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Africa and the "New Issues" in the World Trade Organization Framework

by

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1. Introduction

The multilateral trade agenda has grown in complexity and diversity in the last five years, creating major challenges for most governments as they struggle to absorb new issues, evaluate their implications and set priorities. For the first thirty years of its existence, the General Agreement on Tariffs and Trade (GATT) concerned itself mainly with reducing tariffs on goods, against a background of rules whose primary objective was to protect the market access value of tariff commitments. The early GATT rules went beyond tariff bindings to cover such measures as quantitative restrictions, anti-dumping actions, contingency protection and subsidies, but all these rules basically concerned policy conditions at the frontier. The Tokyo Round (1973–1979) focused on deepening the rules, but beyond the establishment of new rules for government procurement,[1] did little to expand the scope of the multilateral trading system. The Tokyo Round's contribution in the rules area was to clarify and in some cases extend the reach of rules already incorporated within the GATT framework.

The real expansion of the trade agenda was foreshadowed to a degree in various work programmes instituted in the early 1980s, but only took place in the Uruguay Round and its aftermath. The Uruguay Round brought trade in services and trade-related intellectual property rights into the system, and instituted a work programme on trade and the environment. The Singapore Ministerial Declaration added work programmes on trade and investment, trade and competition policy, certain aspects of government procurement, and trade facilitation. It is hardly surprising that such a rapid expansion of the agenda has raised questions about the capacity of some governments to implement their legal commitments in a timely and adequate manner. For most developing countries, especially those whose participation in the Uruguay Round was limited, the adoption of the Uruguay Round results as a "single undertaking" is severely testing the absorptive capacity of governments in both a political and administrative sense. Some governments, including in Africa, have expressed misgivings about the manner in which the WTO agenda is being shaped and have complained of marginalization from the decision making process. These kinds of concerns can only begin to be addressed if governments are adequately informed of the nature of the issues involved and have developed a coherent perception of where national interests lie.

Why did the multilateral trade agenda burgeon so with the Uruguay Round and the establishment of the WTO? The most obvious answer is that the trading system had been left behind, and needed to catch up with the trend of globalization in the world economy if it was to retain its relevance. This is a process that will continue, as new issues are explored and perhaps become part of a negotiating agenda, and as governments strive to improve the substance of what they have been able to agree so far in particular areas. And why has WTO membership expanded so markedly, from around 100 countries at the end of the Tokyo Round to 132 today, with another 31 countries negotiating for WTO membership. To some extent this is because there are more sovereign states than ever before, but it is also because of heightened interest in the trading system in a world of growing interdependence.

Africa's relationship to the world economy in the last two decades or so has been different

[2]These rules were subscribed to by only a handful of developed country governments. Moreover, much of what was negotiated in the Tokyo Round by way of elaborations on the trade rules applied to a subset of the GATT membership, excluding many developing countries.

from that of any other region. Setting aside for the moment the important distinctions that should be made among African countries, the continent taken as a whole has disengaged in recent years from the international economy. While world trade has consistently outpaced world GDP growth in the post-war period, raising the ratio of exports to GDP from 8% in 1948 to 26% in 1997, the same pattern has not prevailed in Africa throughout this period. In the 1980s, the exports of sub-Saharan Africa grew at an annual average rate of 0.4%, whereas GDP grew by 2.4% (Collier, 1997). In the period 1985–1990, Africa accounted for 2.0% of foreign direct investment (FDI) inflows on average, and this share had dropped to 1.4% in 1996. African FDI stocks were 2.4% of world stocks in 1980 and only 1.8% in 1996 (UNCTAD, 1997). Aggregate output growth figures confirm the overall picture of sub-Saharan Africa being left behind: developing countries as a group grew at an annual real average rate of 4.3% between 1971–1988 and 5.8% from 1989 until the present, while the comparable figures for sub-Saharan Africa are 2.3% and 2.9%, respectively (Vockey, 1997). It must be emphasized that the picture across the continent is far from uniform, and that some African countries have recorded significantly higher rates of growth. Moreover, the average growth rate for sub-Saharan Africa has improved recently, exceeding 4% in 1996 and 1997, and was forecast to do the same in 1998.

Notwithstanding the improved performance of certain countries, and seemingly favourable prospects for the continent as a whole, there can be no denying the concern of many policy makers and observers about the elusiveness of "convergence" — in other words, the remoteness of the possibility that rapidly increasing living standards in poorer countries, especially in Africa, will allow these countries to "catch up" in economic terms. The prospect of continuing or even aggravated marginalization remains real unless the trends of the last two decades are reversed. It is not the purpose of this paper to enter into the debate about the root causes of Africa's under-performance, in particular between those who attribute much of the problem to policy factors and those who look to other explanations, such as resource endowments, geography, climate and other "initial" conditions as the relevant variables.[2]

Suffice it to note for present purposes that a discussion of the new WTO issues and the options they present African governments is only relevant if one accepts that the behaviour of these governments in the WTO, including in respect of the new issues, makes a difference to their growth and development prospects. An underlying assumption of this paper is that appropriate and full participation in the WTO is an important element of any strategy that calls for engagement rather than retreat from the international economy. Given the increasingly multi-faceted and intrusive reach of the WTO, the argument behind this assumption is reinforced by the conclusion of a growing body of literature that a range of interacting policy factors determines growth.[3] According to this analysis, economic performance will be compromised if crucial policy complementarities are ignored in the design of reform packages.

The remainder of this paper is divided into sections that deal with seven new issues on the WTO agenda. The issues covered—trade in services, investment, intellectual property rights, competition policy, government procurement, trade facilitation, and trade and environment—

[2]For an excellent summary of this debate, and advocacy of the view that Africa's economic difficulties are rooted primarily in policy factors, see Collier (1997) and references cited therein.

[3]See, for example, Williamson (1993) and Aziz and Wescott (1997).

are not sharply distinguished between those that already form part of the system and those that are only being discussed in working groups. The list does not include the subject of labour standards, which, although raised for discussion in the context of the Singapore Ministerial Meeting, does not form part of the WTO work programme.[4] Given the number of new issues covered in this paper, it is impossible to provide an extensive treatment of any of them. The purpose, rather, is to identify the most salient aspects of the issues from a policy perspective, explain how they are being dealt with in the WTO context, and consider their relevance for African economies.

In reading this paper, it is important to bear in mind its limitations. Neither the full complexity of the issues involved, nor the diversity of individual country experience, can be adequately captured in a paper of this length. The paper can only hope to introduce the issues and outline their implications in broad terms for African countries. A natural next step for the analysis would be to look at these issues individually in terms of what they mean for the policies and interests of particular countries. Two points of importance suggest themselves in this connection. First, there is a need to establish clear priorities from a domestic policy perspective. It is obvious that not everything on the WTO's agenda can be of equal importance in terms of the stage of development and the policy challenges prevailing in a given country. A focused and more selective approach will yield better results. But account should also be taken of the fact that governments may wish to influence the direction of discussion in the WTO in areas that are not of immediate relevance to the existing situation, but which could become important later.

All countries face resource constraints when it comes to participating in organizations like the WTO, but these constraints are more pressing for African countries than for most. Reference has already been made to growing concerns over implementation. These arise directly from the fact that an expanded and growing agenda places a heavy strain on already stretched resources. In essence, the concern is that having assumed wide-ranging commitments in the Uruguay Round, countries are now hard pressed administratively to implement, which in some cases may lead to WTO-inconsistent actions or policies. This problem is not emphasized in the present paper, since for the most part no obligations treated by the paper have yet been assumed (such as investment, competition and trade facilitation), or they concern subjects where commitments have been taken with grace periods for implementation (intellectual property).

Second, the analysis needs to be firmly rooted in an adequate overall appreciation of governments' underlying policy objectives. This means that the way issues are treated in the WTO environment matters. Most importantly, positions must be judged in terms of the domestic policy framework. External policy conditions are important for a country's development prospects, but the domestic policy framework is even more important, and a country's posture and activities in the WTO should be tailored as much to an emphasis on the latter as on the former. The sometimes adversarial approach adopted by countries in the

[4]Ministers at Singapore affirmed the commitment of all Members to observance of internationally recognized core labour standards and stated that these standards should be addressed by the ILO. They noted that labour standards are promoted by growth and development, which in turn is fostered by trade liberalization, Ministers also expressed their rejection of the use of labour standards for protectionist purposes and agreed that the comparative advantage of countries must in no way be put into question. If the issue is present again for inclusion in the work of the WTO, developing countries and others would certainly be concerned about the risk that arguments relating to labour standards would be appropriated for protectionist motives.

WTO is perhaps inevitable, but it does not always ensure that national interests will take precedence over political postures. This is why involvement in the WTO must be clearly seen in terms of national policy objective and priorities.

