nations Development Programme (UNDP) should play major roles. Although UNCTAD (especially through its Positive Agenda), UNDP, the South Centre and some non-governmental organizations (NGOs) have taken steps to strengthen developing countries' capacity in this crucial area, the gap far outstrips their technical capacity and financial ability to respond effectively.

Choice of forums

Helleiner and Oyejide (1998) show that the forum chosen for international economic discussions and negotiations plays a crucial role in their outcomes and subsequent agreements. The authors argue that in the 1970s, when negotiations on investment occurred in the UN system, efforts focused on developing a code of conduct for transnational corporations, rules and principles governing restrictive business practices and a code for technology transfers. These negotiations advanced the interests of developing countries, but the draft instruments they produced were abandoned because a few powerful industrial countries were reluctant to accept them.

In 1998, during discussions sponsored by the Organisation for Economic Co-operation and Development (OECD) on a proposed multilateral agreement on investment, the focus was completely different. The more recent discussions placed priority on protecting foreign investors and ensuring fair national treatment rather than on regulating transnational corporations.

The lesson from this and other examples is that developing countries need to seek negotiating forums that are unlikely to impose undesirable outcomes on them. Because the global political economy has worked against this in recent decades, developing countries need to join or form coalitions among themselves that are not necessarily regionally based. Transregional coalitions of developing countries will be essential in the effort to move choices on negotiating forums in a direction that consistently serves the interests of human development and of poor, vulnerable groups in developing countries.

* * * *

A human development perspective implies that the importance of achieving certain outcomes outweighs the need for one-size-fits-all rules. Required are minimum, universally agreed rules that can be applied in a country-specific manner and tailored to

different development circumstances. The WTO should not be focused on harmonizing trade rules (see chapter 1). Instead it should be concerned with managing the interaction between different national institutions and rules. To do so, all members must accept a minimum set of multilateral trade rules through which each country has the same rights—while its obligations are a function of its stage of development (Nayyar, 2002).

ANNEX 4.1 REGIONAL TRADE AGREEMENTS AND THE MULTILATERAL REGIME

Regional trade agreements provide benefits to their members through free trade areas, customs unions, common markets and other preferential arrangements. Regional integration is seen as a way for countries to benefit from and contribute to a region's development and for countries and regions to participate more effectively in the international trade system. Many policy-makers consider regional agreements an integral part of an overall development strategy for gradual, strategic integration with the global economy.

Since 1945 more than 300 regional trade agreements have been reported to the GATT and WTO—most (250 agreements) since 1995. About 200 of these agreements are currently in force. Thus regional trade agreements have become an important feature of the international trade system. Until 1980 Western Europe was the only example of successful regional integration. This changed when the GATT contracting parties failed to launch a round of multilateral trade negotiations in Geneva in 1982. Frustrated with the stalled multilateral process, the US started bilateral trade negotiations that included regional trade agreements with Israel (1985), Canada (1989) and Canada and Mexico (through the North American Free Trade Agreement, or NAFTA, in 1993).[12] At the same time, the EU continued its expansion, and in the 1990s a plethora of new regional trade agreements began emerging.

It is something of a paradox that regional trade agreements have been growing in number in an era of accelerating economic globalization and despite the creation of the WTO in 1995. A multitude of such agreements now exist. Although about 60 per cent of the regional agreements in force at the end of 2000 were between European countries, agreements involving developing countries accounted for about 15 per cent. Almost all developing countries are members of at least 1 or 2 regional agreements—and Chile is party to at least 11.

Compatibility with WTO disciplines

Compatibility with WTO disciplines is an important issue for many developing countries involved in regional trade agreements, whether the agreements are solely with other developing countries or also involve industrial countries. But the issue of compatibility requires care, because applicable WTO disciplines differ for the

two types of agreements. The WTO's Enabling Clause applies to agreements between developing countries, providing them with more favourable conditions.

Compatibility is a bigger challenge in the context of regional trade agreements between developing and industrial countries. The applicable WTO discipline is GATT article 24—which, despite some flexibility, does not provide special and differential treatment for developing countries. Thus there is concern that the article does not provide adequate legal coverage for regional trade agreements such as those that might be negotiated between African, Caribbean and Pacific countries and the EU, where huge differences in development levels would legitimately call for greater flexibility and asymmetrical treatment. So, although WTO compatibility is recognized as the overriding principle in many regional trade agreements, a parallel concern is compatibility with new WTO rules that more adequately take into account human development and the interests of developing countries.

