

Developing Countries and the WTO

Policy Approaches



Edited by
Gary P. Sampson and W. Bradnee Chambers

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Introduction and overview

W. Bradnee Chambers and Gary P. Sampson

With a well-accepted – albeit controversial – link between trade and development, it follows that achieving the objective of a well-functioning trading system is an integral part of the process of trade-led development. The goal of a world trading system centred on the World Trade Organization (WTO) is for multilaterally agreed law, coupled with the progressive liberalization of trade, to be the basis for international trade relations. The goal is to ensure respect for the interests of all trading partners – large and small. This should come through trading arrangements built on non-discrimination, and agreed rules that apply equitably to countries of all sizes and levels of development. As rules mean little if not effectively enforced, any rules-based system should be backstopped with an effective dispute settlement mechanism. To promote international trade and the interests of developing countries, the system should be coupled with a global forum for the discussion and negotiation of trade issues, and the progressive removal of tariff and non-tariff barriers to trade.

The goal of the Doha Development Agenda (DDA) has been to improve the existing system to achieve this result. However, to create and maintain such a system there must be a collective sense that market access for trade in services, agricultural and non-agricultural goods is in the interest of each country. There must also be a sense that the system provides the necessary legal flexibility for each country to pursue and implement its own national priorities. Additionally, the system must be sufficiently robust to withstand systemic and other challenges. Finally, the

processes that underpin the system must be seen to be both efficient and equitable.

The objective of this book is to investigate each of these aspects of the multilateral trading system as they relate to developing countries and the policy options before them.

At the most fundamental level, the characteristics of a development-oriented rules-based trading system are not easy to define. The question of what is an effective development policy has itself been a moving target. The vast development literature of the last half-century has vacillated between extremes with respect to what is the appropriate development strategy for developing countries. In the early years of the General Agreement on Tariffs and Trade (GATT), economic development was seen to come through industrialization via import substitution. Emphasis was on manufactured exports of developing countries coupled with considerable legal flexibility through high levels of protection in the absence of reciprocal respect to tariff concessions. This legal flexibility constituted the core of *special and differential treatment*, with its withdrawal *graduation*.

By the time of the Uruguay Round negotiations, perceptions had changed as to what were the most appropriate policies to foster economic development. Import substitution fell out of favour. In fact, the legal flexibilities offered to developing countries were seen by many as not only ineffective, but also counterproductive. Part of this new policy prescription was a change in approach. Developing countries should adopt broadly the same liberalization policies as developed countries, which required a different domestic policy space, market access priorities and legal flexibility. The objective of increasing participation of developing countries in world trade came to be increasingly measured in terms of the extent of adoption of legal obligations and liberalization commitments of developing countries in their own markets.

It is against this backdrop that this book addresses key policy issues of developing countries within the global trading system. The intent is to examine a cross-section of critical issues facing developing countries, with the objective of offering policy prescriptions that are both ambitious and realistic. The intent is not to be comprehensive in the sense of covering all issues of importance to developing countries. It is, rather, to analyse a selection of issues in each of the areas that are identified in this book as being of importance to them. There is a necessary overlap between the sections. Market access in manufactured goods (Part I) cannot be de-linked from special provisions for developing countries (Part II), nor can the legal flexibility (Part II) be divorced from process matters (Part IV).

Part I of this book addresses questions related to improving the market access of developing countries in services, agricultural and non-agricultural goods. Cotton is examined as a special case. What priorities should be assigned to opening markets in each of these areas, and what obligations should developing countries undertake themselves? The answer is that each country is different and treating developing countries in a generic sense in terms of their priorities and the legal flexibilities offered to them is no longer – if it ever was – appropriate.

In chapter 2, Kym Anderson and Will Martin address a number of key questions for policy makers, including the relative importance of liberalizing agricultural products, non-agricultural goods and services in developed versus developing countries; should market access, domestic support or export subsidies be the focus of attention in agriculture for developing country negotiators; and should “sensitive” or “special” agricultural products be subject to lesser reform?

Their results indicate that liberalizing merchandise trade in the DDA negotiations has the potential for a disproportionately high share of the gains to be available for developing countries, and for agricultural policy reform to be much more important as a source of global welfare gains than reform of the non-agricultural sectors. This follows from the greater degree of trade distortion in agriculture, and points to the market access pillar being the most important source of potential welfare gain.