2. Trade in services

African countries differ widely in terms of the share of services activities in GDP. On the one hand, the share of services is within the 20–30% range for countries like Burundi, Nigeria and Tanzania. On the other, the share reaches 70% or more for Djibouti and Eritrea (World Bank, 1997). Differences are partly explained by resource endowments, but the share of services activities in GDP typically rises with increases in national income. For this reason, industrial countries on average have higher services-to-GDP ratios than developing countries, and the policy regime a government chooses for services assumes increasing importance over time. In retrospect, it is perhaps surprising that it took until the early 1990s for governments to agree on multilateral rules for trade in services. On the other hand, it is only with more recent developments in information technology—that is, in telecommunications, computer technology and software—that services have become more tradeable and also more readily "disembodied" from goods in certain sectors. And even with greater tradeability, the establishment of multilateral rules on trade in services entailed acceptance of disciplines on investment as well as on cross-border transactions (see below).

Two features of services that distinguish them from production and trade in goods deserve emphasis at the outset, and help to explain what made the negotiation and final shape of the General Agreement on Trade in Services (GATS) so different from the GATT. First, production and consumption of a service may occur simultaneously, since no possibility exists of storing certain services produced now for consumption later. Hair-cutting is an obvious example of this class of service. In such cases, a transaction requires that the producer and the consumer must be in one location. For other services, such as construction, arms-length supply is impossible because the service is not transportable, modern telecommunications notwithstanding. A physical presence is therefore necessary. This implies that if a government grants market access rights to foreign suppliers for non-storable or non-transportable services, it may have to accept either that foreign enterprises can establish a commercial presence in its territory, or that the service suppliers in question may enter its territory, if only on a temporary basis.[5]

The delivery of many services is not so intrinsically restricted, and arms-length supply across frontiers is feasible, although not necessarily desirable from the point of view of the seller and the consumer.[6] Thus, even where establishment or temporary presence is not essential to an exchange, a preference may exist for the physical presence of the supplier in the territory of the consumer, or vice-versa. The essential point here is that either through force of circumstance, or because of the nature of an activity, trade in services cannot be promoted without a willingness on the part of governments to contemplate multiple modes of delivery,

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[5]Some internationally traded services, such as telephone conversations, may also involve instantaneous production and consumption, but in this case the transaction takes place across a frontier and is therefore similar to cross-border exchanges of goods.

[6]Where repeated transactions are required, such as in after-sales services, a continuing local presence is obviously more desirable than long-distance supply.

involving the movement across national jurisdictions of the services themselves, or of producers or of consumers. These realities are reflected in GATS.

Second, services tend to be subject to a greater degree of regulatory supervision than physical goods. In part, this reflects concerns about consumer protection, or in the case of financial services, prudential issues. Since fraud, sharp practice and substandard output may be difficult or impossible to detect and prevent before the damage is done, governments feel obliged to control supply ex ante rather than output on an ex post basis. Another consideration is that some service sectors, like banking, have economy-wide externalities, so that regulation erring on the side of caution is considered necessary to avoid the widespread damage that would be caused by specific sectoral failures. Moreover, in making the comparison with goods, it should be borne in mind that the GATS covers service suppliers (i.e., production) as well as services, whereas in GATT only products are covered.

Heavy regulation may also reflect protectionist policy, where for one reason or another governments are unwilling to countenance foreign competition. Either way, the relative intensity of regulation in many service industries contributes to the complexities of promoting trade liberalization. The focus of negotiations on trade in services is upon sectors, although there is undoubtedly room to do more by way of developing principles applicable to all services trade, regardless of the degree of sector-specific liberalization that governments are willing to countenance. Given the greater necessity of regulation from a consumer protection perspective in the sphere of services, progress in trade liberalization should not be judged merely by reference to the pace and degree of deregulation.

A final point worth making concerns the severe dearth of information available to policy makers and analysts about service transactions. For the most part, governments have not collected data on international service transactions in a systematic fashion, save in a highly aggregated and not always internationally comparable form in the balance of payments accounts. Attempts are being made by the OECD, Eurostat and the International Monetary Fund to improve the standard of data collection in services (World Bank, 1995), but these efforts will take several years to bear fruit. Moreover, problems will still arise because of a (growing) range of intra-firm electronic service transactions that are not recorded in conventional balance of payments statistics. A further limitation of data on services transactions is that so-called "establishment" trade—the sales of foreign-owned enterprises in the host country—is not recorded under most existing statistical methodologies.[7] Finally, as Jagdish Bhagwati pointed out over ten years ago, services statistics will be influenced by economic structure (Bhagwati, 1984). For example, where a manufacturing firm maintains in-house advertising services, advertising will be recorded as goods production; but a manufacturer who buys advertising from an agency triggers a transaction that will be recorded in national output statistics as advertising services. Specialization that leads to out-sourcing of service inputs into manufacturing is referred to as "splintering".

[7]The implied allocation of locally generated output as domestic sales of foreign trade on the basis of the ownership of the equity responsible for production appears to have limited economic relevance. Yet under GATS, governments have assumed obligations in respect of production attributable to foreign equity.

The structure of GATS

The GATS is crafted cautiously,[8] in that it provides signatories with ample scope to condition their multilateral commitments. Only some of the provisions of the GATS framework relate to the universe of trade in services, as defined under the agreement, while others are restricted to those service activities subject to specific, scheduled commitments. Several provisions clearly reflect the pervasiveness of regulations in many service sectors, and the intent to prevent the protectionist abuse of such regulations. The specific schedules indicate which service sectors each signatory has been willing to subject to non-general obligations under GATS. The schedules also provide for qualifications to the national treatment and market access commitments that otherwise apply to sectoral commitments.

The scope of the agreement, the definition of trade in services and the sectoral coverage are laid out in Part I of GATS. Trade in services is defined in Article I in terms of four modes of supply. The first mode involves the cross-border (arms-length or long-distance) supply of a service from one jurisdiction of suppliers.[9] Tourism is a good example of this mode, involving the movement of (mobile) tourists to (immobile) tourist facilities in another country. The third mode of supply is through the commercial presence of a supplier in the jurisdiction of consumers. This is the investment mode, which caused so much difficulty in the early stages of the services negotiations. Some developing countries argued that commitments on service transactions under this mode of supply were tantamount to a surrogate obligation on foreign direct investment, and they expressed unwillingness to tie in their investment regimes in this manner. Finally, the fourth mode entails the movement of natural persons from one jurisdiction to another. This is the mode under which the sensitive issue of the movement of labour is addressed. The fourth mode relates both to independent service suppliers and to employees of juridical persons supplying services.

The conceptual approach underlying these modes was first developed in the academic literature (Sampson and Snape, 1985) as a heuristic device to explain the nature of international transactions in services. Differentiation by modes of supply later formed the basis on which governments defined market access commitments under GATS in their schedules, permitting a choice to be made from among alternative modes. The use of modal distinctions is a reflection of the manner in which liberalization is defined under the agreement, and the possibility of applying different policy regimes to different modes of supply is a potential source of economic distortion (DeAnne Julius, 1994). Despite early reservations about commercial presence, a tendency to encourage this mode is discernible in the schedules of commitments (see below). In some cases, this may be because countries have attempted to use the GATS as an instrument for encouraging foreign direct investment. In others, it reflects the desire to avoid "regulatory competition" between different jurisdictions. Furthermore, where regulatory control is considered important, as in prudential controls in banking, for example, governments find it easier to impose and enforce regulations in their own territories. The extent to which the absence of modal neutrality under GATS is the source of distortion is an empirical question well beyond the scope of this paper.

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[8]Relatively few analyses exist of GATS. See Hoecman (1995), Hoekman and Sauvé (1994), Altinger and Enders (1995), on a Sauvé (1994).

[9]Both a service supplier and a service consumer could, of course, move to a third jurisdiction. Under GATS, this would be treated as two separate transactions from the point of view of the host country.

The GATS, like GATT, is based on the most favoured nation (MFN) principle, designed to prevent members from discriminating among their trading partners. In order to attain final agreement on the MFN principle, and to avoid the wholesale exclusion of sectors from GATS coverage, limited exemptions to MFN are permitted under the agreement. The MFN exemption provisions reflected the concern of some larger countries that by granting MFN access to their markets, they would be losing the opportunity to exchange their relatively open access for further liberalization in other markets. In other words, these countries were arguing that "free riding" would occur in the absence of an effective instrument to ensure reciprocity. Some 70 countries have taken MFN exemptions.

A fundamental feature of GATS is the principle of progressive liberalization. It reflects the reality that governments were neither willing nor able simply to open up their services markets to international competition from one day to the next. Progressive liberalization implies a gradual approach, and the structure of the GATS accommodates such gradualism. Three aspects of the GATS are crucial determinants of the pace and reach of liberalization under GATS. First, governments determine in the course of negotiations which sectors or activities to include and which to exclude from market-opening in their schedules of specific commitments. Few GATS obligations apply unless a sector and the associated modes of delivery have been made subject to specific commitments in the schedule of a member. The MFN principle in Article II and the transparency commitments in Article III are the main general obligations of the agreement. The notable gaps in general application, which have the effect of reducing the reach of GATS, are those relating to domestic regulation and national treatment.

