Since the entry into force of the agreement establishing the WTO, it has become clear that many governments and civil society groups in developing countries have been disappointed with the outcome of the Uruguay Round, in terms both of market access payoffs and of the implementation of certain WTO agreements. There is also a widespread perception that efforts to negotiate additional disciplines on domestic regulatory policies in the WTO may divert attention from more critical development-related priorities.

A major theme of much of the criticism is that more attention should be focused on ensuring that multilateral rules support the development of low-income countries—i.e., that the rules are not inappropriate for their institutional capacities and constraints. Expanding the set of players involved in domestic trade policy formulation and the preparation of negotiating positions can help achieve this objective, in the process enhancing the “ownership” of eventual agreements. Participation is another necessary condition—but is not sufficient, as noted in Chapter 47, by Diana Tussie and Miguel F. Lengyel. Many developing countries have inadequate (or no) representation in Geneva, which impedes their active engagement in negotiations and in the day-to-day functioning of the WTO. Options have been identified that would allow poor countries to expand their representation in Geneva at relatively low cost; for example, Blackhurst, Lyakurwa, and Oyejide (2000) propose transfer of national representatives from other UN bodies to Geneva and more intense cooperation by members.
of regional integration arrangements. Still, only limited expertise is available in most countries.

The costs associated with complying with certain WTO disciplines such as those on customs valuation can be significant, not so much because of the rules themselves but because of the ancillary investments that may be required (see Chapter 48, by J. Michael Finger and Philip Schuler). The norms that are embodied in WTO agreements are often those prevailing in OECD countries, implying not only that implementation costs may be significant for poor countries, but also that they are asymmetrically distributed. This does not necessarily imply that WTO rules are bad from a development perspective, but making them work in low-income countries may require wholesale reform and strengthening of the affected institutions. From a development perspective, the resources required might be better used for alternative purposes.

One option that is sometimes proposed for dealing with potential implementation problems is to move toward formalization of a two-track multilateral trading system under which not all disciplines apply to all members. This is not in the interest of poor countries. Experience has demonstrated that the payoff to seeking to opt out through a strategy of “special and differential treatment”—the traditional approach of developing countries—has been low. The opt-out strategy did, however, prevent countries from being subjected to rules that involved significant implementation costs. What is needed is for the rules that emerge from negotiations to represent and advance the interests of people in developing countries. A “one size fits all” approach to regulatory policies may not be appropriate (see Chapter 49, by T. Ademola Oyejide).

In many of the areas that are being proposed for negotiations, a key need is to assist low-income countries in enhancing their capacity to trade. Many of the trade-related constraints confronting low-income countries cannot be addressed through negotiations. These constraints are often domestic policy issues that require national action—to improve the investment climate, to strengthen domestic regulation, and so forth. Such actions could benefit from concerted multilateral efforts in the WTO but in many cases must be complemented by additional financial and technical assistance (“aid for trade”), channeled through the existing institutions for development cooperation. Determining where such aid would be most effective and useful requires analysis and consultations. A first innovative attempt to move in this direction was taken with the revitalization of the Integrated Framework for Trade-Related Technical Assistance, described in Chapter 50, by David F. Luke. Although limited to least-developed countries, the approach is relevant for other countries as well in that it aims at identifying priorities on a country-by-country basis so that assistance can be directed to those areas.

Further Reading

The passage from the GATT to the WTO represented a major turning point for trade policies in developing countries. Full-fledged commitments were taken on for the first time, clearly showing these countries' willingness to come out of the fringes and play by the new rules and marking a major change from their mostly defensive pre-Uruguay Round position on multilateral trade negotiations. In previous rounds the selected developing countries that had joined the GATT had either remained quiet bystanders or had concentrated on expanding their rights to free themselves from prevailing rules. The developing countries' new engagement was not costless. First, they had to accept a new approach to special and differential (S&D) treatment that undermined their former rights. Second, they had to make significant offers in order to get their own demands considered, in part reflecting the "single undertaking" approach of the Uruguay Round.

With the benefit of hindsight, it can be argued that the gains from integration were less than hoped for. The implementation of some commitments was delayed and sidetracked. In areas of particular interest for developing countries, such as market access, the realized gains have been more meager than expected. Moreover, many developing countries have confronted serious institutional and economic constraints in implementing some of the new disciplines. The calamitous Seattle ministerial meeting in 1999 added another straw to this already overloaded haystack, illustrating that international trade relations faced serious problems of governance. Against this backdrop, it is not at all surprising that developing countries have been pondering anew the dilemmas of their involvement in the WTO and are searching for ways to turn participation into more meaningful and effective influence. It has become evident that increased participation does not always imply more effectiveness or, in the end, result in greater access to global markets.

The Leap from Exclusion to Inclusion

For a good 40 years after World War II, most developing countries did not perceive the GATT as a friendly or fruitful institution in which to promote their interests. Inward-oriented industrialization and nationalist ideologies of development prevailed, turning trade relations into the crux of the North-South debate. Involvement in the GATT reflected these preferences: developing countries adopted a "passive" or "defensive" attitude, refraining from significantly engaging in the exchange of reciprocal concessions. Moreover, many developing countries were not members, and among those that...
were, many failed to maintain official representation in Geneva.

To a large extent the situation was reversed at the beginning of the 1990s. The developing country share of GATT membership rose from 66 percent in 1983 to 74 percent by the late 1990s. Of the 44 new members added since 1982 (37 in 1987 alone), 43 were developing countries and, more recently, transition economies (Michalopoulos 1999a). More significant, however, is the relatively active role that many developing countries played in the Uruguay Round negotiations, not only fully participating in the exchange of concessions but also advancing, on an individual or group basis, a positive agenda of their own. This historic shift in policy and preferences reflected a myriad of domestic and international, economic and political, developments. Decreasing returns from and fatigue with import substitution, together with the fall of the Berlin Wall, led to the de-ideologization of trade and closer integration into the world economy. Developing countries began to swim with rather than against the current. The previously downplayed issue of market access gained increasing salience, and multilateral trade negotiations became more relevant as an instrument for securing such access. A greater awareness of the importance of a rules-based system for anchoring import regimes and protecting export interests emerged in many developing countries. Stepping up participation was necessary on all counts.

At the same time, industrial countries started to see the engagement of developing countries in multilateral trade talks through new lenses. The minimal size of developing countries' markets had previously been perceived as not being worth the effort of pressing for greater access. The result was a situation in which developing countries had negligible obligations and liberalization in sectors of export interest to them was disproportionately small (Tussie 1987; Oyejide 2000; Ricupero 2000). GATT Article XVIII, section B, and the Enabling Clause left developing countries with very little that needed to be done to internalize the results of negotiating rounds into domestic policy. In other words, trade negotiations had at best a marginal impact on the domestic policy process in these countries.

By the mid-1980s, the picture had changed significantly. Several developing countries became major exporters of manufactured goods, even in those sectors in which it had been assumed they lacked comparative advantages. Furthermore, as competition among the major trading players intensified, the continued opening and greater contestability of developing countries' markets became a more highly valued goal. Finally, the United States was firmly determined to extend the GATT into services and other new areas and was no longer willing to accept free-riding of developing countries on such issues as intellectual property. To sum up, either out of conviction or because of fears of closing markets and the implications of conditional most-favored-nation (MFN) treatment, developing countries abandoned their former defensiveness and embraced a much more participatory attitude. Their strategic dilemma turned from whether to engage in the multilateral trading system to choosing an appropriate strategy of participation, focusing on what commitments to make and on how to micromanage a bloated trade agenda.

The challenges of inclusion soon proved to be highly demanding. Developing countries learned in the early stages of the Uruguay Round that greater participation did not translate automatically into leverage, as they found it difficult to decisively influence the process of agenda setting and to shape the final outcome of negotiations. Similarly, with the expansion of the agenda through the inclusion of very complex and slippery issues (services, intellectual property, technical barriers, and sanitary and phytosanitary standards), many developing countries' capacity for analysis and for turning such analysis into sound negotiating positions was overtaxed (Tussie and Glover 1993). "A pro-active, constructive approach was frequently out of reach for many countries because of resource and research capacity constraints" (Chadha and others 2000: 432–33).