But realizing potential gains will not be easy. While it is in agriculture that the greatest cuts in bound tariffs and subsidies are required, the political sensitivity of farm support programmes complicates reaching agreement. Because of high tariffs on many products, a compromise agreement with the exclusions sought for “sensitive” and “special” farm products would significantly decrease the gains from reform. With South-South trade expansion potentially contributing to half the benefits to developing countries from further reform, now that developing countries are trading much more with each other, the major beneficiaries of such reforms would be within their own region.

The authors note that expanding non-agriculture market access at the same time as reforming agriculture would increase the prospects for a successful conclusion to the DDA. For developing countries, much of that would come from decreasing barriers to textile and clothing trade.

In chapter 3, Magda Shahin draws attention to the strategic nature of the cotton trade and its importance for four least-developed countries, Burkina Faso, Benin, Mali and Chad. In response to the very considerable decline in world cotton prices in recent years, the four countries launched the “cotton initiative” in the run-up to the Fifth WTO Ministerial Conference in Cancun. The initiative was aimed at removing

trade-distorting subsidies and obtaining compensation for losses incurred while subsidies were being phased out.

The United States – a major producer and exporter of subsidized cotton – had shown neither interest nor willingness to address the cotton initiative. It called upon the countries to diversify their farm production, and benefit from the US African Growth and Opportunities Act (AGOA) by eliminating tariffs on textiles and garments, and drawing on US development assistance.

On their side, the four countries proposed a mechanism for phasing out support for cotton production with a view to its total elimination. There were to be transitional measures offering financial competition to offset the income the countries were losing. Two decisions were to be taken at the Cancun Ministerial meeting in September 2003, but the proposal failed with the rest of the Cancun agenda.

In the July 2004 WTO Framework Agreement (July Package) the African countries won a major concession from the United States to prioritize the cotton issue as a separate sectoral initiative. In addition, Brazil's WTO dispute settlement case against the US cotton subsidies lent impetus to the debate. Consequently, the African countries were determined to reach some kind of agreement at the sixth ministerial meeting in Hong Kong. It was in fact agreed that the elimination of cotton subsidies would be accelerated and that cotton imports from the four countries would be free of duty or quotas. Ministers also agreed to emphasize the phase-out of trade-distorting domestic subsidies.

According to Shahin, the WTO decision should encourage developing countries to continue their struggle to make the WTO a fairer place. The cotton initiative remains a practical manifestation of DDA objectives. As the only specific interest of African cotton-producing countries, the elimination of subsidies is a critical test of whether the DDA can deliver on development and poverty reduction. She says it would be unfortunate if the elements agreed on in Hong Kong are not implemented as long as the Doha round remains in a state of flux.

In chapter 4, Sam Laird sets out how the current DDA Work Programme provides the basis for negotiation on non-agricultural market access (NAMA) by means of “a non-linear formula applied on a line by line basis”. Given the mandate of the DDA to reduce or eliminate tariffs, in particular on products of export interest to developing countries, it is perhaps inevitable that negotiations focus on “harmonizing” formula approaches. In particular, the discussion has focused on variations of a Swiss formula. Numerous formulae for NAMA-related tariff-cuts have been proposed since negotiations started.

The second broad approach is based on a proposal by Argentina, Brazil and India for a coefficient to be based on each country's current na-

tional tariff average, possibly multiplied by another factor that could be linked to flexibilities or to credit for past unilateral reforms. The African Group has proposed incorporating a “correction coefficient” in this formula linked to the treatment of non-reciprocal preferences, while the African Caribbean and Pacific Group has called for a “vulnerability index” to identify products eligible for special treatment.

With so many possible coefficients and many questions over the treatment of non-formula issues, it is difficult to evaluate the various proposals. However, one general conclusion is that, at the technical level, analysis of the main proposals shows that, regardless of the approach taken, aggregate global trade and welfare is mostly affected by the level of exemptions taken by developed countries. In this respect, a further consideration is that while the more ambitious scenarios offer greater export possibilities and welfare gains, they involve increased imports and greater inter-sectoral shifts in production and employment with losses of tariff revenue. Therefore, they face greater resistance.

A number of developing countries have expressed concern over the erosion of their preferences following most-favoured nation (MFN) tariff reductions. The effects of the erosion, while estimated to be minor in aggregate, are more likely to be affected by the level of ambition rather than the precise formula. Laird believes that, to some extent, improvement in the scope and operation of existing preference schemes, including simpler administration and rules of origin, could help offset some losses.