The second aspect concerns the manner in which market access limitations are expressed in schedules of specific commitments. Four of the six possible ways in which market access may be limited under GATS (Article XVI) are expressed in terms of quantitative limitations—the number of suppliers, the value of transactions or assets, the number of operations or quality of output, or the number of natural persons that may be employed. The other two market access limitations refer to restrictions on types of legal entity and participation of foreign capital. Reliance on quantitative rather than price-based market access limitations carries well-known efficiency costs and distribution implications, and is likely to imply less liberalization than a price-based approach.

The third aspect, already noted above, relates to the role played by the national treatment commitment under GATS—that is, the requirement of equal treatment of foreign and domestic supplies and suppliers in the domestic market. In contrast to GATT, national treatment under GATS is not a general principle. Rather, it is a matter for negotiation. National treatment applies to scheduled commitments unless an explicit indication is given to the contrary. One reason why governments may have been unwilling to see national treatment play the same role in GATS as in GATT, or the role that MFN plays in GATS as a general principle, is that under the commercial presence and movement of natural persons modes of supply in GATS (modes 3 and 4), full national treatment is equivalent to free trade—it would guarantee unlimited investment rights for foreign service suppliers. While governments were willing to guarantee this treatment in some sectors where they made scheduled commitments unencumbered by national treatment limitations, it is difficult to imagine the circumstances in which governments would have been willing to do this across the board.

Liberalization commitments

The gradualist approach to liberalization under GATS has produced diverse range of commitments among WTO members in terms of sectoral coverage and the degree of market-opening. Many countries have been cautious and considerable scope remains for liberalization initiatives in the future. Governments have recognized this, and Article XIX of GATS calls for successive rounds of negotiations, the first of which is scheduled to begin in the year 2000. Unfortunately, the nature of trade in services, the dearth of reliable data and the structure of market access commitments under GATS make it very difficult in many cases to assess the significance of what has been committed so far by way of trade liberalization. When a sector or activity is not omitted altogether from a schedule, it may be specified without any market access or national treatment limitations under all four modes of supply. Otherwise, the limitations that are specified must be judged in terms of their restrictiveness, and the information requirements can be prohibitive.

Another aspect of the assessment of the value of a specific commitment requiring detailed information is its worth in relation to the actual policies pursued by a government. If a specific commitment ties a member to a policy regime that is less open than the regime applied, then it has less value for trading partners than a commitment that reflects the policy status quo. And a commitment that corresponds to the policy status quo at the time it is made is less valuable than one that promises further trade liberalization, although such a commitment still has value in that it ensures against any increase in protection. Many specific commitments under GATS are at or below the status quo, and this has led observers to question the degree to which the GATS has so far led to actual liberalization. The more recently concluded negotiations on basic telecommunications and financial services, however, have entailed significant liberalization moves on the part of many members (Low and Mattoo, 1997, and Mattoo, 1998).

Specific service commitments by country are summarized in the Annex. Because of the constraints on making accurate assessments of what has been committed, the Annex takes a simple approach that presents a very partial picture.[10] If a member has made any commitment whatsoever in one of 12 highly aggregated sectors, this is indicated, and such commitments are summed. The most significant information the Annex gives is where countries have omitted to make any market access commitments at all in sector—no quantitative statements can be made where commitments have not been made. But this crude approach is still quite revealing. For all WTO members and all possible commitments measured in this way, the Appendix shows that only 47% of the total possible commitments have been made. The comparable figure for African countries is 34%. Africa's commitment levels are particularly high in tourism and related travel services (95%) and particularly low in distribution services, educational services, environmental services, and health and related social services.

Options for Africa

Even with very crude measurement methods, it is obvious that considerable scope exists for increasing commitment levels in trade in services. This does not apply only to Africa, but more generally. Once a government determines how much liberalization it wishes to

[10] More sophisticated attempts at measurement have been made by Hoekman (1995), Altinger and Enders (1995), and Mattoo (1997), but they all suffer from severe information constraints and rest on heroic assumptions.

undertake and at what pace, the question is what WTO commitments can do to support and sustain liberalization efforts. WTO commitments sometimes seem to be looked upon as concessions that carry a cost, unless they are matched by comparable commitments from trading partners. In economic terms, reciprocity plays a positive role only in narrowly drawn conditions that are unlikely to apply to most African countries in most circumstances—namely, that the liberalizing country will suffer a deterioration in its terms of trade. Bearing this in mind, along with solid empirical evidence that the welfare gains from liberalization accrue primarily to the liberalizing country,[11] and that countries that have pursued more open policies have performed better, it is difficult to see an economic argument based on reciprocity demands for refraining from making binding liberalization commitments under the WTO.

Binding international commitments serve to tie in policies that are susceptible to pressure from adversely affected domestic interests. In the specific case of investment, or commitments under the third and fourth GATS modes of supply, they can also provide a positive signal to foreign investors and guarantee a commitment to policy continuity. Adequate investment in infrastructural industries, for example, is a key ingredient of growth and development. Clear GATS commitments in such sectors as telecommunications, health, education, financial services and transport could contribute to increased investment.[12]

Finally, although the economic case for not binding liberalization commitments is weak or nonexistent for the most part, political economy considerations—in particular the natural resistance to liberalization from those that stand to lose from it—may make it easier to liberalize in the context of joint action under a multilateral negotiation. This is an argument for more effective engagement in multilateral processes under the WTO. A related argument for such engagement is the fact that when new negotiations on trade in services start in the year 2000, they are likely to involve the design of rules as well as liberalization commitments. All member countries have an incentive to ensure that the rules of the system accommodate their interests.

3. Trade and investment

Trade related investment measures

Efforts made by some countries during the Uruguay Round to bring the subject of investment into the multilateral trading system were of limited success. The Agreement on Trade-Related Investment Measures (TRIMS) reiterates the applicability of GATT provisions on national treatment and the prohibition of quantitative trade restrictions to certain TRIMs. The agreement does not address the treatment of investments or investors, but rather focuses on trade measures that are linked to investment policies. An illustrative list annexed to the TRIMs agreement contains examples of measures inconsistent with national treatment or involving quantitative trade restrictions, including local content requirements, trade-balancing requirements and measures that have the effect of restricting imports.

[11] See, for example, Martin and Winters (1996) and WTO (1998), which contain or report upon various studies of the gains from liberalization under the Uruguay Round.

[12] Support for this view can be found in UNCTAD (1996).

The agreement establishes grace periods within which these and any other non-conforming measures must be brought into conformity. All inconsistent measures were to have been notified within 90 days of the entry into force of the agreement. Phase-out periods for these measures were set at two years for developed countries, five years for developing countries and seven years for least-developed countries. Transition periods can be extended for developing and least-developed countries if they face difficulties in eliminating TRIMs. A standstill clause requires that existing TRIMs are not intensified during the transition period. A special provision permits the imposition of TRIMs on new enterprises during the transition period if that is considered necessary in order to avoid any disadvantage against established enterprises already subject to TRIMs. Notifications of TRIMs were received from 34 members, mostly developing countries. Among African countries, notifications of measures were received from Egypt, Nigeria, Uganda and South Africa, while Mauritius and Zambia notified that they had no non-conforming measures. In proportionate terms, notifications from Africa were far fewer than those from Latin America and Asia, raising the question whether this is because less frequent use has been made of TRIMs in Africa, or whether more notifications should have been made.

The Working Group on the Relationship between Trade and Investment

The limited scope of the TRIMs agreement has not discouraged some countries from continuing to press for the inclusion of investment on the multilateral agenda. A peg upon which these efforts have been hung is the provision in the TRIMS agreement calling for an examination within five years of the question whether the agreement should be complemented by provisions on investment and competition policy. For reasons discussed below, the initiative to launch a comprehensive work programme at the Singapore Ministerial Conference in December 1996 proved controversial

The agreement that finally emerged involved the establishment of a working group to examine the relationship between trade and investment. The mandate stated that this exercise did not prejudge whether negotiations would be launched in the future, and that if any such negotiations were eventually launched, this would only occur after an explicit consensus decision was taken to that effect by WTO members. These preconditions reflected concern on the part of some developing countries that they might be pressurized into a negotiation exercise they did not support. Other developing countries have expressed support for negotiations. Provisions attached to the working group's mandate seek to ensure that the interests of developing countries are fully reflected in the discussions. A decision will be made in two years upon how the work should proceed.

At its first meeting, the working group adopted a detailed work programme, bearing in mind that its mandate was exploratory, and of a fact-finding and educational nature. Four items were identified around which the work is being organized. The first addresses the relationship between trade and investment in terms of its implications for growth and development. Issues taken up in this context include foreign investment and technology transfer, the effects of foreign investment on the balance of payments, investment and competition, and the relationship between investment and employment. The second item examines the economic relationship between trade and investment, including the determinants of foreign direct investment and the nature of the interaction between trade flows and investment flows. Third, the working group is examining existing international arrangements involving or impinging upon trade and investment, including in the WTO. Finally, the fourth item on the working group's agenda addresses issues relevant to an assessment of the need for possible future initiatives, such as commonalities and differences in existing international instruments dealing with investment and obligations between home and host countries and between investors and host countries.