The impact of these difficulties on the results of the Uruguay Round should not be underestimated. A balanced negotiating outcome would have required an agenda that reflected the interests of all stakeholders as evenly as possible, as well as consistent participation by developing countries. Various assessments agree that in such circumstances the outcome would have been tilted more against industrial countries' interests. To be sure, developing countries did not leave the negotiations empty-handed: the inclusion of agriculture, the commitment to phase out the restrictions on textiles, and the creation, with the birth of the WTO, of a much stronger dispute settlement mechanism
than the one existing under the GATT can be deemed important gains. Yet these were more than offset by concessions: a more restrictive approach toward special and differential treatment, commitments made in the intellectual property and services agreements, the binding of many developing country tariffs, and new disciplines on subsidies and customs valuation, to mention the most significant ones. Furthermore, the very creation of the WTO added new challenges for effective participation. The greatly expanded trade agenda called for additional institutional capacity in member governments. In addition, in contrast to the GATT, the WTO accommodated ongoing negotiations, demanding constant involvement. Finally, while the new dispute settlement mechanism is an asset, it gave rise to a need to finance and develop expertise on international trade law in order to take full advantage of it. Given the level of technical expertise required, questions have been raised about developing countries’ capacity to bring cases efficiently as complainants and to protect their interests as defendants. Even though some technical assistance is available from the WTO secretariat, it is not intended to assist developing countries on specific cases. External legal counsel usually comes from an international law firm or consultant, at considerable cost, although the creation of the Advisory Centre on WTO Law in 2001 provides some access to subsidized legal assistance (see Chapter 9, by Delich; see also Weston and Delich 2000).

The Post-Uruguay Round Situation

Six years after the entry into force of the WTO, developing countries face new challenges and priorities related to their participation in multilateral negotiations. There is a broad consensus that market access has not improved as much as expected. Agriculture products continue to face high protective tariffs, as do the classic footwear, clothing, textiles, and steel sectors, even after allowing for the Generalized System of Preferences. In agriculture tariffs peaks have proliferated to the point of reaching 350 percent in important export products; some of them particularly sensitive for developing countries. Industrial countries’ trade policies continue to obstruct diversification and reduce incentives for processing commodities, with serious implications for export growth of products with greater value added, and commitments on subsidies limit the scope for implementing support policies for growth and exports (Lengyel and Tussie 2000).

These by now rather classic North-South agenda items do not exhaust the complex menu on the table. Following the failure to launch a new round of negotiations in Seattle, the intricate issue of trade in services became the engine of WTO negotiations in 2000. Complexity is related to several factors: negotiations are proceeding simultaneously at the multilateral and regional levels; they involve several sectors of great importance for the domestic economy and, therefore, different producer interests; and the results spill over into other areas such as intellectual property rights and foreign direct investment. The weaving of negotiating positions has become highly complex, both technically and politically. As countries diversify their exports across products and markets, it becomes more difficult for them to concentrate their bargaining resources in a few selected areas. With the expansion of the negotiating agenda, occasions for friction expand as well, making it virtually impossible to pursue a single-issue strategy. Argentina was among the early learners of this lesson: it “discovered this [during the Uruguay Round] when, in spite of its efforts to concentrate on agriculture, it was drawn into bilateral disputes over intellectual property” (Tussie and Glover 1993: 231–32), with painful tradeoffs between these sectors.

At the same time, thinly disguised forms of administered protection have flourished. Both industrial and developing countries are resorting to safeguards, countervailing duties, and, especially, antidumping measures to protect producers operating in their domestic markets. In other words, as multilateral negotiations reduce conventional barriers, trade relief policies are being used and abused. This question goes far beyond the North-South agenda, branching out into South-South relations. Indeed, in tandem with regional trade agreements, an undercover war of mutually paralyzing trade relief measures has mushroomed. Many developing countries have actively applied trade relief measures on “sensitive” sectors precisely against neighbors that, because of geographic proximity, are able to benefit most from trade liberalization. The South-South dimension has also emerged in the context of investment policies, against the backdrop of a potential race to the bottom over incentives. As countries compete to attract investments, transnational corpo-
rations shop around for the most “market-friendly” jurisdictions and engage in what has come to be called regulatory arbitrage. Multilateral trade negotiations, which were shunned by many developing countries, offer an opportunity to strike a balance between the need to avoid the irrationality of a costly race and the convenience of retaining measures to encourage specific investments. Developing countries would benefit greatly from efforts to increase transparency and limit competition over rules of origin or antidumping regulations (Chudnovsky and López 2000).

These are but a few examples of the multiplicity of issues that need to be addressed. Moreover, the emphasis on reciprocity has added a previously absent domestic dimension. With the need to offer reciprocal concessions, every international negotiation has necessarily turned into a parallel domestic negotiation whereby the gains of one sector abroad require another sector to adjust to heightened import competition. The sensitivity of domestic actors to the distributional impact of trade concessions has tended to generate conflicts and resentments, adding a source of further fragility. Trade issues have acquired a salience in domestic politics that is without precedent in the postcolonial era.

To be sure, the raw nerve of domestic politics today is not the same as half a century ago. In the era of globalized markets, segments of production chains that used to function within national boundaries are now internationally integrated. The pace of international integration is, naturally, uneven, leading to tensions within sectors as different patterns of supply and investment emerge. Although the pattern may vary from sector to sector and from country to country, there is widespread awareness that residual protection or trade relief measures for one product add an additional cost to the next link in the production chain (Hoekman and Leidy 1992). The bid to have access to inputs at international prices in order to improve competitiveness coexists uneasily with the quest to retain domestic market shares.

The complexity of the expanding agenda has also led to changes in the locus of responsibility for trade bargaining. Traditionally, most countries assigned this function to foreign affairs or trade ministries, which spoke for the “national interest.” As the interests of the nation, and even those of particular sectors within it, become less clear, and as the issues become more technical, input from other ministries is required. Decentralization may improve the quality of decisionmaking, but it can also lead to bureaucratic wrangling and reduced effectiveness, with the opening of a wider range of targets for lobbying by other countries. As governments turn away from their traditional role of regulatory control to one of facilitating investment and trade, the capacity to specify the contours of the “national interest” with a minimally adequate degree of consensus has been undermined.

By the same token, these trends make it hard for developing countries to find common ground and build joint negotiating positions, even when there is agreement that such cooperation could increase their leverage at the bargaining table. As Narlikar and Woods (2002) forcefully argue on the basis of the experience of the Uruguay Round, many factors, including the political context, the availability of rewards and incentives, leadership, and income levels, heavily condition the formation of trade coalitions, alliances, or any other similar collective endeavor (see Box 47.1). The growing heterogeneity of trade interests within and among developing countries stemming from these trends only contributes to lessening the likelihood of such initiatives.

Governance

The failure of the Seattle ministerial meeting in late 1999 has been attributed to several factors: domestic political considerations and lack of political will to push for further liberalization on the part of the United States; strong disagreements over the coverage of an eventual new round and particularly about the scope of agricultural liberalization; the intense opposition of many developing countries to the inclusion of some issues—notably, labor standards—in the agenda; and these countries’ dissatisfaction with the agenda-setting process. Perhaps even more important than the causes of the events at Seattle were the consequences; it was made apparent that international trade relations face serious problems of governance. Indeed, such events called into question the decisionmaking and rulemaking processes, the level and nature of actors’ participation, and the transparency and accountability of the WTO. To some, “the policy differences probably could have been bridged, if the WTO’s decision-making process had not broken down” (Schott and Watal 2000: 1). To be sure, the problems...
Developing Countries: Turning Participation into Influence

Amrita Narlikar

The prenegotiation phase (1982–86) of the Uruguay Round marks a turning point in the history of coalition formation among developing countries. It remobilized the Informal Group of developing countries into its most formalized incarnation, the G-10. (In its hard-line form, the G-10 included the Big Five—Argentina, Brazil, Egypt, India, and Yugoslavia—along with Cuba, Nigeria, Nicaragua, Peru, and Tanzania.) This coalition epitomized the traditional bloc diplomacy of developing countries that had found several avenues through the G-77 in UNCTAD and the Non-Aligned Movement (NAM) in the General Assembly. The negotiating position of the G-10 was simple and clear: members would block the opening of a new trade round until traditional issues of standstill and rollback were attended to. Above all, they would resist an inclusion of new issues (with special reference to services) within the purview of the GATT.