While developing countries generally accept that trade liberalization is beneficial, at least in the long term, many are concerned about adjustment costs, as well as potential losses from preference erosion and a decline in tariff-based revenues. Success in implementing the eventual agreement on the new commitments depends critically on developing countries’ being able to generate a supply response that takes advantage of market opportunities. To do this, many countries will need to build physical and institutional infrastructure, especially for transport. This need can be met only by substantial financial flows that go beyond the remit of the WTO. In this sense the Aid for Trade Initiative as described in chapter 12 is of special importance.

In chapter 5, Gary Sampson points out that the General Agreement on Trade in Services (GATS) holds the potential to greatly expand trade in services and profoundly change international patterns of investment and production consumption. As ongoing negotiations have been folded into the DDA, significant future liberalization of trade in services looks bleak at best.

Sampson notes that, against this backdrop, it is perhaps timely to reflect on some of the broader consideration of policy relevance with

respect to GATS. In particular, GATS provides the policy space that developing countries consider absent in other WTO agreements. As there is considerable flexibility for developing countries to pursue their own development paths, these options should be carefully reviewed in the light of each country's development strategy.

Developing countries were successful in making development an integral part of GATS. The most important policy challenge facing them now is how best to exploit the opportunities presented in GATS. GATS provides a framework within which developing countries can promote domestic policy reform. On the market access front, as is formally recognized, developing countries should receive recognition for liberalization taken autonomously.

A principle criticism of GATS is that the foreign provision of many services could constitute an encroachment of national sovereignty and be at variance with domestic development priorities. Commitments with respect to government services supplied on a commercial basis in the area of education and health services are frequently singled out. Developing countries have not, however, engaged in a privatization of public healthcare or education systems. Indeed they have enforced the same standards on foreign suppliers as on nationals for the protection of the public. Furthermore, when developing countries provide access to their markets for Foreign Service suppliers, they are free to attach conditions aimed at their participation in trade in services.

The vast majority of measures that affect trade in services arise from domestic regulations. As the degree of sophistication of the nature of services provision increases with technological advancement, so does the concern of the public for health, the environment and safety. Consequently, the regulation of services trade and production will become increasingly complex. There is thus need for effective disciplines on the domestic regulation of services activities so as to ensure that they do not "constitute unnecessary barriers to trade".

Part II asks, if each developing country is unique, with a need to implement its own appropriate development strategy, what meaning can be given to commitment not to treat un-equals equally in the WTO legal system? What form should legal flexibilities take for the multilateral trading system to be truly supportive of economic development? In the DDA, the increase in participation of developing countries has become increasingly synonymous with developing countries forgoing legal flexibility and undertaking more commitments in the context of trade liberalization. The validity of this approach raises the question of what is the appropriate development strategy for each developing country.

In chapter 6, Constantine Michalopoulos notes that, while special and differential treatment (SDT) for developing countries has long been ac-

cepted and WTO agreements contain a large number of provisions for SDT, developing countries have felt that the provisions have not been properly implemented and more flexibility – more “policy space” – is required to permit the implementation of their development strategies.

The DDA called for a review of WTO SDT provisions with the objective of “strengthening them and making them more precise, effective and operational”. Despite extensive negotiations in the context of the DDA, there is little agreement on the type of measures required.

Many developing countries regard SDT provisions as meaningless, while many developed countries regard them as bad economics and outdated. A fundamental premise of SDT is that developing countries are intrinsically disadvantaged in their participation in international trade and therefore multilateral agreements must account for this weakness when specifying their rights and obligations. A related premise is that trade policies that maximize sustainable development in developing countries differ from those in developed economies, and policy disciplines applying to developed economies need not necessarily apply to developing countries. A final premise is that it is in the interest of developed countries to assist developing countries in their fuller integration and participation in the international trading system.

Based on these premises, provisions in WTO agreements fall into two broad categories: positive action by developed-country members and exceptions to rules and obligations. In the DDA, developing countries have made numerous proposals both addressing the principle of SDT and with respect to sector-specific provisions.