The case for multilateral cooperation on investment

The debate about the desirability of extending multilateral rules on investment is taking place against the background of two inter-related factors, one economic and the other institutional.[13] The first of these relates to the dramatic expansion that has occurred in international capital flows in recent years.[14] Foreign direct investment (FDI) flows averaged US$50 billion per annum between 1980–1985, and had reached US$50 billion by 1996[15] —a seven-fold increase. At the same time, a growing number of countries, especially developing countries, are involved in these capital flows.

Secondly, as a result of the growing prominence of FDI and of globalization trends more generally, international cooperation on investment matters is increasing and new agreements are being drawn up all the time. Bilateral investment agreements (BITs) have expanded dramatically. There were some 1,160 BITs in existence by mid 1996 (Ha Yeung, 1997), two-thirds of which were signed in the 1990s. Some 256 of these agreements involved African countries. Typically, BITs provide for non-discriminatory treatment of foreign investors and investments, and also provide guarantees against expropriation and for the transfer of funds. These agreements focus primarily on the conditions of operation at the post-entry stage, and do not stipulate entry or establishment conditions for FDI. A growing number of regional agreements include investment provisions—indeed, there is probably no regional integration agreement signed over the last decade or so that does not incorporate some investment provisions. In addition, the WTO itself already has investment provisions in the services area (see previous section), and rules relevant to investment in the TRIMs agreement, the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Government Procurement. The OECD has developed a number of instruments dealing with investment and for several years has been trying to negotiate a Multilateral Agreement on Investment. These institutional developments are a logical consequence of global FDI trends, and raise the question whether it would not make sense to seek a more comprehensive and coherent set of rules.

Increased capital flows, like other features of globalization, are not only attributable to technological advances and innovative business sector behaviour—policy has also played an important role. Many governments used to be more inclined than they are today to ration and condition the entry of FDI into their markets. They have become less confident that they are better placed than markets to deliver economic prosperity. Outward-oriented trade policies

[13] The WTO's 1996 Annual Report contains an extensive analysis of the relationship between trade and investment.

[14] The WTO discussions described above are primarily about foreign direct investment, and not short-term capital flows. The latter have been the subject of much scrutiny recently because of the Asian financial crisis.

[15] See UNCTAD's annual *World Investment Report* (various years) for the most comprehensive data available on foreign direct investment.

have emphasized the need to compete on world markets, which in turn requires new investments in modern plant and continuing upgrading of human skills. It is also the case that many developing country governments have lost at least part of their earlier mistrust of transnational corporations (TNCs) and the fear that if not restrained, these enterprises would act contrary to national economic interests. The capacity of TNCs to behave monopolistically can be attenuated through trade liberalization, so that enterprises have to compete in contestable markets rather than prospering behind government-granted market entry barriers.

As corporations have become increasingly internationalized, with production processes located in different parts of the world, trade and investment have tended to complement rather than substitute one another. Tariff-jumping investments, designed to secure access to a market through a domestic production presence rather than through trade, are becoming less important relative to investments that complement trade flows. Competitive imperatives increasingly require that international businesses both trade and invest, in an overall production/marketing cum market access strategy. Economic policies that frustrate such strategies will carry higher economic costs as the globalization process continues. In sum, the case for international investment liberalization is the same as that for trade liberalization—to reap the welfare gains from international economic specialization.

Developing country concerns

Notwithstanding the observations made above about growing reliance on the international economic and market-oriented policies, many countries, especially developing countries, continue to have misgivings about an uncritical and undifferentiated approach to foreign investment. In some of the WTO discussions, such misgivings have sometimes found expression in the argument that it is impractical to work on investment because the agenda has already overloaded. While the greatly enlarged dimensions of the WTO's post-Uruguay Round agenda is posed significant implementation challenges for many governments, the more substantive concerns that have been expressed about multilateral rules on investment can be summarized under five headings.

First, even though TRIMs may have lost some of their lustre, many governments still wish to use elements of "industrial policy" to influence resource allocation decisions, including in relation to investment. Investment policy, involving a mixture of controls and incentives, has been deployed by many countries to promote specific objectives, such as technology transfer, industrialization more broadly, regional development and export expansion.[16] As discussed above, the TRIMs agreement circumscribes some of the measures deployed for these purposes. In general, however, these provisions focus on measures that can be substituted for more efficient fiscal interventions, should such interventions be deemed to make any sense in the first place. A domestic content requirement, for example, could be replaced by "equivalent" tariffs on the competing imports against which the domestic content rule was aimed.

It can be shown that in certain second-best situations, a domestic content requirement could increase welfare. Under standard competitive assumptions in final and intermediate goods markets, however, and in the absence of other government interventions, a domestic content requirement is unambiguously welfare deteriorating (Grossman, 1981). The economic

[16] See, for example, Maskus and Eby (1990).

proposition that a domestic content requirement can improve welfare has led some to argue for them (Balasubramanyam, 1991), while others have emphasized uncertainty about the outcome and the fact that this kind of policy will induce wasteful rent-seeking behaviour.

As far as subsidies are concerned, the Agreement on Subsidies and Countervailing Measures prohibits subsidies contingent upon exportation or the use of domestic over imported inputs. The agreement also provides for remedies against subsidies that while not illegal, are actionable because they have adverse effects. Non-specific subsidies are exempted from the disciplines of the agreement and are not countervailable.[17] The emphasis here is on subsidies that are less distortionary because they are not narrowly focused on a particular activity or firm. Certain subsidies made generally available for the purposes of regional development, for example, or for research or environmental purposes, are non-actionable. One important point to note about the WTO subsidy disciplines is that they are designed first and foremost to deal with subsidy practices affecting trade in goods, and they will not always apply easily to investment incentives. One area that could be of immediate interest to most countries would be the prospect of disciplining fiscal incentives designed to influence investors' location decisions. Such incentive packages can prove costly for governments, and may well amount to fruitless competition among national treasuries, with little resulting effect on location decisions or on the total supply of investment funds.

In sum, the TRIMs and subsidies rules seek to eliminate the most economically distorting interventions that governments might be tempted to make in the name of investment policy, but existing WTO rules do not prohibit these policies altogether. Disciplines in these areas have, however, become more strict over the years. Any multilateral investment agreement would have to address the question of whether existing disciplines require modification. The matter may not prove straightforward, considering that in the OECD Multilateral Agreement on Investment (MAI), no provisions are included on fiscal measures, except insofar as these overlap with other specific provisions, such as transparency commitments or protections against expropriation.

The second category of concern in multilateral investment rules involves competitiveness considerations. This issue will be taken up later in a broader discussion of competition policy. The concern is that if a multilateral investment agreement sets about constraining the behaviour of governments and guarantees access and attractive operating conditions for investors, it may neglect the abuse by enterprises of their monopolistic positions in ways that reduce national welfare in the host country. It was concerns about such anti-competitive behaviour that led to efforts in UNCTAD to establish a Set of Multilaterally Agreed Principles and Rules for the Control of Restrictiveness Business Practices in 1980. The question of what the WTO might do to control anti-competitive behaviour emanating from the private sector is subject to discussion in the Working Group on the Interaction Between Trade and Competition Policy (see below).

The case for ensuring that TNCs do not abuse monopoly positions is strong, but identifying the appropriate policy prescription for doing so many be just as important.[18] Before choosing

[17] A subsidy is considered non-specific if access to it is not limited to certain enterprises, and if prior objective and neutral criteria of an economic nature determine access to the subsidy.

[18] Should rules be required, this could be done within an investment agreement or as part of a stand-alone agreement on competition policy.

the best remedy for anti-competitive behaviour, it would be important to identify the source of a TNC's monopoly power. Sometimes these kinds of market advantage are the direct result of government policy. If a market is protected, for example, and then an investor is invited in to supply the market through domestic production, competition could be stifled. In such a case, a government may want to consider whether it should use trade liberalization as a vehicle for inducing competition, rather than to allow a monopolist to survive and then seek to restrain anti-competitive behaviour. A suitable alternative remedy could be to allow additional investment in the sector. In some instances, pro-competitive regulation or the application of competition laws might be the only solution, but it should be borne in mind that implementing such policies could involve considerable administrative costs, not to mention the risks associated with unproductive rent-seeking behaviour.

Third, concern has been expressed over the environmental implications of liberal investment regimes. This issue became a prominent plank in the opposition of some non-government organizations to the OECD's MAI. Incorporating the necessary provisions in an investment agreement to address environmental externalities, and ensuring that such interventions are the most efficient available, would seem relatively straightforward in theory. In practice, differences among governments on these issues would make for a challenging negotiation.

Fourth, the question of the timing and place of liberalization would need to be determined in a multilateral investment agreement, and some governments argue for a gradual approach. The arguments here are similar to those that arise with trade liberalization. A slower pace of liberalization might allow domestic producers to prepare for new competition and for more orderly adjustment where domestic production is displaced by imports. But gradualism also carries the risk that the liberalization process will be frustrated more easily by vested interests. Similar considerations apply in the case of investment. A balance must be struck. Those arguing for gradualism favour the GATS model, which emphasizes progressive liberalization and allows members to decide the pace and content of their liberalization commitments. As discussed above, the GATS has not been a dynamic instrument of liberalization in many sectors.