The prenegotiation phase also catalyzed a second coalition, the so-called Café au Lait group, which included both industrial and developing countries. Both coalitions arose in response to the same issue: whether to include services within the GATT. The origins of the Café au Lait group lay in a 1982 decision that urged interested countries to undertake national studies on services and exchange information. In the absence of a GATT program for facilitating such an exchange, some industrial and developing countries came together informally to explore the issue. Colombia’s ambassador to the GATT, Felipe Jaramillo, was selected to chair the meetings. Jaramillo’s position as the chairman of the GATT contracting parties established a de facto linkage of the group with the GATT. The institutional linkage was formally acknowledged and ratified at the GATT’s autumn 1985 session.

The prenegotiation phase also catalyzed a second coalition, the so-called Café au Lait group, which included both industrial and developing countries. Both coalitions arose in response to the same issue: whether to include services within the GATT. The origins of the Café au Lait group lay in a 1982 decision that urged interested countries to undertake national studies on services and exchange information. In the absence of a GATT program for facilitating such an exchange, some industrial and developing countries came together informally to explore the issue. Colombia’s ambassador to the GATT, Felipe Jaramillo, was selected to chair the meetings. Jaramillo’s position as the chairman of the GATT contracting parties established a de facto linkage of the group with the GATT. The institutional linkage was formally acknowledged and ratified at the GATT’s autumn 1985 session.

Two sets of developing countries were active in the “Jaramillo track.” The first group, later known as the Enthusiasts, included services exporters (such as the East Asian newly industrialized countries); others that hoped to gain from issue linkage and tradeoffs, such as Chile, Colombia, and Uruguay; and some, such as Jamaica, whose import dependence in services made efficient international provision of services through GATT inclusion worthwhile. The second group consisted of small countries driven by the uncertainty of their own interests and by fears of the costs of exclusion.

The G-10 initially participated in the Jaramillo deliberations, where members chiefly took a blocking role. Subsequently, the G-10 decided to move its deliberations outside the Informal Group, led at the time by Colombia, and prepared a draft that was presented as a fait accompli to the Informal Group and the Preparatory Committee (PrepCom) of the Uruguay Round. The draft made no mention of services. Suggestions by the Jaramillo group that the draft be discussed were dismissed with the argument that the G-10 had not made its submission on behalf of all developing countries and represented only the signatories of the draft. In reaction to these events, the participants in the Jaramillo process came together in the G-20.

The G-20, consisting of Bangladesh, Chile, Colombia, Côte d’Ivoire, Hong Kong (China), Indonesia, Jamaica, the Republic of Korea, Malaysia, Mexico, Pakistan, the Philippines, Romania, Singapore, Sri Lanka, Thailand, Turkey, Uruguay, Zambia, and Zaire, was quite explicitly a negotiating coalition. The group realized that there was little point in repeating the G-10 exercise of arriving at an independent draft and presenting it as a fait accompli to other countries. If stalemate was to be avoided, negotiation with the industrial countries would be necessary. This recognition led the G-20 to establish liaison with the G-9 (Australia, Austria, Canada, Finland, Iceland, New Zealand, Norway, Sweden, and Switzerland). Under the leadership of Colombia and Switzerland, and combining the majority of developing and smaller industrial countries, the Café au Lait Group emerged.

Café au Lait members were aware that to move any agenda through the GATT process, the support of the Quad (Canada, the European Union, Japan, and the United States) would be necessary. Canadian involvement in the G-9 brought (continued)
of the WTO decisionmaking process predated the Seattle meeting. The process, as during the GATT period, moved on the basis of consensus, arrived at through formal and informal consultations, much like an “old boys’ club.” It worked well when players were few and issues were fairly straightforward, but over the past 15 years it seems to have gone into slow motion. The image of past success, nonetheless, led to unrealistically high expectations on the part of both new entrants and new activists. The result is that high expectations now coexist uneasily with decreasing returns. The diversity of interests and objectives currently represented, albeit faultily, in the WTO makes it difficult to reach consensus over the broad range of issues.

The grievances of many developing countries with this system mounted following the conclusion of the Uruguay Round, particularly regarding the constraints the agreements imposed on these countries’ real possibilities of influencing the agenda-setting process. Although developing countries played an active role in the period leading up to the Seattle meeting, submitting over half of the more than 250 specific proposals on the agenda, they claimed that...
their proposals were not given due weight. The “green-room” practice fueled the disenchantment, underpinning the claims of a “democratic deficit” and a lack of transparency during the Seattle meeting. The “green room” is the name given to the traditional method used in the GATT/WTO to expedite consultations; it involves the Director General and a small group of members, numbering between 25 and 30 and including the major trading countries, both industrial and developing, as well as a number of other countries that are deemed to be representative. The composition of the group tends to vary by issue, but there is no objective basis for participation. This procedure worked when most developing countries were quiet bystanders. After the significant concessions made in the Uruguay Round, developing countries felt entitled to be included in the green-room process, and on several occasions they submitted declarations stating that they would not adhere to any consensus reached without their effective participation. Although the subsequent ministerial meeting, in Doha, was more inclusive and open to all members, the issue of effective participation remains a key one.

Perceptions of inequities in the WTO decision-making system implicitly call into question other facets of governance, specifically, the failure to balance the costs and benefits arising from trade negotiations. “The end result has been an absence of ‘ownership’ of many agreements, and a general suspicion of the WTO” (Chadha and others 2000: 434). One reason for this has been the costs associated with the implementation of certain WTO agreements (see Chapter 48, by Finger and Schuler, in this volume).

To be sure, the WTO is not an international organization intended to “govern” the global economy, or even international trade relations, as a whole. It does, however, perform some functions of governance, specifically, the failure to balance the costs and benefits arising from trade negotiations. “The end result has been an absence of ‘ownership’ of many agreements, and a general suspicion of the WTO” (Chadha and others 2000: 434). One reason for this has been the costs associated with the implementation of certain WTO agreements (see Chapter 48, by Finger and Schuler, in this volume).

Enhancing Participation

Improving developing countries’ participation involves two central dimensions. First, improving skills and institutional capacity to analyze, take stock of, and manage the workings of existing agreements is a precondition for designing adequate positions in follow-up negotiations. Second, a reform of the WTO decisionmaking system is needed to allow developing countries to increase their voice in the affairs of the organization. On the first front, there is no doubt that efforts must be made at the national level, particularly in view of the ever-finer heterogeneity of developing countries’ interests. Gone are the times when multilateral bargaining could be broadly articulated by a grand coalition of developing countries. The need for each country to do its own homework in following issues, to attend all meetings, and to have teams in capitals doing extensive background research and providing adequate instructions on all matters cannot be dismissed. The acquisition of sufficient knowledge about how the system works, of technical skills, and of an adequate institutional capacity should be priorities. This is particularly so given that the WTO is a member-driven organization with a very small secretariat, leaving a great part of the analysis of issues and development of positions to members.

Enhanced capacity to participate also requires an effort to overcome the lack of coordination and the turf wars at the national level that usually plague developing countries. Coordination problems stem from various sources, “including differences regarding the location of real compared to nominal authority with respect to the articulation and implementation of trade policy as well as differences in terms of which institution has the responsibility for trade policy and which government agency has the power to negotiate and sign international agreements” (Oyejide, 2000: 23). The need for coordination is pressing not only among government agencies but also between them and business. In most developing countries business tends to follow negotiations at the WTO from a considerable dis-
tance, and its involvement is basically ad hoc and limited. Several countries have taken initiatives to improve this situation, but results are still incipient and have a long way to go.¹

Proposals to address these issues have stressed the need for increasing technical assistance to developing countries. The WTO itself provides assistance, focused on training and the dissemination of information. An important initiative was the adoption by a high-level meeting in 1997 of the Integrated Framework (IF) for trade-related technical assistance to least-developed countries. The initiative involves six international agencies (the IMF, UNCTAD, the World Bank, the International Trade Centre, the United Nations Development Programme, and the WTO) that work together to help least-developed countries integrate into the world economy and benefit from WTO membership. This is a most welcome initiative, yet it falls short of actual needs (see Chapter 50, by Luke, in this volume).