A policy of pragmatism has prevailed thus far, allowing regional trade agreements to operate without official endorsement from the WTO membership. But WTO disciplines applying to regional agreements could change, because the Doha negotiation agenda includes 'negotiations aimed at clarifying and improving disciplines and procedures applying to regional trade agreements'.[13] It is the primary responsibility of developing countries, supported by their industrial country partners in regional trade agreements, to ensure that any changes to WTO rules under the Doha work programme do not limit the potential for development afforded by these agreements or allow human development policy options to be constrained by agreements with 'WTO plus' provisions in areas of concern to developing countries—such as TRIPS, agriculture, textiles and clothing, investment, services, environment and labour.

The coincidence of the timing of the Doha negotiations and of several major negotiations on regional trade agreements presents a unique opportunity and major challenge to the international community. (For example, the agreement on the Free Trade Area of the Americas is scheduled for completion by 2005, and the free trade agreement between African, Caribbean and Pacific states and the EU is scheduled for completion by 2008.) Both industrial and developing countries must rise to the task of placing human development and poverty reduction at the centre of all trade negotiations, whether multilateral or regional.

Mercosur: An agreement between developing countries

The Mercado Comun del Sur (Southern Common Market, or Mercosur) is among the most widely cited examples of a successful trade pact, particularly among developing countries. The agreement and its original members—Argentina, Brazil, Paraguay and Uruguay—celebrated its 10th anniversary in 2001. Bolivia and Chile joined Mercosur as associate members in 1996. Mercosur was designed to start as a free trade area, then become a customs union and eventually a common market. Currently a customs union, it accounts for 70 per cent of Latin American trade. Its members have a combined GDP of nearly $1 trillion and are home to more than

230 million people, making Mercosur the world's third largest trading bloc after the EU and NAFTA.

In many ways Mercosur has been a success. It has provided significant economic benefits to its members: between 1990 and 1999 trade among its members grew by more than 200 per cent, and among the world's regions Latin America has experienced the sharpest increase in intra-regional trade. But income disparities in member countries remain largely unchanged, and more than 37 per cent of citizens in Mercosur countries still live below the poverty line. In addition, there has been little collaboration in non-economic areas, and members were not able to reach agreement in many areas—including on a common negotiating position for the Free Trade Area of the Americas—even before the recent Argentine crisis.

From a human development perspective, while some initial steps have been taken towards common education and drug policies, there is no cooperation on labour mobility, labour standards or the environment. Still, Mercosur may have had a positive effect on democratic governance in its member countries due to a 1996 amendment to its charter (after a planned coup attempt in Paraguay) formally excluding any country that 'abandons the full exercise of republican institutions'.

Some institutional steps have been taken to address the social impact of trade liberalization in Mercosur member countries, but the results have been mixed. Social issues associated with economic integration were largely ignored until organized labour in the region pushed for the creation of a working group to address labour relations, employment and social security. Geared towards studying the labour situation in the region, the group focused on issues of commercial interest and business competitiveness.

In 1994 a Forum for Economic and Social Consultations was formed to represent the private sector in Mercosur member states. The forum has since opened its doors to other actors, including labour organizations, consumer protection groups, universities and an environmental group (Espino, 2000). But it has not admitted women's organizations or government bodies that focus on women's development.

Women's advocates see the Forum for Economic and Social Consultations primarily as a tool of economic and commercial interests. Because most female workers are in sectors outside the scope of organized labour, they do not feel represented by it. Women's organizations rallied to address this shortcoming and in 1997 succeeded in setting up a Women's Commission under the Coordinating Authority for Southern Cone Confederations of Labour. Their demands to governments and organized labour included promoting the participation of female workers in Mercosur, speeding the ratification of International Labour Organization agreements specific to women and keeping all labour unions and women's departments informed.

A series of civil society meetings and forums, supported by the United Nations Development Fund for Women, also furthered activities to address women's concerns in government ministries responsible for them in Mercosur countries (Espino, 2000). In 1995 women in Uruguay set up an advocacy lobby called the Mercosur Women's

Forum, with branches in each member country. The Paraguay branch is the most active and has brought its concerns to the national chapter of Forum for Economic and Social Consultations. Despite these networking strategies across countries, the forum does not appear to have tangibly influenced the working or executive bodies of Mercosur.