Finally, arguments about the need to safeguard national sovereignty, strategic considerations, and protection of the cultural heritage cannot be evaluated on economic grounds. A public policy "override" driven by any of these rationales should be made explicit and defended on its own terms. All that economic analysis can offer is an analysis of the costs of such policies in conventionally measured welfare terms. These kinds of "carve-out" provisions can be found in many agreements.

Options for Africa

If the rationale for liberalizing investment inflows is essentially the same as that for trade in goods and services, then existing trends towards opening up to FDI (UNCTAD, 1997) should continue. Legitimate questions arise as to the pace at which the liberalization process should be conducted, but in deciding how quickly to move, it is important to bear in mind the downside risks of not moving quickly enough. There may be grounds for applying investment incentives in pursuit of clear, broad-based policy objectives, but detailed interventions at the sectoral, sub-sectoral or even firm level are likely to carry the same high costs as trade protection. Public policy objectives can be safeguarded in a multilateral setting, provided governments involve themselves actively in discussions, and ultimately in negotiations should these take place. Africa as a whole has not been markedly successful in attracting foreign investment in recent years, and the policy framework is a key determinant of performance.

4. Trade-related aspects of intellectual property rights

The TRIPS agreement

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the General Agreement on Trade in Services (GATS) were the two most significant extensions of the agenda of the multilateral trading system that emerged from the Uruguay Round.[19] The TRIPS agreement aims to do three things. First, it defines the substance of intellectual property rights in seven distinct areas, building on several pre-existing international agreements for the protection of intellectual property. The areas covered are copyright, trademarks, geographical indications, industrial designs, patents, lay-out designs of integrated circuits, and undisclosed information (trade secrets). Second, the TRIPS agreement creates obligations for the enforcement of intellectual property rights at the national level. Third, it forms part of the WTO's integrated dispute settlement system, providing for enforcement of the agreement at the international level.

The TRIPS agreement provides phase-in periods for various of its provisions. Developing countries are allowed up to five years to phase in most provisions, excluding the most favoured nation (MFN) and national treatment obligations (one year). They are permitted a further five years in cases where patentable technology was not protected at the date of entry into force of the agreement. In the case of least-developed countries, a phase-in period of 11 years is foreseen (except for MFN and national treatment), with the possibility of further extensions. For most developing countries, therefore, a TRIPS-consistent system of intellectual property right protection is supposed to be in place by the turn of the country. This requirement is going to prove a significant challenge for many countries, given all that is needed in the way of laws, institutions and procedures.

Economic considerations and the cost-benefit calculus

The area of intellectual property in the WTO has been contentious. As with trade liberalization, there are winners and losers from reforms. But the situation is more complex in the case of intellectual property rights, and it is less easy to argue that all the losers can be adequately compensated in some foreseeable future, or that national welfare in the aggregate will always be augmented in the medium to long term, especially when the initial redistributive effects of introducing intellectual property involve one country gaining and another losing. Much depends on the circumstances of the country concerned. Moreover, the policy default is different in the TRIPS area: While trade and investment liberalization involve the withdrawal of governments from markets, in TRIPS governments are entering markets to protect the returns of a subset of economic agents. Notwithstanding these uncertainties, however, it would be difficult to argue convincingly that countries with their

[19]Two good papers providing an analytical overview of the TRIPS Agreement are Primo Braga (1995) and Subramanian (1995). In addition, the World Intellectual Property Organization commissioned papers from several authors in 1995. These papers provide useful background, analysis and policy guidance. See Sherwood (1996), UNCTAD (1996), and the Institute for Economic Research (1996). These papers contain extensive bibliographies.

own innovative capacity and that have achieved a certain level of development and technological sophistication could possibly gain from the denial of intellectual property rights to creators and inventors. As Primo Braga (1995) has argued, the fundamental challenge facing developing countries is to convert the granting of intellectual property rights from a rent transfer mechanism to an effective instrument for technological development.

From an economic perspective, there are essentially two reasons why governments may wish to grant producers the exclusive rights embodied in intellectual property protection, both of which turn on the presence of market failure. First, to the extent that investments in knowledge generation—that is, the fruits of research and development and other creative activity—cannot be recouped through some kind of exclusivity of access to the returns from such investments, they will be under-supplied. Potential innovators will not innovate, nor creators create, thereby arresting technological progress and cultural development. The market fails to align social and private costs and benefits in these circumstances, providing justification for arrangements to ensure that producers of intellectual property are permitted to recoup the outlays involved.

Second, the provision by governments of intellectual property rights may be designed to eliminate information asymmetries in the market, or in other words to protect consumers from their ignorance about the characteristics of particular products. Trademarks are the most relevant property right in this context. They provide consumers with a guarantee of the quality of products. While it is easy to state these propositions in abstract terms, a complex welfare analysis underlies any judgement as to what level of protection should be permitted, and for how long. Indeed, some would argue that for all practical purposes, the answers to these questions are indeterminate—the optimum outcome can only be approximated by a decision making process infused with power politics. Furthermore, from a national welfare standpoint, the ideal level of intellectual property protection would vary from country to country, depending on such factors as income levels, degree of skills development and the extent of indigenous capacity for technological innovation. When these uncertainties are added to the sensitivities inherent in the redistributive implications of interventions to protect intellectual property rights, it is not surprising that this is a contentious policy area.

Three key benefits flow from intellectual property protection. First, it can encourage local innovation and technological and cultural enrichment. Second, foreign owners of intellectual property are more likely to invest in a jurisdiction that protects their rights over that property, thus augmenting both the amount and quality of foreign investment. Third, technology transfer and diffusion are likely to be greater under a stronger system of intellectual property protection than a weaker one.[20]

Against these considerations, five categories of cost or potential cost can be identified. It is important to note, however, that a number of these costs are of a transient or once-off nature, and that there will be circumstances in which net costs become negative when matched to benefits over the medium and long term. The first cost to be noted is simply that of payment for the exploitation rights of intellectual property. Second, it may be the case that prices for products that are subject to intellectual property protection rise when this protection is granted. This is most probable in circumstances where the protection is granted to products with low price elasticities in markets where rent appropriation is easiest. Third, effective

[20]For some empirical evidence on these points, see Mansfield (1995).

implementation of intellectual property rights in the field of trademark infringement, in particular, can lead to falls in output and employment. On the other hand, substitution in consumption for unbranded products of comparable quality to counterfeit goods may mitigate such effects, and more investment may also be forthcoming from trademark holders if they have greater confidence in the intellectual property protection system.

Fourth, producer and consumer costs may arise from the negative effects on the diffusion of technological knowledge that can accompany the granting of exclusive rights. The strength of this effect depends on how well developed a market is, whether the protection of proprietary knowledge creates significant structural bottlenecks in the economy, and how the intellectual property owner uses the exclusive right. Finally, many countries, especially developing countries, will encounter significant administrative costs as they set up the institutional and legal machinery necessary to comply with the TRIPS agreement. The agreement recognizes this difficulty in part through the phase-in periods it foresees, and also through its encouragement of technical assistance.

Options for Africa

Compliance with the TRIPS agreement poses major challenges for many African countries, and the agreement carries with it a number of uncertainties as to the cost–benefit calculus involved in full compliance. The considerable complexities associated with TRIPS suggest the need for technical assistance, as well as close attention to discussions on implementation as they unfold in the WTO.

Two general points should be borne in mind. The first is that governments can influence the severity of the downside associated with intellectual property protection through other policies. The more open markets are to trade and investment, the less likely are owners of intellectual property to be able to appropriate economic rents. Obviously the size of potential rents is affected by underlying elasticities, but governments can make a contribution to reducing monopolistic abuses by making markets competitive through liberalization and, where necessary, through pro-competitive regulation. Second, net long-term cost problems linked to intellectual property regimes are likely to be the most acute in countries with limited technological development, where technology transfer and knowledge diffusion are limited, and where local innovation has yet to take off. The policy implications of this are clear—policies that support the development of human skills, technology and knowledge diffusion are essential to reducing these costs. One particular area where concerted action could have significant returns is in the field of telecommunications and information technology based on computers.

5. Trade and competitive policy

The Working Group on the Interaction Between Trade and Competition Policy

Ministers agreed at their meeting in Singapore in December 1996 to establish a working group to study issues relating to the interaction between trade and competition policy, including anti-competitive practices. The mandate was established in parallel to that on trade and investment, and stated that the exercise did not prejudge whether negotiations would be launched in the future, and that if any such negotiations were eventually launched, this would only occur after an explicit consensus decision was taken to that effect by WTO members.