In broad measure, there are two main problems with the present system of SDT. First, there is no consensus on whether developing countries should be subject to different trade rules. Second, the system has encouraged a “pretend” culture in the WTO. According to Michalopoulos, developing countries pretend that they are the same except for the least developed countries (LDCs), while the developed countries pretend that they provide meaningful SDT to all developing countries. Underlying both premises is the fact that the WTO is not primarily a development institution, but one in which trade policies are formulated by trade ministers primarily beholden to domestic producers.

If there is to be country-specific SDT, country differentiation requires agreement on the criteria used to define eligibility for SDT. At the moment, the WTO recognizes 50 LDCs, of which 32 are WTO members. For the rest, vast differences in institutional capacity and degree of integration in the world markets remain ignored if a generic approach is adopted. A policy is needed that more narrowly defines which countries are eligible for SDT and the nature and conditions under which legal flexibility can be resorted to.

Michalopoulos's recommendations include: a regular review of SDT implementation by utilizing the Trade Policy Review Mechanism (TPR); detailed guidelines regarding the commitments sought from acceding members; and enhancing the capacity of the Secretariat to provide technical assistance.

For Manickan Supperamaniam in chapter 7, the concept of SDT is a fundamental element of the multilateral trading system and has increasingly defined the nature of developing country participation in the trading system. SDT has evolved to include preferential market access, a longer tariff phase-out period and flexibilities on implementing GATT/WTO disciplines and rules, as well as offers by developed countries to provide technical assistance and capacity building to facilitate implementation of GATT/WTO agreements. At the same time, it has changed from providing flexibilities and spaces for development policy based on economic criteria, to time-limited derogations from the rules with more favourable treatment regarding tariff and subsidy reduction commitments and more generous thresholds in the application of market defence measures.

WTO agreements contain approximately 155 provisions on SDT aimed at enabling developing countries to avail themselves of the rights provided while observing their obligations. According to Supperamaniam, experience has shown that these SDT provisions have failed to even remotely achieve their objectives in terms of integrating developing countries into the multilateral trading system and improving their trading conditions. The reasons for these shortcomings are: they only recognize the interests of developing countries in very general terms; merely provide for a longer time frame for implementation; or provide for some form of technical assistance.

Developing countries succeeded in putting SDT in the DDA as an implementation component of the development dimension to correct the inequities and imbalances of the international trading system. Numerous developing-country proposals call for making SDT provisions mandatory rather than best-endeavour commitments. Supperamaniam believes that decisions on these proposals have been somewhat desultory and no headway has been made so far despite intense negotiations and several extended deadlines.

There are two serious problems with the current WTO approach to SDT. First, there is a fundamental flaw in the presumption that developing countries are equipped to take on obligations similar to developed countries. Second, it is false to argue that developing countries should liberalize on the same basis as developed countries, ignoring the real differences in adjustment capacity and developmental needs.

There are strong reasons why favourable treatment for developing countries should be maintained and further enhanced in the WTO. One

of the very clear arguments for SDT relates to a wide range of level-playing-field issues, whether it is in terms of size of economies, trade share, industrial capacity or poverty issues or the size and capacity of enterprises. Furthermore, because the WTO constrains domestic policy choices necessary to make strategic liberalization possible, SDT has a crucial role in providing development space in respect to certain instruments and obligations.

The focus of the Doha work programme on development necessitates that efforts are made to mainstream development considerations into existing WTO rules and emerging disciplines. Potential problems will arise from the outcome of the Doha regulations and other elements of the work programme in terms of the costs of current and emerging WTO agreements.

Part III recognizes that challenges to the efficacy of the multilateral trading system can come in many forms, and provides three examples. First, the recent proliferation of preferential trading arrangements has potentially fragmented the rules-based trading system built on the foundation of non-discrimination. Second, should the trading system be the vehicle for the implementation of non-commercial goals and social standards such as environmental protection, labour standards and human rights? Could it become a vehicle whereby social values are used as a form of disguised protection? Finally, WTO agreements could be seen to be imbalanced and lead to a loss of confidence in the system itself. Trade-related intellectual property protection is reviewed in this context.