Developing countries must continue the search for additional self-generated, homegrown ways to build their technical and institutional capacity. Only those with expertise will normally have the knowledge necessary to codify and interpret arcane information. No doubt the task is daunting and seems out of reach for many countries if approached on an individual basis. It looks more feasible if scarce financial resources are pooled in the context of regional groupings of countries that share many trade interests, allowing actions to be jointly designed, organized, and managed. Such an endeavor could result in a more demand-driven and customized process of technical assistance. Participation in this network-like effort must include institutions such as universities, specialized organizations, and research institutes that have knowledge on trade matters or the capacity to build up knowledge within a short time.

Some of these reflections can also be applied to the decisionmaking process—the other side of the coin of participation. Proposals to improve the WTO decisionmaking process have included the creation of a management or steering group in which participation would be representative of the broader membership and to which responsibility for building consensus could be delegated. Although this would make WTO procedures more efficient and equitable by linking expeditiousness with fair representation, it falls short of what is needed. As Martin Wolf observed some time ago (Wolf 1984: 216), “There is little likelihood that industrial countries will grant special privileges to some countries without also victimizing others (or even the same ones in different circumstances).”

The proposed steering committee therefore requires more “radical” reengineering. Instead of centralizing the consensus-building process and delegating responsibility “upstream,” the WTO process as it stands today could be decentralized, delegating the task of finding common ground “downstream”—for instance, to regionally based committees that bring together developing country constituencies with the mission of assembling joint positions on major issues to be brought to the negotiating table. The broadening of participation and interest representation would strengthen the legitimacy of the WTO decisionmaking process without undermining the quest for efficiency. This path does not depend on a notion of reciprocity, on which a fruitful discussion of present difficulties can only founder. What is required is to break the logjam by changing the context for discussions. After all, over the past two decades, and after much soul-searching, most developing countries have given sufficient proof of their commitment to the world trading system, as well as of their willingness to sustain trade liberalization.

Notes

The authors wish to acknowledge debates and discussions with the members of the Latin American Trade Network (LATN) as well as the able support of the coordinating unit housed at FLACSO, Argentina.

¹ The status in Africa and Latin America is described in Oyejide (2000) and Lengyel (2000), respectively.
At the Uruguay Round, developing countries took on unprecedented obligations not only to reduce trade barriers but also to implement significant reforms both in trade procedures (e.g., import-licensing procedures and customs valuation) and in many areas of regulation that establish the basic business environment in the domestic economy, such as technical standards, sanitary and phytosanitary standards (SPS), and intellectual property law.

This chapter discusses the second type of commitment. These are more than policy commitments; they imply investment decisions. Their implementation will require that countries purchase equipment, train people, and establish systems of checks and balances, to name just a few actions. This will cost money, and the amounts involved can be substantial. A review of Bank project experience in the areas covered by the agreements suggests that an entire year’s development budget may be at stake in many of the least-developed countries (LDCs).

Developing country institutions in the three areas mentioned are often weak and would benefit from strengthening and reform. Our analysis indicates, however, that existing WTO regulations in these areas reflect little awareness of development problems and little appreciation of the capacities of developing countries to implement SPS, customs valuation, intellectual property, and other such regulations. For most of the developing and transition economy members—some 100 countries—significant complementary investments will be required, raising the question of whether money spent to implement WTO rules in these areas would be money productively invested. This is a question that must be posed and answered before concluding agreements. A lesson from the Uruguay Round is that not doing so can give rise to serious implementation problems and to lack of “ownership” of agreements.

Whatever the answer to the question for any given country may be, undertaking this type of analysis will be ineffective if it is not complemented by active participation in the WTO. Because of developing countries’ limited capacity to participate in the Uruguay Round negotiations, there was little support for the reforms to which WTO membership obligates them. From their perspective, implementation requirements were imposed in an imperial way, with little concern for what implementation will cost, how it will be done, or whether it will support their development efforts. Thus, many developing countries have neither an economic incentive nor the political will to implement the obligations.

In considering implementation of WTO agreements, it is helpful to ask the following questions:
• How much will implementation cost?
• What are the development problems in this area?
• Does the WTO agreement correctly diagnose the development problems?
• Does the WTO agreement prescribe an appropriate remedy?

“Appropriate,” in the last question, refers both to correct identification of the problem and to recognition of the capacities (resource constraints) of developing countries. To lend specificity to the discussion of the scope and cost of the investments that may be involved in implementing WTO commitments, we review (primarily) World Bank project experience with customs reform, with application of SPS standards, and with the installation of systems of intellectual property rights (IPRs). In each of the three areas, we outline basic WTO obligations and examine how implementation might be managed so as to best help developing countries use trade as a vehicle for development. On the basis of this discussion, we offer some recommendations that may help avoid future implementation problems. This effort must include binding commitments by industrial country members to furnish technical assistance to developing country members that request it. In the Uruguay Round developing countries took on bound commitments to implement the agreements in exchange for unbound commitments of assistance. This should be avoided in future negotiations.

Customs Valuation

The WTO Customs Valuation agreement addresses only valuation— only one part of the customs process. In addition to providing information on how much customs reform might cost, we argue in this section that given the initial situation in many developing countries, changing the valuation process without undertaking overall customs reform is not likely to improve the predictability of the customs process. Likewise, changing the customs valuation process would not significantly lessen the possibility of using the customs process as a nontariff barrier.

Scope and Content of the Customs Valuation Agreement

The Uruguay Round Customs Valuation agreement establishes the transaction value of the shipment in question as the primary basis for customs value and prescribes a hierarchy of methods for determining that value. The first, basic option is to use as the customs value the transaction value of the imported merchandise—the price actually paid or payable for the specific shipment. The agreement lists items (add-ins) that must be included in the price actually paid or payable, such as packing costs and the cost of tools, dies, and molds provided by the buyer. The second alternative is to use the transaction value of identical merchandise sold for export to the same country of importation, at or about the same time, for which a transaction value can be determined. The third, fourth, and fifth options are also attempts to come as close as operationally possible to the transaction value of the specific shipment. The agreement also contains a rogue’s gallery of methods that may not be used, such as the selling price of competing domestic products, or the selling price of the goods in the market of the exporting country or in another export market.

Presumed Administrative Environment

The valuation process the Uruguay Round agreement imposes is one that complements the customs systems in place in most of the advanced trading countries (both developing and industrial). That system is based on the generalized use of electronic information management and on built-in incentives for compliance by importers. Trade in these countries takes place in large-scale lots, and duty rates are generally low. In this context, departure from routine business practice (for example, retrieval of additional information in response to a valuation inquiry) is costly. Importers themselves normally conduct the valuation process, including the application of the add-ins and take-outs needed to comply with the rules. In Norway a paperless customs declaration system operates around the clock; clearance takes 15 minutes, on average, and is almost always completed well before the goods arrive. About 85 percent of declarations pass through the system without being stopped for further investigation (WCO 1999). Investigation and verification of the importer-submitted customs value do not normally cause physical delay of the shipment; instead, the importer posts a customs bond sufficient to cover the amount at issue. Financial institutions in many developing countries do not offer such bonds.
Developing Countries’ Customs Practices and Problems

Customs practices in many developing countries differ significantly from those in the more advanced trading nations. The differences often involve basic concepts, not just differences in details or efficiency.

Physical Control. Effective customs administration has both physical and administrative dimensions. Physical control has to do with keeping track of what passes into and out of the country. In many poorer countries, traditional smuggling—goods sneaked across the border, away from recognized ports—is a significant problem. At a duty rate of 50 percent, the avoided duty on the number of television sets one person can transport on a bicycle-jitney can come, in a poor country, to a year’s wages. Where physical control systems are lax, smuggling need not even involve clandestine overland trails or secret moonlit beaches; goods often move through ports without coming under the supervision of customs authorities.

Administrative processes. Customs processes in poorer countries exhibit many interacting weaknesses: excessive procedures that are not codified (often, not even a published schedule of current tariff rates is available); poorly trained officials; a civil service system that does not pay a living wage, leaving officials dependent on side payments for performing their functions; and ineffective provision for appeal. Cunningham (1996), in an assessment of several least-developed countries that are considering customs reform, observed that systems and procedures seem to have evolved so as to maximize the number of steps and approvals needed—to create as many opportunities as possible for negotiation between traders and customs officials. It should be evident from this brief account of customs problems in poor countries that valuation is only an inch in a whole yard of customs operations that need improvement.