These preconditions reflected both the realization that this was a complicated policy area, about which there was limited understanding in many quarters, and the concern on the part of some countries that they might be pressured into a negotiating exercise they did not support. Other provisions attached to the working group's mandate seek to ensure that the interests of developing countries are fully reflected in the discussions. A decision will be made in two years upon how the work should proceed.

As noted in Section 3 above, international efforts had been made previously to address competition-related issues in an explicit way, notably through UNCTAD's 1980 efforts to establish a Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices. The interest in exploring competition policy in the WTO context—a possibility that had been foreshadowed in the Uruguay Round TRIMs agreement—is attributable to a number of factors. As trade and investment liberalization efforts have intensified, the possibility that private sector behaviour alone can frustrate competition and influence markets has become a greater concern to governments. Attention has been focused on anti-trust or competition policy in a domestic setting for many decades in developed countries, but the international dimension is more recent.

The concerns of completion policy

Globalization, or the growing integration of the world economy, has given competition policy a transborder dimension that was largely absent previously, and has already led to various forms of bilateral cooperation, mostly involving comity-type arrangements for information sharing and consultation. Some more recent bilateral arrangements have gone further, and anticipate the possibility of one competition policy authority asking another to act on its behalf. An additional influence on the decision to look at competition policy in an international context is interest in ensuring that any discussion of possible rules on investment flows be adequately balanced by work on the competition side to guard against the anit-competitive abuse of a market position by enterprises.

In considering competition policy, it is important to remember that many different policies influence the conditions of competition in a market.[21] Trade liberalization, more open procurement arrangements, control of the protectionist abuse of technical standards and the removal of subsidies are examples of policies that affect the conditions of competition. They can all be characterized as pro-competitive policies that enhance efficiency and increase economic welfare, and therefore act in the same direction as explicit competition policies targeted more directly on firm behaviour or market structures.

Whether directed at firm behaviour or market structure, competition policies can have ambiguous welfare effects, especially in a temporal sense. A government might decide, for example, to allow a merger in the name of greater productive effic iency or competitive capacity internationally, while at the same time recognizing that the merger will lead to higher prices for customers. The need for such trade-offs helps to explain why a distinction is made in practice between *per se infringements* of competition laws, which are outright illegal, and *rule of reason* judgements, where the competition authorities have to decide whether or not a practice or a proposed merger, for example, should be permitted. As the

[21]The 1997 WTO Annual Report contains a detailed analysis of trade and competition policy (WTO, 1997). The report includes an extensive bibliography on a wide range of issues raised in the competition policy debate.

practice of competition policy becomes more sophisticated, and the capacity to analyse probable outcomes improves, governments are becoming less certain about what can be treated in a straightforward per se fashion, leaving only the most egregious types of price-filing and exclusionary behaviour in this category.

The case for and against international competition policy

It is easy to see how these difficulties are compounded in an international context. Take, for example, a welfare analysis of a competition policy decision by a national competition authority involving, say, a merger. It may transpire that national welfare would be enhanced in the country whose enterprises were merging, but at the expense of consumer welfare in other countries. In an international setting, what welfare standard should apply? In the case just described, the welfare cost to the affected country could exceed the gain to the country permitting the merger. In this case a national welfare standard would favour action, but a global standard would not. If the welfare gain were greater than the welfare loss, a national and a global welfare standard would yield consistent conclusions, but still at the expense of consumers in another jurisdiction. Governments may have difficulty in subscribing to a global welfare standard, and accepting associated judgements that could always be challenged in relation to the welfare calculus, where this standard will often either sanction a welfare loss in one country or prevent another country from reaping a welfare gain.

A further complication arises from differences in national approaches to competition policy. In the United States, for example, considerable emphasis is placed on the protection of consumer welfare, strict prohibition of a range of per se prohibitions, the use of criminal penalties, and effective enforcement, including by private citizens. The European Union, on the other hand, has placed greater emphasis on integrating the European market, including through the extensive use of block exemptions to permit agreements among firms and practices that would otherwise be prohibited. The EU approach is more broad-based than many, incorporating state aids to industrial and regulatory structures that distort competition, as well as private business practices.

Both the discretionary nature of much competition policy and the existing differences in national approaches make it unlikely that governments would agree easily to a strong form of multilateral commitment, such as harmonized rules and multilateralized decision making in competition policy decisions. Alternative approaches, such as commitments on the implementation of national laws and regulations, minimum standards, or comity-based cooperation, might stand a better chance of prospering.

The arguments, in summary, in favour of multilateral competition rules can be broken into four broad categories (Hoekman and Mavroidis, 1994). First, the absence of national competition rules and resulting trade distortions might provide grounds for international action. Second, differences in national regimes and omissions in these regimes could be usefully eliminated through international rules. The elimination of the exemption of export cartels from national competition laws, for example, would enhance competition in increasingly integrated international markets. Third, as trans-national corporation (TNCs) increasingly operate in multiple jurisdictions, international cooperation would help control abuses of market positions that cannot be easily addressed by a single authority. Multilateral cooperation would also lower transaction costs for TNCs, who have to deal with different national competition authorities that do not necessarily pronounce in a consistent fashion.

Fourth, international cooperation on competition policy could provide an avenue for moderating what is perceived in some quarters as a growing problem in international trade—the use of anti-dumping measures. While sometimes presented as a pro-competitive policy instrument, anti-dumping actions generally have the effect of making markets less contestable. Anti-dumping actions typically benefit domestic producers at the expense of foreign suppliers and domestic consumers, as does any protection policy. To the extent that anti-dumping actions seek to respond to the consequences of uncompetitive conditions in export markets, international cooperation in the field of competition policy could provide a more appropriate framework than anti-dumping. In reality, however, it is unlikely that governments would agree to substitute anti-dumping rules with multilateral competition rules in the foreseeable future. This is because for many countries, the anti-dumping apparatus functions at least in part as a safety valve when liberalization takes place, displacing in such cases the regular safeguard mechanism provided in the WTO. The anti-dumping question will be addressed in its own terms, and not as a by-product of competition policy disciplines. Moreover, experience also suggests that anti-dumping might disappear altogether only in circumstances of deep integration, such as in the European Union.

A reason for thinking carefully about the role for competition policy in an economy before investing in the necessary legal and institutional machinery relates to the point made earlier about the array of policies that can be brought to bear upon the conditions of competition in a market. There is a risk that competition policies could be used as a surrogate or indirect means of dealing with problems of abusive market behaviour that are in themselves made possible by other government policies. Trade protection, anti-dumping actions and investment restrictions, for example, can all render markets less competitive. Does it make sense to apply the band-aid of competition policy and regulation in cases where the problem only exists because the government allows it to exist through other policy interventions? It is important for governments to be clear on this point both in terms of domestic policy, and before they become embroiled in any possible future international competition policy commitments. The key question to ask is how far will open markets render explicit competition policy redundant. Will open trade and investment policies ensure competition? The answer may well be affirmative for many industries, but not for all. In network industries like basic telecommunications, for example, it is clear that liberalization alone does not remove the scope for suppliers to abuse their market position. Pro-competitive regulation is also required.

The argument that competition policy should not be adopted uncritically, without an analysis of alternative ways in which markets can be rendered more competitive, is reinforced when the risks of regulatory capture are taken into account (Neven et al., 1993). The relationship between the regulators and the regulated is always complicated, at the level of both design and implementation. On the other hand, a well-designed and well-run competition policy authority could serve a useful role in pointing out the anti-competitive consequences of other government policies, acting as a kind of watchdog on government's role in influencing the conditions of competition in national markets.

Options for Africa

Only eight African countries have adopted anti-monopoly or competition legislation,[22] and another seven have either started to prepare such legislation or have the matter under serious consideration[23] (WTO, 1997). Before competition policy legislation is adopted, governments should consider carefully why they want it, what priority it should have and whether alternative policy approaches can do more to address particular instances of anti-competitive behaviour by private business. The necessary competition policy or regulatory interventions can then be designed to meet specific needs that cannot be addressed through improved policy design elsewhere. Capacity building needs, including the framing of legislation, regulations and qualified administrators, will be considerable. As far as international efforts to address competition policy are concerned, close monitoring of the discussions in the WTO working group would be useful in developing an understanding of the issues involved, including the desirability of possible future commitments in this area.

6. Government procurement

Government procurement has never been in the mainstream of GATT or the WTO. It was explicitly excluded from the national treatment provisions of the GATT, and similarly carved out of the GATS.[24] In the Tokyo Round (1973–1979) an agreement on procurement was reached. This agreement was amended in 1988 and then replaced by a new Agreement on Government Procurement (GPA) in the Uruguay Round. The GPA has only 26 signatories[25] out of the total WTO membership of 132, and several reasons have been put forward for why the GPA did not attract more signatories.[26] Many governments have opted for maintaining procurement arrangements that favour domestic suppliers over foreign ones, something not permitted by the national treatment provision of the GPA. Another argument is that the procedures involved are excessively cumbersome and costly for countries with limited administrative resources. The disciplines of the GPA apply only to the governmental entities indicated by a signatory and it has been asserted that prospective signatories have found the demands of existing signatories with respect to the entities to be covered too enacting. Another consideration is that many developing countries believe that for competitive reasons they cannot bid effectively for foreign procurement contracts, and so they attach little importance to international procurement disciplines.