In chapter 8, Graham Dutfield sees a number of complications when dealing in the WTO with rulemaking in the area of intellectual property (IP). Because of the enormous diversity in terms of economic circumstances, there are necessarily quite disparate interests involved. Furthermore, intellectual property rights are designed with certain assumptions as to what should be eligible for protection. In developing countries, creativity may be common, but not easily described or communicated in ways that lend it to IP protection. Examples given by the author include curare, batik, myths and the dance ‘lambada’, which flow out of developing countries unprotected by intellectual property rights, while Prozac, Levis, John Grisham novels and the movie *Lambada!* flow in – protected by a suite of intellectual property laws, which in turn are backed by trade sanctions. A further difficulty is that the sophisticated and aggressive intellectual property forum management and other political strategies employed by the United States and the European Union seem to undermine WTO multilateralism. Increasingly, developing countries are pressured outside the WTO forum to raise their IP standards well above those required by the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) to become what is commonly dubbed ‘TRIPS plus’.

Dutfield notes that the current conventional wisdom is that the world's most successful nations are those best at producing, acquiring, deploying and controlling valuable knowledge. Knowledge, especially new knowledge unavailable to one's rivals, is key to international competitiveness and therefore to national prosperity. Those who accept such a view tend to assume, first, that knowledge-based economies are nowadays wealthier, almost by definition, than traditional or natural resource-based ones. Second, that wealth-creating knowledge of the kind that turns economies into knowledge-based ones comes almost exclusively out of universities, corporate laboratories and film, music, art and design studios, and not out of such unlikely places as peasant farmers' fields and indigenous communities. Third, this transformation requires the availability of high US- or European-style standards of intellectual property protection and enforcement. In short, rich countries have such standards, poor countries do not. Therefore, to be like rich countries, poor countries must adopt these standards; the "magic of the marketplace" will presumably conjure up the rest.

Dutfield's overall conclusion is that well-designed IP systems can benefit national economies just as poorly designed ones can harm them. But how does one go about designing and negotiating an appropriate IP system or fine-tuning an existing one? The economic and social impact of IP reform is very hard to predict reliably, especially in the long-term. This is particularly the case for developing countries. This is a real handicap in the present situation, where countries are pressured to negotiate and implement new multilateral trade rules and bilateral or regional free trade or investment agreements, and to respond to powerful stakeholder groups – often foreign ones – demanding changes to national regimes that may not serve the interests of their citizens and other domestic stakeholders. Such difficulties in measuring impacts make it difficult for governments and their representatives to know what negotiating position to adopt on IP, how best to handle complex trade issue-linkage bargains, and how far they should accommodate the demands of international business interests clamouring for change to domestic IP rules.

According to Ernst-Ulrich Petersmann in chapter 9, WTO law suffers from the same ambivalence as WTO politics. Idealists claim that "member-driven governance" serves the "public interest". Realists counter that consumer welfare, human rights and other constitutional safeguards of citizen interests are neither mentioned nor effectively protected in WTO law. WTO negotiations are driven by producer interests, bureaucratic and political interests; citizens, their human rights and consumer welfare are treated as marginal objects of benevolent governance, resulting in widespread alienation of citizens and democratic distrust vis-à-vis intergovernmental power politics in the WTO.

The author poses a number of questions: how should the “development objectives” of the WTO and “special and differential treatment” be defined in WTO law and policies? Here there is a need for democratic legitimacy based on respect for human rights and “principles of justice”. Are human rights legitimate criteria for differentiating SDT among developing countries? What about differentiating WTO technical assistance programs, such as trade-facilitation for combating corruption in customs administration?

Petersmann concludes that, similar to the focus of human rights on empowering individuals and people and protecting their rights against domestic abuses by their own governments, WTO law should focus on empowering private economic actors and consumers by protecting their rights against welfare-reducing abuses of trade-policy powers at national and international levels. He points to the DDA, where WTO Members “recognize . . . the need for all our peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates”. This suggests that citizen interests – in order to reduce poverty and the welfare-reducing protectionism of governments more effectively – must be legally protected more effectively by defining the WTO objective of “sustainable development” in terms of human rights and by empowering “WTO citizens” as legal subjects and democratic owners of the WTO legal system. As governments and WTO dispute-settlement bodies are legally required to interpret international treaties “in conformity with principles of justice” as defined also by universal human rights, WTO Members should recognize for the world trading system what the World Bank has long since recognized for its development assistance.

In chapter 10, Jens Pössel notes that the multilateral rules-based trading system has made a significant contribution to world economic growth and stability over the past 50 years. It has correspondingly established extensive authority within the field of international economic affairs. It now focuses on far more than trade, and has extended its reach to issues that are central to sustainable development. WTO rules now have a potential impact on almost all sectors of society and law. From both an economic and a social perspective, stable and rules-based societies constitute a necessary condition for sustainable development, a well-functioning world economy and a multilateral trading system.