Reform Experience in Developing and Transition Economies

We present in this section a digest of our review of World Bank projects bearing on customs reform. Table 48.1 contains a tabulation of the cost of customs reform projects in a sampling of countries. Reform projects have included the following elements (few projects covered them all):

- Computerization, including the introduction of computerized customs systems and of systems for warehouse inventory control and statistical reporting
- Improvements in valuation procedures
- Cargo controls to speed up processing and eliminate fraudulent or incorrect valuation
- Refitting of customs buildings in order to permit the use of UNCTAD’s ASYCUDA customs software
- Administrative reforms, including creation of a new division responsible for customs valuation and tariff classification; recruitment and training of staff; establishment of an appeals tribunal; and reduction of the discretion exercised by customs officers
- Provision of antismuggling and drug interdiction equipment, ranging from X-ray equipment and gas chromatographs to communications equipment
- Training of management and staff in basic management, customs procedures, and computer operations; establishment of staff training schools
- Screenings for drug interdiction
- Legislative reforms, including revision of laws, formal accession to the Harmonized System Convention, and measures to increase transparency.

The reforms we reviewed cover 16 major categories of activities ranging from rewriting legislation, through training in auditing procedures, to physical security in customs warehouses and policing of smuggling and of traffic in illicit drugs. Combinations of these components may involve a cost in the neighborhood of US$10 million for one country.

Sanitary and Phytosanitary Standards

The SPS agreement recognizes the right of governments to restrict trade when necessary to protect human, animal, or plant life or health, but it limits exercise of that right to measures that do not unjustifiably discriminate between countries with the same conditions, and that are not disguised restrictions on trade. The agreement further obligates members to impose such restrictions only to the extent necessary to protect life and health, and on the basis of scientific principles. Restrictions are not to be maintained if scientific evidence to support them is lacking. The last point implies that SPS measures can be put in place only on the basis of
careful laboratory testing and analysis and if science-based concerns about food safety or serious threats to animal or plant health have been identified.

The SPS agreement requires that the process of developing and enforcing SPS regulations be transparent. Governments must publish proposed regulations in advance and allow comment by the public, including foreign exporters. Governments must notify the relevant international body of any changes to SPS rules and must establish enquiry points so that traders can determine a country’s present and planned SPS regulations and processes.

Before the SPS agreement came into force, an exporter had, in effect, to comply with the importing country’s SPS measures. With the agreement in force, the exporter must still comply with those SPS measures, but the importing country is required to demonstrate that its SPS measures are in fact based on science and are applied equally to domestic and foreign producers. The Uruguay Round agreement puts the WTO on the side of exporters who comply; the exporter now has clearer grounds for challenging an import restriction.

A Heavier Burden for Developing Countries

Although the SPS agreement does not require that a country’s domestic standards meet the agreement’s requirements, it does require that the standards the country applies at the border meet those requirements. In this regard, the agreement probably places a heavier burden on developing than on industrial countries because the standards already in place in industrial countries have more or less been established as the standard with which the developing countries must comply.

Article 3 of the SPS agreement specifies that SPS measures which are in conformity with relevant international conventions are to be deemed necessary to protect human, animal, or plant health and presumed consistent with the agreement. A country may adopt other standards or methods, but if it is to apply them at the border, it is required by the WTO agreement to demonstrate their scientific merit and appropriateness. Industrial countries have been leaders in establishing these international conventions, which are, to a significant degree, generalizations of industrial country practices and standards. This does not imply that these standards are bad standards in a scientific sense. It does, however, mean that the SPS agreement lends itself to a more effective assault on developing countries’ use of SPS measures against imports than on industrial countries’ behavior.

For a developing country to effectively use the WTO agreement to defend its export rights or justify its import restrictions, it has to upgrade its SPS system to international standards. Effective use of the WTO agreement depends on extensive investments: it is not a matter of applying existing systems of standards to international trade but a much broader matter of installing world-class systems.

Lessons Learned from World Bank Experience

The World Bank has assisted several countries in implementing SPS regulations. Bank projects supporting SPS systems have typically placed these measures in a general development context of ensuring food security, increasing agricultural productivity, and protecting health, rather than focusing on the narrower objective of meeting stringent requirements in export markets.
One SPS-related project that the Bank has supported—for export reform in Argentina—did have improving trade performance as an objective. The principal goal of the program was to gain international recognition of certain zones as disease free or pest free. Argentina’s meat, fruit, and vegetable exports have been limited by other countries’ concerns over the presence of, in particular, foot-and-mouth disease and citrus canker. In addition, the program recognized that if Argentina was to diversify into higher value-added exports such as processed meats, seeds, and horticultural products, producers would have to meet more stringent quality control standards. Among the components of the program that related directly to implementation of SPS standards were upgrading of central and field-level veterinary services; establishment of laboratories and of quarantine stations; disease and pest eradication programs; certification of disease-free and pest-free zones; training, facilities, and equipment for seed certification and registration, for quality control, and for ensuring that exported meat is free of chemical residues; creation of a laboratory to bring wool certification up to international standards; and staff and equipment for research aimed at reducing chemical residues.

The costs of several SPS-related projects that the World Bank has supported are reported in Table 48.2. In addition to such costs to the government, producers in the private sector bear other expenses of complying with SPS regulations: vaccinating livestock, eliminating pesticide residues, guaranteeing sanitary food processing conditions, and so on.

### Intellectual Property Rights

The WTO TRIPS agreement covers the seven main areas of intellectual property rights: copyright, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and undisclosed information, including trade secrets. In each area the agreement specifies minimum standards of protection, requires governments to establish enforcement procedures, and provides means of dispute settlement. The minimum standards are similar for each of the seven areas. In the case of patents, they cover:

- What is patentable.
- What rights flow to the owner of a patent. (The government is obligated to prevent unauthorized persons from using, selling, or importing the

---

**Table 48.2 Costs of SPS-Related World Bank Projects**

<table>
<thead>
<tr>
<th>Country</th>
<th>Project description</th>
<th>Cost (millions of U.S. dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria, 1988–90</td>
<td>Locust control project</td>
<td>112.0</td>
</tr>
<tr>
<td>Argentina, 1991–96</td>
<td>General agricultural export reform project</td>
<td>82.7</td>
</tr>
<tr>
<td>Brazil, 1987–94</td>
<td>Livestock disease control project</td>
<td>108.0</td>
</tr>
<tr>
<td>China, 1993–2000</td>
<td>Animal and plant quarantine (component of agricultural support service project)</td>
<td>10.0</td>
</tr>
<tr>
<td>Hungary, 1985–91</td>
<td>Slaughterhouse modernization (component of integrated livestock industry project)</td>
<td>41.2</td>
</tr>
<tr>
<td>Madagascar, 1980–88</td>
<td>Livestock vaccination (component of rural development project)</td>
<td>11.8</td>
</tr>
<tr>
<td>Poland, 1990–95</td>
<td>Food-processing facilities modernization (component of agroindustries export development project)</td>
<td>71.0</td>
</tr>
<tr>
<td>Russia, 1992–95</td>
<td>Improvement of food-processing facilities and disease control (component of rehabilitation loan)</td>
<td>150.0</td>
</tr>
<tr>
<td>Turkey, 1992–99</td>
<td>Modernization of laboratories for residue control (component of agricultural research project)</td>
<td>3.3</td>
</tr>
<tr>
<td>Vietnam, 1994–97</td>
<td>Pest management (component of agricultural rehabilitation project)</td>
<td>3.5</td>
</tr>
</tbody>
</table>
patent, the patented process, the patented product, or the product or products directly made from the patented process.)

- What exceptions to those rights are permissible (for example, compulsory licensing may be required).
- How long the protection lasts (WTO 1999: 214 f).2

The TRIPS agreement, like the SPS agreement, builds on standards set forth in relevant international conventions such as the 1967 Paris Convention for the Protection of Industrial Property and the 1989 Washington Treaty (the Treaty on Intellectual Property in Respect of Integrated Circuits, sometimes labeled the ICIP Treaty).