Ministers agreed at their meeting in Singapore in December 1996 to establish a working group with the mandate "to conduct a study on transparency in government procurement practices, taking into account national policies, and based on this study, to develop elements

[22] Algeria, Côte d'Ivoire, Gabon, Kenya, Mali, South Africa, Tunisia and Zambia.

[23] Cameroon, Egypt, Ghana, Madagascar, Malawi, Morocco and Zimbabwe.

[24] Negotiations are taking place under Article XIII of GATS on government procurement in services. The work is still at a preliminary, exploratory stage.

[25] Canada; the European Community and member states; Hong Kong, China; Israel; Japan; Korea, Liechtenstein; Netherlands for Aruba; Norway; Singapore; Switzerland; the United States.

[26] For a discussion of this and many other aspects of government procurement, see Hoekman and Mavroidis (1997)

for inclusion in an appropriate agreement".[27] The Working Group on Transparency in Government Procurement is open to all members and any eventual agreement in this area would apply to the full WTO membership, and not just to a subset of countries. The initiative to promote this work was taken by developed countries, in particular the United States. Along with the mandate on trade facilitation (see Section 7 below), this exercise can be seen in part as an effort to address governance or corruption issues.[28] Government procurement has been shown time and again in different countries, both developed and developing, to be a major source of government patronage and corruption.

In addition, procurement is worth a significant amount. Estimates of its value vary from 7–12% of GDP at the upper bound to 2.75–4.25% at the lower bound (Trionfetti, 1997). Procurement therefore offers major scope for liberalization gains and the creation of new market opportunities for foreign suppliers. It is interesting to note that according to the analysis of the value of procurement markets undertaken by Trionfetti (1997), smaller countries and developing countries spend proportionately more of their GDP on procurement than large industrial countries.

The working group on transparency does not focus on the issue of protection in procurement, but only on the transparency of procedures and the public availability of relevant information. Among the elements of transparency that have been identified in the working group on the basis of national practices and the provisions of other international procurement agreements[29] are information on national legislation and procedures, prior information on procurement opportunities, tendering and qualification requirements, conditions for fairness, accountability and integrity in evaluation procedures, and surveillance and enforcement mechanisms. A significant point about transparency requirements is that they must be seen to be applied— putative transparency is not enough.

It remains uncertain whether a transparency agreement on procurement will be concluded under the auspices of the WTO, since the mandate may be interpreted to envisage the possibility but not to entail a commitment to that effect. If this does happen, there would eventually be a question as to whether a further step would be taken to address preferences and various "offset" requirements that are now commonplace in procurement.[30] Judging from the exceptions and partial coverage of the GPA, the elimination of preferences and other national objectives from procurement activities seems some way off. In any event, it is difficult to imagine that there would be an ex ante exclusion of the possibility that developing countries could use some measure of preference in government procurement. On the other hand, pressures are mounting for improvements in procurement practices in developing countries, both as a condition demanded by international financial institutions and because of budgetary circumstances that call for maximum efficiency in the use of government revenue. These considerations militate in favour of active engagement in the WTO process, so that governments can be adequately informed and influence outcomes.

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[27] See Kulacoglu (1997) for a description of the working group's activities.

[28] For a discussion of corruption and procurement, see Economic Commission for Africa (1997).

[29] The latter include the UNCITRAL Model Law, the World Bank Guidelines on procurement and the GPA.

[30] Such offsetting requirements may involve requirements expressed in terms of such things as technology transfer, counter-trade, R&D, exports, local content, training, national subcontracting, and investment.

7. Trade facilitation

Ministers agreed at Singapore in December 1996 to direct the Council for Trade in Goods "to undertake exploratory and analytical work, drawing of the work on other relevant organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area". Trade facilitation refers to practically any aspect of trade or trade-related activity where government requirements exist, but in its wider conception also includes consideration of such matters as harnessing new information technology in order to accelerate transaction times. The interest in increasing efficiency in trade has been heightened by the fact that other barriers to trade have been falling in the last few years, making delays at borders, cumbersome and excessive documentation requirements, and a lack of automation relatively more costly. These additional cost factors may often exceed tariff levels.

Several international organizations have been working on these questions for many years. The WTO also contains provisions relevant to trade facilitation, including the rules on transit traffic, fees and formalities, customs valuation, and publication of regulations. Separate agreements also exist on customs valuation, technical barriers to trade, sanitary and phytosanitary measures, import licensing procedures, rules of origin, and preshipment inspection. The Singapore Ministerial Conference mandate provides the opportunity to take a comprehensive look at these provisions from the perspective of trade facilitation.

Some governments are already pressing for a formal agreement on trade facilitation in the WTO, while others prefer to wait and deal with the issue in a broader negotiating context. Among the main elements where improvements could be made in the name of trade facilitation are streamlining of documentary requirements, improved automation and use of information technology, more transparency in procedures, and better risk assessment and audit based techniques of control in customs. Considering the welfare gains that could accrue from improvements in these areas, especially in countries where such problems are pervasive and carry high costs for the economy, the WTO trade facilitation exercise would seem to justify active participation.

8. Trade and environment

Work in the WTO on trade and environment

Growing concerns among various governments and non-government organizations, especially from the early 1990s onwards, about environmental protection and the relationship between trade and environment, led to the establishment of a GATT work programme on this subject.[31] This mandate was replaced at the time of the completion of the Uruguay Round by a new one. The Committee on Trade and Environment (CTE) was established with the twin objectives of identifying the "relationship between trade measures and environmental measures in order to promote sustainable development" and making "appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system". The CTE has carried out an extensive programme of background analysis and discussions, which is continuing. Certain recommendations emerged from the CTE for the

[31] See Low (1992) for surveys of these issues. New work from the World Bank on trade environment issues is under preparation.

Singapore Ministerial Meeting, but no conclusion has been reached on the central question of whether any modifications of WTO provisions are required.

Ministers at Singapore noted that the CTE would continue to examine, among other things, the scope of the complementarities among trade liberalization, economic development and environmental protection. They stated that the full implementation of the WTO agreements would make an important contribution to achieving the objectives of sustainable development. Ministers also noted the importance of policy coordination at the national level on these issues, and recognized the contribution of government experts in the work of the CTE.

Trade policy and environmental policy

One of the most obvious links between trade policy and environmental policy is the role that trade liberalization can play in improving environmental quality. In the case of agriculture, for example, protection in industrial countries can lead to capital and input-intensive agricultural production techniques that are less environmentally friendly than the alternative of allowing countries with more suitable resource endowments and propitious environmental conditions to undertake agricultural production. Trade liberalization in these circumstances would imply improvements in environmental quality.

Unless trade itself is identified as the direct source of an environmental problem, and such a determination would require a comprehensive analysis taking fully into account the general equilibrium effects of alternatives, then the association of trade restrictions with improved environmental quality is likely to be erroneous. In practice, trade policy is often invoked as a means of persuasion, or as a threat. Trade policy in these circumstances serves as a mechanism for punishing governments that do not comply with certain environmental standards. Such standards may be set cooperatively, as for example in a Multilateral Environmental Agreement (MEA), or they may be developed unilaterally and then applied to other jurisdictions.

In either case, the immediate point here is that trade restrictions are typically not an efficient intervention from an environmental perspective because they do not attack the environmental problem at source. Import restrictions on a scarce natural resource, for example on tropical timber, will not guarantee the preservation of tropical forests. The incentive effects of such a measure may simply be to increase domestic consumption of the natural resource, or so cheapen its price in the market as to induce agriculturalists to clear the forests and use the land for other purposes. The optimal intervention is to manage the resource directly, and by assigning of property rights, fiscal measures or some other kind of intervention, address the externality that is resulting in socially costly depletion of a natural resource. The challenge of identifying economically optimal policy interventions to deal with environmental quality externalities is not always relished by environmental groups, some of whom prefer to reject the idea of scarcity and opportunity cost, and others of whom relish trade policy because of its coercive promise in an international setting.

An additional pressure in the trade and environment debate emanates from protectionist interests. It is attractive for those seeking protection from foreign competition to be able to point to concerns over the state of the environment as a reason for blocking trade. In effect, to the extent that protection lowers the incomes of those seeking to sell in export markets, it may indirectly have a negative effect on the environment. The demand for improved environmental quality typically rises as incomes increase.

Demands for internationally harmonized environmental standards may emanate from environmentalists or from protection-seekers. While perhaps a superficially attractive idea, the notion that environmental problems could be solved by ensuring that all countries subscribe to identical standards, or to agreed minimum standards, tends to overlook the practical difficulties of settling on such standards. Moreover, there are good environmental reasons why standards may differ, associated with the absorptive capacity of different locations. And as noted previously, different income levels are likely to result in different priorities when it comes to fixing environmental standards, which means that additional incentives may be needed to ensure some given level of environmental standard. Pressures for harmonization can be particularly imposing when they go beyond the characteristics embedded in products themselves and cover non-product related process and production methods (PPMs).