Given the frequency of reference to sustainable development in WTO texts, including ministerial declarations, it is clear that, from the legal perspective, the goal of sustainable development is one of the main objectives of the WTO. In light of this, Pössel explores the human rights dimension of the term “sustainable development” within the context of the WTO, along with the legal basis for a human rights approach to sustainable development. The direct link between trade, sustainable development

and human rights comes through the right to non-discrimination, the right to work, the right to food and the right to health, all of which can be directly affected by international trade. Moreover, their realization forms part of the economic or social development process.

The chapter concludes that sustainable development, besides environmental protection, essentially means nothing else but the effective realization of particular human rights associated to the economic and social development process. The globalization of human rights and of economic integration offers mutually beneficial synergies, that is, protection and enjoyment of human rights depend also on economic resources and on integration law opening markets, reducing discrimination and enabling a welfare-increasing division of labour. Therefore, it is vital that WTO Member States consider the human rights dimension of their respective trade policies.

In chapter 11, Ken Haydon notes that, in recent years, there has been a proliferation of preferential regional trade agreements (RTAs). Of the 200-plus RTAs notified to the WTO in the last decade, one quarter have been made since the failed WTO Ministerial Conference in Cancun in September 2003. Furthermore, the share of world trade accounted for by RTAs has grown from 40 per cent to over half of global trade in the last five years. The so-called “new-regionalism” is characterized by a new concern with respect to domestic regulations when compared to more conventional tariff-based preferential agreements.

There are several reasons for this growth. Preferential RTAs are perhaps viewed by both government and business as offering quicker gains to market access than can be achieved through the process of multilateral negotiation. Regional agreements also offer the opportunity to address issues that have been deliberately excluded from multilateral negotiations – notably the two so-called Singapore Issues, investment and competition, which have been dropped from the DDA. What are the implications of this deeper integration for developing countries both as parties and non-parties to the agreements concerned?

Haydon notes that the proliferation of RTAs – both plurilateral and bilateral – increasingly involves agreements between countries at markedly different stages of development. In recognition of these differences, RTAs commonly contain special and differential-type provisions that seek to benefit the less advanced partner. However, while RTA provisions often go beyond those found in the WTO, and while there may be lessons for the evolving debate on aid-for-trade, care is needed in seeking to draw on RTA experiences. Of the two broad types of special and differential treatment, there is one – flexibility in liberalization commitments – that is widely applied in regional agreements. It is, however, of questionable value insofar as it weakens the commitment to market opening. Another – financial and technical assistance – is seen as being

broadly beneficial but is implemented in regional accords at a level well below its potential.

Moreover, even where developing countries may benefit from SDT-type provisions in RTAs, such benefit needs to be set against the negative aspects of regionalism. These include increased transaction costs for business and pressure to address trade-related concerns such as core labour standards or protection of the environment. While regional agreements can complement the multilateral trading system, they can never be a substitute for it. Complementarity would be fostered by donor support for regional efforts at capacity building and by a strengthened commitment, by all countries, to open markets and strengthened rules of trade.

Part IV looks at two very practical process-related issues of importance for developing countries – how to ensure that the dispute settlement system functions in such a way as to adequately preserve their rights, and what means to facilitate trade will enable developing countries to take full advantage in a practicable sense of the opportunities offered by the multilateral trading system.

In chapter 12, George Akpan explores developing countries and reform of the Dispute Settlement Understanding (DSU). He looks at how the present system affects the participation of developing countries, and how reforms could improve their participation in the Dispute Settlement Body (DSB). Many proposals have been made. One relates to the introduction of permanent panellists, similar to that of the Appellate Body. The present ad hoc system, he says, is a carry-over from the old GATT days. Although this proposal has received little support among members, he believes much can be said in support of the idea. Some developing countries are opposed, as they feel that it will lead to increased judicialization of the system and remove flexibility that they might have in regulatory solutions to meet their peculiar circumstances.

Other procedure-related proposals include the consultation process, where some have proposed the period required for consultations should be decreased from the present 60 days to 30 days to speed up the process. Others call for the enhancement of third-party participation in the consultation process. The current rules recognize that a Member with substantial trade interests can request consultation and join in the process as a third party. In Akpan's view, developing countries should support proposals to increase participation in general, as this provides them the opportunity to learn more about substantive and systemic issues. In the case of non-compliance, he proposes that the right to retaliate should be reformed, and used only as a last resort to force compliance with the ruling of the panel or Appellate Body.