**Extension of IPR Obligations**

The TRIPS agreement requires each WTO member to adhere to the provisions (with a few exceptions) of the international IPR conventions, whether or not the member is a party to those conventions. This in itself was a significant widening of obligations for many countries. For example, the coverage of integrated circuits was an extension even for some industrial countries.3 Under the TRIPS agreement, WTO members must consider unlawful—if not authorized by the rightsholder—the import, sale, or other commercial distribution of the integrated circuit design, of integrated circuits containing that design, and of articles that contain such integrated circuits.

As another example, the Rome Convention, which establishes rights of performers, producers of sound recordings, and broadcasters, has few signatories, particularly among developing countries. The TRIPS agreement, however, creates obligations for governments to allow recording companies from one country to attack unauthorized reproduction and sale of their products within another country. In some areas the TRIPS agreement has broader coverage than the relevant international convention. For example, it goes beyond the Berne Convention by requiring copyright protection for certain computer programs and computerized databases, and it contains the first multilateral obligations concerning industrial designs (e.g., textile designs).

The enforcement provisions of the TRIPS agreement require that a member provide civil as well as criminal remedies for infringement of IPRs. They also obligate members to provide means by which rightsholders can obtain the cooperation of customs authorities to prevent imports of infringing goods. Although it is impossible to predict how the process of application and interpretation through the WTO dispute settlement mechanism will play out, a number of legal experts believe that there is sufficient "wiggle room" in the agreement that developing countries could—within a good-faith implementation of their obligations—strike a balance between the interests of second-comers and the need to promote innovation and investment (see Reichman 1998 and references cited therein). This would, however, require a considerable departure from the balance that has been institutionalized in the industrial countries' IPR law. That balance, many experts argue, is tipped toward the interests of commercialized producers of knowledge—and tipped past the point of optimality even for the communities of interests that make up industrial country societies.4

Yet the tendency of the WTO is to give the benefit of the doubt to established standards. Finding grounds for moving away from such standards is particularly difficult in the area of intellectual property rights, which are, after all, an existential matter of legal definition, not a scientific matter of empirical estimation.

**How to Do It**

Even for an individual country, it would be nigh on impossible to provide objective guidelines on how to strike the optimal balance between legal incentives to create and the costs incurred by users and potential second-comers as a result of protecting IPRs. Systems in place have to be seen as the outcome of accepted (e.g., democratic) political processes, not of scientific calibration. It would be even more difficult to adjust this balance to different levels of economic development. Analysts have so far built up little knowledge about the impacts of various forms of IPRs on economic development, much less about the effects of different degrees of any of these forms.5

Our review of World Bank projects in support of IPRs again shows a considerable range of needed reforms—new legislation (e.g., to extend IPR protection to plant varieties), improvement of administrative structures (capacity to review applications, including the introduction of computerized information systems and extensive training for staff), and better enforcement. Some information on the associated costs is reported in Table 48.3.
Lessons Learned

The following are the main points that emerge from our review.

A need for reform. In the areas we have covered—customs administration, sanitary and phytosanitary standards, and intellectual property rights—there was no shortage of World Bank projects to review. Developing countries are willing to borrow money to finance improvements in these areas. It is evident that they themselves see a need for reform.

The message from industrial countries: “Do it my way!” The content of the obligations imposed by the WTO agreements on customs valuation, SPS, and intellectual property rights can be summed up as the advanced countries saying to the others, “Do it my way!” The Customs Valuation agreement imposes on all countries a system in use in the leading industrial countries; the TRIPS and SPS agreements explicitly establish as the WTO standard international conventions developed in large part by the industrial countries.

Although the SPS agreement appears to allow countries to retain indigenous systems, doing so is not a real alternative. In defending trade-related actions, the systems recognized by international conventions have the legal benefit of the doubt; an indigenous system must prove itself. The developing countries do not have the necessary resources to defend their systems, and so the only effective option for a country that retains an indigenous system of standards is not to apply standards at the border at all.6 The WTO’s free-rider problem has not gone away; it has been swapped for a forced-rider problem, and the burden has been shifted from the industrial countries to the developing countries.

For the advanced countries whose systems are compatible with international conventions (or vice versa), the WTO adds no more than an obligation to apply their domestic regulations fairly at the border. This includes not discriminating among transactions involving different countries and not unnecessarily impeding international transactions. Countries that at present apply their own indigenous standards have the additional—and far larger—obligation to apply the internationally sanctioned standards in their domestic economies. Although new WTO areas such as SPS and IPRs aim at the trade-related aspects of their subject matter, their implementation by developing countries requires, first of all, the establishment of such systems, or the conversion of indigenous systems to those recognized by international conventions.

A related lesson is that the scope of what the WTO regulates is narrower than the scope of what must be done to make development sense out of implementation. Customs valuation versus customs reform is an example: it helps little to change customs valuation procedures if containers still sit on the dock for 60 days.

Inappropriate diagnosis and inappropriate remedies. One effect of the “do it my way!” nature of the agreements is to intensify the ownership problem. This characteristic also returns us to our initial questions. From a development perspective:

• Do the WTO agreements appropriately identify the problems faced by developing countries?
• Given countries’ needs and their resource bases, do the agreements provide the most effective remedies?

The Customs Valuation agreement provides neither appropriate diagnosis nor appropriate remedies. It addresses only a small part of most developing countries’ problems with customs
administration and provides no remedy for other parts. For the small part of the problem it covers, it provides an inappropriate remedy, one incompatible with the resources many developing countries have at their disposal.

Our conclusions on the TRIPS agreement are similar. As to diagnosis, its focus is not on encouraging innovation or protecting indigenous technology in developing countries; rather, it is on industrial country enterprises' ability to collect for IPRs on which many countries did not recognize any obligation to pay before the Uruguay Round. The default remedy is to imitate industrial countries' intellectual property law. Although legal scholars point out that the TRIPS agreement allows for the possibility of adopting intellectual property law that is friendly to users and to second-comers, they also note that the benefit of the doubt is on the side of copying present industrial country approaches. A major cost of standardizing on the prevailing industrial country norms is the thwarting of experimentation that could lead to legal approaches more appropriate for developing countries.7

Effective implementation and compliance involve investment in development projects, but WTO negotiations have not supported examination of actual and proposed agreements from this perspective. The dynamic behind the WTO process has been the export interests of major enterprises in the advanced trading countries. Development ministries in those countries frequently complain about how hard it is to get their trade ministries to pay attention to development issues; the development ministries are junior partners in making trade policy. Meanwhile, at the WTO many developing countries have little capacity to organize and to advance their own interests.

Conclusions

Avoiding implementation problems of the type that arose after the Uruguay Round requires that there be much greater ownership of negotiated agreements. The absence of instinctive ownership of the reforms needed to comply with WTO obligations will make implementation very difficult and is likely to push governments toward superficial adjustments aimed at avoiding clashes with trading partners. Private and social sector shareholders must be involved in the creation of WTO obligations—not just the government agencies that will ultimately be responsible for implementation. How the developing countries organize their participation in WTO affairs needs modification, but perhaps so does the WTO process itself.

As discussed in Chapters 47 and 49 in this volume, participation in the WTO is necessary but not sufficient for realizing outcomes that are perceived to be in the national interest. Addressing the “development credibility” deficit requires, first and foremost, that there be a good understanding of the relevance and implications of multilateral rule-making, as well as proactive participation in the negotiating process. Better understanding of the issues in developing countries is required not just by government officials but also by the private sector and civil society. Greater explicit attention needs to be devoted to analyzing the economic relevance and implications of proposed rules. This is something that must be done by national stakeholders, with due consideration given to how alternative rules might best be applied and enforced, how transitional arrangements can be linked to national capacities to implement agreements, and what types of corollary investment are needed.

Each of the three Uruguay Round agreements we have reviewed includes a promise of assistance with implementation. In addition, each provides for delayed implementation and sets forth a procedure whereby a developing country can request an extension beyond the agreement's deadlines. The latter provision might be interpreted as recognition that the prescribed or default technology included in the agreements might not be the most suitable for these countries. Although the agreements allow for the possibility that other approaches might be developed and recognized, they provide no such alternative. As for finding alternatives, it must be recognized that WTO negotiations are propelled by self-interest. Narrowly interpreted, that places the burden of designing alternatives that are appropriate to developing countries' needs and resources on those countries themselves.