Whatever the outcome of deliberations on the best approach to standard-setting in the environmental field, a point that has been emphasized by most members in the CTE is that standards, and suitable remedies against non-compliance, should be decided through a cooperative process and not through unilateral determinations. If governments decide in a multilateral environmental agreement (MEA), for example, that they want to use trade restrictions as a remedy for non-compliance with agreed environmental norms, this is a decision that trade specialists might not always see as optimal, but it would represent a consensus. A consensus agreement of this nature, with a specific environmental focus in a MEA, would be more likely to lead to a desirable environmental outcome without trade restrictions than a unilateral approach without any basis in prior commitments from other countries. Trade restrictions have been written into relatively few MEAs and no instance of their use has been the subject of a WTO dispute to date. This observation reinforces the argument that the best place to deal with environmental issues that have international dimensions is in MEAs. The idea of making the WTO responsible for policies in this area is neither good for the environment, nor beneficial to the WTO and the legitimate trade interests of potentially affected countries.

Options for Africa

One issue brought before the CTE, which has its origins in GATT discussions going back to the early 1980s, is that of the export of domestically prohibited goods. This issue is important for many African countries, for whom the export of inferior or dangerous goods from countries in which the sale of such goods is prohibited, has been a source of environmental damage, health hazards and other economic costs. Specialized inter-government organizations are helping to resolve the problems that arise here. WTO members should be encouraged to support these efforts, including through the provision of technical assistance that would strengthen the technical capacity of the affected countries to monitor and control when necessary the imports of domestically prohibited goods.

Other concerns that appear of particular interest to developing countries are to ensure that environmental arguments are not appropriated for protectionist ends, that spurious harmonization objectives are avoided, and that the global responsibility for safeguarding environmental quality is equitable shared. African countries might also press for further liberalization in such areas as agriculture, where positive environmental spin-offs would be forthcoming. In the longer term, it is in the interests of all countries, as well as of the multilateral trading system, that growth and development be sustainable. But good environmental policy is much more likely to secure this objective than bad trade policy.

Appendix: Summary of specific services commitments by country

Countries	01	02	03	04	05	06	07	08	09	10	11	12	Total
Angola							*		*	*			3
Antigua and Barbuda	*						*		*	*	*		5
Argentina	*	*	*	*			*		*				6
Australia	*	*	*	*	*	*	*	*	*	*	*		11
Austria	*	*	*	*	*	*	*	*	*	*	*	*	12
Bahrain							*						1
Bangladesh									*				1
Barbados	*	*					*			*			4
Belize	*							*					2
Benin	*						*		*		*		4
Bolivia								*	*	*			3
Bot swana	*	*							*				3
Brazil	*	*	*	*			*		*		*		7
Brunei Darussalam	*	*					*				*		4
Bulgaria	*	*	*	*	*	*	*	*	*	*	*		11
Burkina Faso									*				1
Burundi	*		*	*				*	*				5
Cameroon	*								*				2
Canada	*	*	*	*		*	*		*		*		8
Central African Rep.	*	*				*			*	*			5
Chile	*	*					*		*		*		5
Colombia	*	*	*			*	*		*				6
Congo									*	*			2
Congo RP	*	*	*		*				*	*			6
Costa Rica	*				*			*	*	*	*		6
Côte d'Ivoire	*		*						*		*		4
Cuba	*	*	*				*		*	*	*		7

Countries	**01**	**02**	**03**	**04**	**05**	**06**	**07**	**08**	**09**	**10**	**11**	**12**	**Total**
Cyprus	*						*						2
Czech Republic	*	*	*	*	*	*	*	*	*	*	*		11
Djibouti	*	*							*	*			4
Dominica		*					*		*	*			4
Dominican Republic	*	*	*				*	*	*				6
Ecuador	*	*	*	*		*	*	*	*	*	*		10
Egypt			*				*		*		*		4
El Salvador	*	*				*	*		*		*		6
European Community	*	*	*	*	*	*	*	*	*	*	*	*	12
Fiji									*				1
Finland	*	*	*	*		*	*		*	*	*		9
Gabon	*		*				*		*				4
Gambia	*	*	*	*	*	*	*	*	*	*	*	*	12
Ghana			*		*		*		*		*		5
Grenada		*					*		*	*			4
Guatemala	*						*		*		*		4
Guinea	*					*		*	*		*		5
Guinea-Bissau									*	*			2
Guyana	*	*					*		*		*		5
Haiti	*		*		*		*		*				5
Honduras	*						*		*		*		4
Hong Kong	*	*	*	*			*		*	*	*		8
Hungary	*	*		*	*	*	*	*	*	*	*		10
Iceland	*	*	*	*		*	*		*	*	*		9
India	*	*	*				*	*	*				6
Indonesia	*	*	*				*		*		*		6
Israel	*	*				*	*		*				5

Countries	**01**	**02**	**03**	**04**	**05**	**06**	**07**	**08**	**09**	**10**	**11**	**12**	**Total**
Jamaica	*				*		*	*	*	*	*		7
Japan	*	*	*	*	*	*	*	*	*	*	*		11
Kenya		*					*		*		*	*	5
Korea RP	*	*	*	*		*	*		*		*		8
Kuwait	*		*	*		*	*	*	*	*			8
Lesotho	*	*	*	*	*	*	*		*		*	*	10
Liechtenstein	*	*		*	*	*	*		*	*	*		9
Macau	*						*		*				3
Madagascar	*												1
Malawi	*		*				*	*	*				5
Malaysia	*	*	*				*	*	*	*	*	*	9
Maldives	*												1
Mali					*				*				2
Malta							*		*		*		3
Mauritania									*				1
Mauritius		*							*				2
Mexico	*	*	*	*	*		*	*	*		*	*	10
Mongolia	*	*	*	*			*		*				6
Morocco	*	*	*			*	*		*		*		7
Mozambique							*						1
Myanmar									*		*		2
Namibia	*								*				2
New Zealand	*	*	*	*	*		*		*		*		8
Nicaragua	*	*					*		*		*		5
Nigeria		*					*		*		*		4
Norway	*	*	*	*	*	*	*		*	*	*		10
Pakistan	*	*	*				*	*	*				6

Countries	**01**	**02**	**03**	**04**	**05**	**06**	**07**	**08**	**09**	**10**	**11**	**12**	**Total**
Panama	*	*	*	*	*	*	*	*	*	*	*		11
Papua New Guinea	*	*	*				*		*		*		6
Paraguay							*		*				2
Peru	*	*		*			*		*	*	*		7
Philippines	*	*					*		*		*		5
Poland	*	*	*	*	*	*	*	*	*		*		10
Qatar	*	*	*			*	*		*				6
Romania	*	*	*	*		*	*		*		*		8
Rwanda	*				*	*			*	*			5
Saint Kitts & Nevis		*					*		*	*	*		5
Saint Lucia							*	*	*	*	*		5
Saint Vinc. & Gren.							*	*	*	*	*		5
Senegal	*	*		*					*	*	*		6
Sierra Leone	*	*	*		*	*	*	*	*	*	*		10
Singapore	*	*	*				*		*	*	*		7
Slovak Republic	*	*	*	*	*	*	*		*		*		9
Slovenia	*	*	*	*	*	*	*	*	*	*	*		11
Solomon Islands	*		*				*		*				4
South Africa	*	*	*	*		*	*		*		*	*	9
Sri Lanka									*				1
Suriname									*		*		2
Swaziland	*							*	*				3
Sweden	*	*	*	*		*	*		*	*	*		9
Switzerland	*	*	*	*	*	*	*		*	*	*		10
Tanzania									*				1
Thailand	*	*	*	*	*	*	*		*	*	*		10
Togo			*						*	*			3

Countries	**01**	**02**	**03**	**04**	**05**	**06**	**07**	**08**	**09**	**10**	**11**	**12**	**Total**
Trinidad and Tobago	*		*		*		*	*	*	*	*		8
Tunisia							*		*				2
Turkey	*	*	*		*	*	*	*	*		*		9
Uganda									*				1
United Arab Emirates	*	*	*			*	*		*				6
Uruguay	*	*					*		*	*	*		6
USA	*	*	*	*	*	*	*	*	*	*	*		11
Venezuela	*	*	*				*		*	*	*	*	8
Zambia	*		*					*	*				4
Zimbabwe		*					*		*				3
Total all countries	87	69	58	36	30	38	86	32	110	47	67	9	669
Total - Africa	22	14	14	5	7	8	16	7	37	11	13	4	158
% of possible commitments - All countries	73	58	49	31	25	32	73	27	93	40	57	8	47

Key:
- 01 Business services
- 02 Communication services
- 03 Construction and related engineering services
- 04 Distribution services
- 05 Educational services
- 06 Environmental services
- 07 Financial services
- 08 Health and related social services
- 09 Tourism and related travel services
- 10 Recreational, cultural and sporting services
- 11 Transport services
- 12 Other services

Source: WTO Services Database.

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