The 1997 Mercosur declaration reflected some of these women's initiatives, calling for measures 'to guarantee equality of opportunities among women and men in the…various forums for negotiations which are part of Mercosur'. The declaration also recommended making the participation of women's organizations mandatory in the Forum for Economic and Social Consultations. As a result the Reunion Especializada de Mujeres came into being in 1998. This gender advisory unit seeks to ensure that gender issues are addressed in Mercosur's key decision-making bodies.

But according to some sections of civil society, the unit has not made much progress in analysing negotiations or creating mechanisms to ensure gender equality in the region (WIDE, 2001). Among the factors that have impeded the incorporation of a gender perspective in negotiations on an institutional structure in Mercosur are the low priority given to the social dimensions of economic integration and its lack of prominence in negotiations between employers and workers (WIDE, 2001).

Asia-Pacific Economic Cooperation: An agreement between industrial and developing countries

The 21 member countries of the Asia-Pacific Economic Cooperation (APEC) forum have agreed to form an Asia-Pacific regional trade agreement by 2010 for APEC's industrial economies and by 2020 for its developing economies.[14] APEC is not a free trade area in the formal sense of GATT article 24 because free trade and investment are being pursued voluntarily by each member rather than through an agreed tariff reduction plan. But if the regional trade agreement comes into existence, it will be the world's largest—with members accounting for 55 per cent of global GDP, about half of global exports and almost 40 per cent of the world's population.

Apart from its projected economic benefits, APEC is expected to practice 'open regionalism'—meaning that it will offer non-discriminatory trade treatment to non-members as well. But many observers question whether that will actually happen. APEC has made little progress on its tariff reduction goals precisely because of its open regionalism policy: members are unwilling to reduce tariffs for non-members and get nothing in return.

As a consultative forum, APEC cannot make decisions that are legally binding on its members. It is primarily a forum for discussing economic and trade policy and does not explicitly address social and development issues. Though it has links to several business groups and academic research organizations, there is no formal mechanism for consultations with other parts of civil society.

APEC's framework for gender integration. In a 1996 statement APEC leaders acknowledged for the first time the importance of women and young people's participation in the economy. The statement was a victory for the Women Leaders' Network, which had drafted a call to action and presented it to APEC leaders. Launched that year as an informal network of female leaders from APEC members' public and private sectors, governments, civil society organizations and academia, the Women Leaders' Network has evolved into a policy forum and the main advocate for gender issues in APEC. The network has succeeded in getting the predominantly male leaders of APEC to recognize the gender implications of economic policies and has laid the ground for gender-based initiatives. The network is a completely voluntary organization that functions through country focal points. Although it lacks an institutional structure and funding, the network has held six annual meetings since its inception.

Advocacy by the Women Leaders' Network has had some encouraging results. For example, it led APEC to convene its first ministerial meeting on women in 1998. As a result of that event APEC agreed to develop a framework for integrating women into all its activities, and in 1999 the framework was endorsed. The meeting also led to the creation of an advisory group to implement the framework. In addition, the Women Leaders' Network influenced the creation of a women's science and technology group under APEC's industrial science and technology working group, initiated a gender information site on the APEC Web site and provided gender expertise in a number of APEC forums.

APEC's framework for integrating women consists of three inter-related elements: gender analysis, collection and use of sex-disaggregated data and involvement of women in APEC. The framework's advisory group has developed practical guides to facilitate implementation of the framework.

Members of the Women Leaders' Network say that it is too early to assess the framework's impact on APEC policies. Still, there have been some tangible results in individual countries. For example, Viet Nam has adapted the framework for its national programme on women. But overall within APEC, gender mainstreaming efforts are still at the level of raising awareness and building capacity through, for example, gender information sessions and the publication of best practices. Some APEC working groups—notably those on human resources development, industrial science and technology and small and medium-size enterprises—have been more active in incorporating gender criteria into project proposals and evaluation concerns.

As a group composed primarily of businesswomen, the Women Leaders' Network is focused on improving market access for female entrepreneurs. There are sound economic arguments for this approach: more than a third of the region's small and medium-size enterprises are owned by women, and 80 per cent of these are in the burgeoning services sector. But this business-oriented approach has prompted criticism that the Women Leaders' Network is a group of privileged pro-

fessional women who use efficiency arguments to gain support for gender issues in APEC and subordinate human development to economic development. Conspicuous by its absence, both in the network and in APEC, is a gender focus on the social impact of trade liberalization.