Many other proposals on the table are systemic in nature: on the issue of transparency of WTO dispute settlements systems; to strengthen SDT provisions of the DSU for developing country Members; and facilitating

the access of developing countries to the dispute settlement system in general.

According to Akpan, many developing countries joined the WTO in the expectation that it would help them to address their development challenges through trade. To achieve this they need to be able to participate in the system effectively – including using the dispute settlement mechanism to defend their trade interests. It is not suggested in the chapter that the rules are biased against developing countries, rather the argument is that, given the peculiarity of developing countries, specific arrangements should be introduced to facilitate participation of developing countries in dispute-settlement proceedings.

According to Nora Neufeld in chapter 13, Trade Facilitation (TF) negotiations were slow to start due to developing countries' reluctance to engage in what they saw as an already ambitious multilateral round. This view was strengthened by the parallel attempt to launch negotiations on three other Singapore issues.

Traditionally, due to developing-country resistance, TF work has taken place in customs or other market-access-related WTO bodies. However, the resistance to rulemaking for TF was overcome in the July Package, where negotiations to make commerce more efficient through the rationalization of procedures, documentation and information flows were foreseen. The first two years of TF negotiations showed that they could deliver substantive improvements to the current trading regime. They produced a promising set of proposed rules. On the table when the Round was suspended was a framework for the elimination of the remaining barriers in the non-tariff field. This would involve rules to significantly change trading realities on the ground.

TF negotiations have been successful for a number of reasons. There is no doubt that TF has a direct link to economic growth. Trade Facilitation is increasingly believed to have the potential to make global liberalization a tool for development by allowing for enhanced participation in international trade, lower trade transaction costs, strengthening of a country's tax and revenue base and ensuring better resource allocation. In this context, the Washington consensus has gradually been replaced by a line of thinking to promote a trade liberalization model that centres on poverty eradication and that bridges gaps in development. For this, a constructive approach to trade facilitation is crucial.

According to Neufeld, the TF negotiations are among the best prepared areas of the DDA. A Work Plan, adopted at the start of negotiations, encapsulated the shared sense of a need for a balanced advancement. Never before had developing countries engaged so actively in making proposals. Perhaps this success is related to the technical nature of the subject, enabling negotiators to focus on relatively uncontroversial substance with political considerations kept at a low-key level.

However, progress in the TF negotiations should not hide the fact that problems need to be addressed. Substantive advances in discussing detailed proposals do not equal agreement on final outcomes. There are wider systemic challenges – especially with regards to positioning within the total outcome of the DDA, and related risks of hostage-taking and the overall fate of the Round.

Neufeld concludes that failure to conclude the TF negotiations would mean failure to realize their trade enhancement and cost-reduction potential – a failure to deliver on the very promises that led to the initiation of the DDA in the first place. It would not only destroy a decade of intense work with tangible advances, but would also put an end to what many see as a new way of constructive cooperation between the developed and developing world.

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Developing Countries and the WTO: Policy Approaches

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It is widely accepted that a well-functioning global trading system is a prerequisite for trade promotion and the development of developing countries. However, it is equally well recognised that the trading system has not worked to the advantage of many developing countries. In this regard, the Doha Development Agenda—negotiations launched at the WTO to rectify the situation—has failed.

Compared to just ten years ago, developing countries are much better informed with respect to trade negotiations. Also, they now comprise two-thirds of the membership of the WTO—an organisation based on consensus—giving them a new power and authority in future negotiations.

For this reason, it is of critical importance for developing countries to have clear proposals for reform that are both ambitious and realistic. Only then can they constructively promote their interests in the coming years. This book addresses the critical policy choices now facing developing countries with respect to trade policy. Experienced negotiators, scholars and trade officials from very different backgrounds offer policy prescriptions to secure a world trading system that will meet the needs of developing countries.

Gary P. Sampson is the John Gough Professor of International Trade at Melbourne Business School, Melbourne University, Australia and Professor of International Economic Governance at the United Nations University Institute of Advanced Studies (UNU-IAS) in Yokohama, Japan. **W. Bradnee Chambers** is the Senior Programme Officer at the United Nations University Institute of Advanced Studies (UNU-IAS) in Yokohama, Japan.

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