Determining the costs and benefits of implementation is clearly of great importance. The project costs presented here are just a first approximation of the investments needed to implement WTO obligations on SPS, IPRs, and customs reform in order to ensure that implementation benefits the country. Implementation costs go beyond what is needed to simply pass new legislation or ministerial decrees. Often, very significant investment requirements are
associated with upgrading the capacity of the relevant institutions (see Box 48.1 for estimates for Jamaica). To gain acceptance for its meat, vegetables, and fruit in industrial country markets, Argentina invested over US$80 million in achieving higher levels of plant and animal sanitation. Hungary spent more than US$40 million to upgrade the level of sanitation of its slaughterhouses alone. Mexico spent over US$30 million to upgrade intellectual property laws and enforcement that were already at higher levels than is the case in most least-developed countries. We identified 16 elements in customs reform, each of which can cost more than US$2.5 million to implement.8 Although the amounts will vary by country, the totals involved in effective implementation of WTO agreements can exceed the annual development budget of least-developed countries. This suggests that in future negotiations, efforts must be made to obtain binding commitments to provide adequate financial and technical assistance for implementation (Finger and Schuler 2000).

Finally, we should be careful not to be lulled into the mercantilist ethic of reciprocal negotiations in which delay is itself victory. Nor should we ignore the potential benefits of pursuing multilateral reform. Where reform is needed, to delay improvements is to prolong the time that people in developing countries remain poor. Time will, of course, be needed for implementation, but implementation periods should be based on the engineering requirements for accomplishing the required infrastructure improvements and making the investments associated with complementary, supporting institutional strengthening, not handed out as a second prize in a tough negotiation. There is a need to distinguish between agreements that require real investments—both direct and indirect—and agreements that can be implemented by the stroke of a pen (see also Chapter 49, by Oyejide, in this volume). Both require careful analysis, but only the first gives rise to legitimate concerns regarding the costs of implementation.

Postscript: Implementation and the Doha Round

At the WTO ministerial meeting in Doha in 2001, trade ministers paid considerable attention to implementation. They agreed in their declaration that where negotiations are undertaken, the relevant implementation issues would be addressed in those negotiations and that other implementation issues in other areas would be addressed as priority matters by the relevant WTO bodies. In an accompanying ministerial decision (WT/MIN(01)/W/10), ministers addressed 46 individual points, principally in the regulatory areas reviewed in this paper but touching as well on the market access commitments of the Uruguay Round.

Although these documents do convey the ministers’ reading of the importance of implementation questions, they also reflect the international community’s lack of advancement in thinking about the “development dimension” of the behind-the-border or “new” WTO areas in ways beyond the conceptions built into the existing agreements. Sixteen of the individual decisions encourage use of special and differential treatment provisions in the WTO agreements, and 10 of them reaffirm phase-in provisions. Ten call attention to unbound provisions for technical assistance for developing countries; one decision reaffirms that industrial country members have a legal obligation under TRIPS Article 66.2 to provide their enterprises and institutions with incentives to promote technology transfer to LDCs. Eight decisions call for further review to clarify certain parts of the antidumping, subsidies, and TRIPS agreements. Three possibilities are covered by the decisions: technical assistance to do what the WTO agreements mandate; longer transition periods for doing it; and in some cases, special and differential permission not to do it.

In the upcoming trade negotiations, more imaginative thinking will be needed to examine reforms in the WTO new areas in ways that make sense from a development perspective. For example, the declaration encourages greater developing country membership in international standard-setting organizations such as the Codex Alimentarius. The negotiations should go on to devise indigenous alternatives to the default regulatory framework that existing international standards embody. Trade ministers at Doha (implicitly) called attention to the need for such thinking; the research community should interpret this as a challenge to provide it.
This box provides some (conservative) estimates of the cost to Jamaica of implementing selected WTO agreements.* The estimates do not take into account the need for and cost of ancillary investments and reforms that may be required to support implementation.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Implementation of the TRIPS agreement in Jamaica will require an initial public sector investment of at least US$1 million. This is associated with upgrading and modernization of the domestic intellectual property rights (IPRs) system. Modernization involves:

- Revision of existing laws (on, for example, trademarks and patents)
- Enactment of new laws on layout designs, geographical indications, plant varieties, and so on
- Development of proper administrative structures and officers to implement intellectual property (IP) procedures and policies as required by the legislation and the government.

A new Intellectual Property Office (JIPO) will administer the laws required by the TRIPS agreement. Approximately US$437,500 was already allocated to the existing IPR structures; another US$875,000–US$1.25 million will be required to develop the JIPO so that it covers all TRIPS areas. The estimated costs required for establishing the JIPO come to about US$775,000 a year over five years, after which the office is expected to be nearly self-sufficient. An additional estimated US$250,000 is needed to jump-start the implementation of major enforcement programs, including border controls; these are likely to be recurring costs.

Agreement on Sanitary and Phytosanitary Measures (SPS)

Implementation of the SPS agreement will require a total of US$7.6 million. This includes revision of current laws and regulations to make them WTO-compliant (US$200,000); establishment of an Agriculture Health and Food Safety Authority to administer and coordinate SPS activities (US$6 million); upgrading and equipping of existing laboratories in areas such as pest identification, pesticide residue analysis, and microbiology, and provision of training in lab methodology, quality management, and use of equipment (US$500,000); conduct of pest surveys, surveillance, and monitoring (US$250,000); establishment of an enquiry point (US$150,000); creation and strengthening of inspection facilities at ports of entry and exit to serve all the agencies involved in the certification of food imports and exports, with provision for additional staff, training, and equipment to detect high-risk materials in shipments (US$500,000); and funding for participation in international standard-setting meetings, working groups, and the Committee on SPS Measures (US$30,000). Many of these costs will be recurring.

Conclusion

These are very rough estimates and are quite conservative. Nevertheless, they illustrate that for a small developing country the implementation of the WTO agreements can be a substantial undertaking that requires both technical and financial assistance. Implementation of the TRIPS, SPS, and Customs Valuation agreements narrowly defined—that is, excluding ancillary and complementary investments to improve customs and standards institutions, and ignoring all costs for businesses—will require at least US$10 million. These financial resources are in addition to what is already budgeted by the government or allocated by donor countries as overseas development assistance to Jamaica.

* The cost estimates were originally made in Jamaican dollars and were converted to U.S. dollars at the rate of US $1 = J$45.

Source: Prepared by the volume editors, based on a paper prepared by the Ministry of Foreign Affairs and Foreign Trade, Jamaica.
Notes

This chapter draws heavily on Finger and Schuler (2000).

1 One critic argues that “these [are] not ‘minimum’ standards of intellectual property protection in the classical sense of the term; rather, they collectively expressed most of the standards of protection on which the developed counties could agree among themselves” (Reichman 1998: 603).

2 The TRIPS agreement provided the following transition periods: industrial countries, until January 1, 1996; developing countries and transition economies, up to January 1, 2000; least-developed countries, up to January 1, 2006. The transition period for a least-developed country may be extended on a “duly motivated” request by the country. Developing countries that currently provide patent protection to processes and not to products—for example in the food, chemicals, and pharmaceutical sectors—can delay until January 1, 2005, the application of the obligation to protect products. Even here, governments must ensure that inventions made between 1995 and 2004 will be able to gain patent protection after January 1, 2005.

3 This treaty is not yet in force; thus far, it has only nine signatories, of which only one has ratified.

4 Reichman, for example, asserts that “the logical course of action for the developing countries in implementing their obligations under the TRIPS Agreement is to shoulder the pro-competitive mantle that the developed countries have increasingly abandoned” (Reichman 1998: 606). Templeman (1998) argues that there is no public justification for the level of intellectual property protection defined by industrial countries’ laws.

5 Abbott (1998a: 501), in his introduction and summary in an issue of the Journal of International Economic Law devoted to the TRIPS agreement, notes this lack of understanding of the impact of IPRs on economic development.

6 We are not arguing here that the iron fist imposes the wrong standards. Our concern is to remove the velvet glove of comforting rhetoric from that fist.