Moreover, much of the integration of gender has occurred at the working group and technical cooperation levels, and has had no impact on the agendas for trade and investment liberalization and trade facilitation.

Challenges and recommendations. The Women Leaders' Network faces three major challenges: organizing itself better to take on a monitoring role, ensuring that development and ethical issues are not eclipsed by the business agenda, and raising funds to ensure its survival. Not being a formal APEC mechanism limits the network's potential role in gender mainstreaming.

Among the main constraints to gender integration in APEC are a lack of data and information on women's economic roles, a lack of recognition of women's roles in the paid work force in APEC data and analysis, a lack of data on women's contributions in the informal sector and unpaid work, and under-representation of women in APEC forums and activities (Corner, 1999).

Thus APEC should encourage its members to collect more and better information on women's economic roles and on the effects that trade and investment liberalization have on them. It should also formally recognize gender as a cross-cutting issue and routinely undertake analysis to identify the different impacts of policies and programmes on women and men. Finally, APEC should collect data on women's participation in its activities and assess the impact that gender integration and women's participation have on achieving its goals.

The Women Leaders' Network, on the other hand, should ensure more balanced participation and representation at its annual meetings and address a broader range of the issues facing female workers in Asia and the Pacific—not just those of women in business.

A way forward for regional trade agreements

The surge in regional trade agreements has intensified concerns and debates on promoting national and local interests alongside international trade regimes. Efforts to include human development and poverty reduction objectives in regional (and multilateral) trade agreements have assumed even greater importance and support against the backdrop of a rapidly liberalizing global economy—particularly because of concerns about the agreements' inimical effects on human development.

Although new opportunities are being created by multilateral and regional trade liberalization, central aspects of globalization are limiting countries' development policy options. Moreover, many countries do not ensure active, regular consultations between governments and national stakeholders on development

priorities in regional and other international trade agreements. As a result human development priorities and strategies to promote them are likely to be marginalized relative to business and political objectives.

If human development goals are to be achieved, parliamentarians and representatives of civil society must become engaged in the formulation of trade policy and in the negotiation and implementation of regional trade agreements. Some progress has been made in this area, but much more is needed. Consultations with key stakeholders were critical in the development of South Africa's free trade agreement with the EU. Similarly, the Cotonou Agreement between African, Caribbean and Pacific states and the EU requires that non-state actors and the business community be consulted on all aspects of the development partnership.

WTO compatibility should be a fundamental principle for regional trade agreements, but first WTO rules need to be made more flexible and human development friendly. Several recent regional agreements have included compliance with the WTO as a general principle, but this is not true of all. WTO rules should provide the overall boundaries for the scope and nature of regional agreements. As much as possible, these agreements should be non-discriminatory to non-members. To enable that, WTO rules should provide regional trade agreements with sufficient scope for addressing development concerns, and agreements between industrial and developing countries should allow for less than full reciprocity from the developing country partners.

Several other issues are important in updating and adapting regional trade agreements. First, flexibility in admitting members is needed to create the widest possible development space and to strengthen social and cultural ties. If useful, membership should be extended to countries beyond the standard geographic definition of a region. Widening membership to enlarge economic and social space is already an accepted objective in some regional trade agreements (though too wide a membership can become unwieldy and increase the size of the economic problems to be resolved). For example, the Common Market for Eastern and Southern Africa (COMESA) includes countries from North, East and Southern Africa and the Indian Ocean—while the African, Caribbean and Pacific Group of States includes countries from three continents.

This wider development space should be complemented by a policy of selectively stimulating growth in certain non-traditional subregions made up of two or more countries that are natural integration areas but that are in bordering regions unlikely to be covered by a formal regional trade agreement. Properly designed, such zones can help create a network of trade in an area—energizing regional integration within established groups and strengthening political solidarity between countries. Moreover, businesses and consumers in such zones can benefit considerably from the economic activities generated.

Many such selective free trade and economic complementarity agreements have been concluded in Latin America and the Caribbean outside the context of

existing regional integration agreements. The Argentina-Brazil Programme of Economic Integration and Cooperation, adopted in 1986, is an example—and formed the basis for the creation of Mercosur in 1991. The Southern African Development Community is now pursing this philosophy in the form of 'development corridors' linking landlocked countries to countries with ports and access to the sea, or linking less developed to more developed areas. This form of regional integration deserves more support because it could foster development and reduce poverty in outlying regions of countries—regions normally overlooked by profit-focused economic activities and development funding.

Enormous human development benefits can come from regional trade agreements among developing countries when such agreements create regional or like-minded development space or link neglected outlying areas. These kinds of agreements can build solidarity and bring together countries at similar stages of development, allowing for more symmetrical power relationships than under agreements between industrial and developing countries. Such agreements often provide developing countries with the greatest potential for mutually beneficial human development gains, at least in the short run. And if strategically managed, they are also likely to increase the bargaining power of developing country coalitions in international trade negotiating forums such as the WTO. Developing countries are likely to obtain much greater human development benefits when they combine their efforts in such forums.

Regional trade agreements between industrial and developing countries can also be instrumental in promoting economic growth and generating resources for human development activities. But the benefits to developing countries in the early stages of such agreements will depend on the accompanying social and economic adjustment measures. Developing country partners must ensure that they benefit from non-reciprocal trade arrangements and should assume less stringent liberalization commitments than their industrial country partners.

Regional trade agreements are no panacea for human development. None of the existing or planned regional trade agreements include provisions that will automatically enhance human development. The gender framework in APEC, while promising, still needs to be implemented, while NAFTA's labour and environmental clauses have not changed the environmental situation or labour relations in US-Mexico border areas. Agreements among EU countries may be an exception. But it is hard to see how the positive aspects of EU agreements can be emulated by developing countries given the high incomes and human development indicators of EU members and their relative equality in terms of sustainable human development.

NOTES

1. Indeed, this is a key problem with hearings in anti-dumping proceedings, where testimony from groups other than the import-competing industry is typically not allowed.

2. Plurilateral agreements are signed by WTO members that choose to do so, while all members are party to multilateral agreements.

3. Income is a proxy for more relevant indicators such as composition of exports and imports, industrial structure, sectoral composition and human capital levels, and further classification may be necessary in some cases. A full description of the Millennium Development Goals can be found at http://www.undp.org/mdg/99-Millennium_Declaration_and_Follow_up_Resolution.pdf.

4. Several examples of ways of doing this come from developing country proposals such as the ones submitted to the special session of the WTO Committee on Trade and Development on 18 June 2002, with communications from the African group, Paraguay, India, the least developed countries group and the joint communication from Cuba, the Dominican Republic, Honduras, India, Indonesia, Kenya, Pakistan, Sri Lanka, Tanzania and Zimbabwe.

5. This requires that the investigative process in each case gather testimony and views from all relevant parties, including consumer and public interest groups, importers and exporters and civil society organizations, and determine whether there is sufficiently broad support among these groups for the exercise of the opt-out or safeguard in question. Requiring groups—importers and exporters—whose incomes might be adversely affected by the opt-out to testify and the investigative body to trade off competing interests in a transparent manner would help ensure that protectionist measures that benefit a small segment of an industry at a large cost to society would not have much chance of success. When the opt-out in question is part of a broader development strategy that has already been adopted after broad debate and participation, an additional investigative process need not be launched (Rodrik, 2001).

6. Sanjaya Lall's index on domestic capabilities, which includes industrial performance and technology effort indexes, is an example. This index, supplemented by a human development index, could provide one such mechanism.

7. Taken together, these rulings are regarded by some as creating a cumulative jurisprudence on trade issues, though legally each ruling is independent.

8. Data are from http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

9. India, Malaysia, Pakistan and Thailand used the WTO dispute settlement process to challenge US restrictions on shrimp imports caught using nets known to harm certain species of endangered sea turtles.

10. Women legislators, for instance, represent only 9 per cent of the seats in parliament in Latin America and the Caribbean (UNDP, 1995). The situation is not much better in some industrial countries: women hold only 12 per cent of the seats in the US Congress and 23 per cent of the seats in the Canadian parliament (Hemispheric Social Alliance, 2001).

11. This is the experience in making finance ministries more gender-aware (Sen, 1999). However, given the structural similarities between finance and trade ministries, especially in developing countries, similar institutional constraints are likely in trade ministries.

12. Members of regional trade agreements are often but not always located in the same geographic region.

13. Paragraph 29, Doha Ministerial Declaration adopted 14 November 2001 (WT/MIN(01)/DEC/1), 20 November 2001.

14. The members of APEC are Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong (China, SAR), Indonesia, Japan, the Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, the Russian Federation, Singapore, Taiwan (China), Thailand, the United States and Viet Nam.

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