7 Matthew Stillwell of the Center for International Environmental Law pointed this out to us.

8 The experiences we have reviewed were in fairly large and more advanced developing countries; the costs could be higher in least-developed countries of a similar size that begin farther from the required standards, and they may be lower in much smaller countries.
Special and Differential Treatment

In broad terms, WTO provisions relating to various elements of special and differential (S&D) treatment constitute a set of rights and privileges that apply to developing and least-developed country members and from which industrial countries are excluded. In effect, these provisions are meant to grant developing countries and least-developed countries (LDCs) more favorable access to the markets of the industrial countries and to give them substantial policy discretion with respect to their own domestic markets.

In principle, the existence of S&D provisions in the GATT/WTO framework reflects the recognition that the multilateral trading system consists of countries at markedly different levels of development. Because of disparities in economic situation and capacities, there are significant differences in the benefits that countries reap from the global trading system. S&D provisions are aimed at relating these differences to the obligations and commitments that different categories of member countries are expected to undertake.

There appears to be some concern that many developing and least-developed countries may not have derived as much benefit from the various rounds of multilateral trade negotiations as expected and that very few of them actually participate effectively in the WTO process (Hudec 1987). More specifically, a disproportionate increase in the exports generated by these trade negotiations has accrued to the industrial countries, partly because the negotiations have typically reduced tariffs on products of export interest to industrial countries more sharply than on products of interest to developing and least-developed countries. The latter groups of countries have typically been handicapped in negotiating reductions of the high tariffs facing their exports because they are often not principal suppliers. Furthermore, they may have little to offer in multilateral trade negotiations because their “essential” imports of capital and intermediate goods already carry zero or minimal tariffs, while their heavy reliance on trade taxes as sources of fiscal revenue often restricts the extent to which they can reduce these tariffs as “concessions” in the negotiating process. Finally, their capacity to participate effectively in the WTO process is constrained by their limited leverage, which arises from a series of factors, including the small size of their economies, the limited number of their export commodities, their greater vulnerability to terms of trade shocks, their endemic balance of payments problems, and their limited human and institutional capacity.

Broadly reflecting these concerns, S&D provisions are designed to accomplish two objectives: (a) to enhance the market access conditions facing the...
beneficiary countries, and (b) to exempt them from certain multilateral trade disciplines and thus give them some flexibility in the use of various trade and trade-related measures. In operational terms, enhanced market access has been implemented through trade preferences offered by the industrial countries on an individual basis to specific developing and least-developed countries. The right of the developing and least-developed countries to regulate access to their own markets is operationalized through the maintenance of trade barriers and through substantial exemption from several GATT/WTO disciplines. The exemptions enable them to use quantitative import restrictions for both infant industry protection and balance of payment reasons; to establish preferential regional trading arrangements among themselves; and to benefit from tariff reductions achieved in the process of multilateral trade negotiations, in accordance with the most-favored-nation (MFN) principle, but without reciprocity. The two sets of S&D provisions are obviously interrelated and complementary. The derogation from certain rules ensures that beneficiary countries are not deprived of the essential tools for strengthening their export supply capacity, without which they may not be able to take full advantage of the offer of preferential access to industrial country markets.

Before the Uruguay Round

The traditional S&D treatment strategy was developed between the mid-1960s and the mid-1980s. In particular, the principle and objectives of a generalized and nonreciprocal system of trade preferences for developing countries received approval in 1968, during UNCTAD II. Eventually, by its decision of June 25, 1971, the GATT provided legal backing for the UNCTAD agreement. In effect, the GATT approved a waiver of the provisions of GATT Article I for a period of 10 years, thus enabling its industrial country members to offer trade preferences to developing countries without offending the MFN principle.

It can be claimed that S&D treatment provisions reached their peak during the Tokyo Round (Wolf 1984). The 1979 Framework Agreement on Differential and More Favorable Treatment, Reciprocity, and Fuller Participation of Developing Countries, also known as the Enabling Clause, offers a fairly comprehensive statement on the core S&D provisions. In particular, it provided permanent legal cover for the Generalized System of Preferences (GSP), identified the LDCs as a separate category of GATT members meriting more favorable treatment than other developing countries, and codified the "graduation" principle by which developing countries would be expected to take on more of the obligations of GATT membership as their economies grew stronger. In specifying the S&D provisions applicable under the Tokyo Round codes, the Framework Agreement identified three special modalities for S&D treatment: (a) the offer of technical assistance to developing countries to help them comply with the new rules; (b) the granting of the right to weaker disciplines for developing countries in certain respects; and (c) the granting of exemptions from some of the new obligations on the grounds that the developing countries concerned faced limitations of administrative and implementation capacity.

Up until the Uruguay Round of multilateral trade negotiations, the key S&D provisions that granted special trade policy discretion to the developing and least-developed countries were codified in GATT Article XVIII. Section A of this article permitted developing countries to modify previously negotiated tariff bindings in order to assist the establishment of a particular industry; section B allowed the use of quantitative import restrictions by developing countries as an instrument for dealing with balance of payments problems; and section C permitted developing countries to use quantitative import restrictions for infant industry protection. Of the three, sections A and C were subject to compensation or retaliation, and hence section B was much more widely invoked than the others. Finally, GATT Article XXVIII bis (3) allowed developing countries not to offer full reciprocity for negotiating concessions made by industrial countries, in recognition of the developing countries' need to use import duties for general economic development and fiscal purposes.

Enhanced market access through the GSP was one major component of S&D treatment that was expected to produce concrete results. The benefits, however, have been limited by the typically narrow product coverage of the GSP, by restrictive rules of origin, and by the application of safeguard measures by some preference-granting countries. Furthermore, the GSP is not a multilateral agreement, and preference-granting countries have exercised the
right to exclude or graduate specific developing countries from GSP benefits. During the first 10 years of the scheme (1968–78), less than 11 percent of eligible imports actually received GSP treatment. A decade later, in 1988, only 27 percent of all dutiable imports was granted preferential access.

The benefits derived by developing countries from the GSP have thus been quite small in relation to the total exports of developing countries, and they have been heavily concentrated in a few beneficiaries. Up to the mid-1980s, three economies—Hong Kong (China), the Republic of Korea, and Taiwan (China)—accounted for about 45 percent of total GSP gains. This concentrated nature of GSP benefits remained unchanged through the early 1990s, as 6 to 12 of the largest beneficiaries claimed 71 to 80 percent of the total.

Both of the key components of S&D provisions have been criticized in the literature (Wang and Winters 1997). It has been argued that the component which grants greater flexibility to developing countries in their use of trade policy instruments is counterproductive because these “market-distorting” measures impose a self-inflicted cost on developing countries’ own economies, while nonreciprocity may preclude their use of the GATT/WTO framework as an “agency of restraint.” The GSP component does not provide, it is argued, a stable and reliable basis for investment, and it promotes production and trade inefficiencies in the beneficiary countries. These criticisms foreshadowed developments regarding S&D treatment during the Uruguay Round negotiations, in particular.

The Uruguay Round

The launch statement that began the Uruguay Round in September 1986 contained an explicit understanding that developing countries would be accorded S&D treatment in the negotiations in accordance with the terms of the 1979 Framework Agreement. But the adoption of the “single undertaking” as the guiding principle for the round ensured that the agreements coming out of the negotiations would radically change the form and content of most of the key elements of the second dimension of S&D provisions. In particular, the agreements had the effect of reducing the scope of many of the existing S&D provisions, and the surviving provisions were reformulated essentially in the form of longer time periods within which developing countries were to implement the new agreements. In other words, the intent of the Uruguay Round agreements is that developing countries should eventually meet virtually the same set of standards as industrial countries on a broad range of market access issues.

Thus, many post–Uruguay Round S&D provisions are expressed in terms of transition periods and differences in threshold levels. That is, the Uruguay Round agreements specify how soon and to what extent industrial and developing countries should meet their obligations. Some of the agreements add nonmandatory offers of technical assistance to help developing countries fulfill their commitments. The implied eventual convergence in standards of behavior for industrial and developing countries applies, in particular, in such areas as the use of quantitative trade restrictions, offers of special assistance to producers, tariff binding, and reciprocity.

For example, the use by developing countries of quantitative restrictions for dealing with balance of payments problems has been constrained by the imposition of more stringent rules and procedures. A schedule for removing existing quantitative restrictions has to be publicly announced, and there is an explicit preference for price-based measures for curtailing imports. Where the use of quantitative import restrictions is justified, they must be limited in duration and be applied on a nondiscriminatory basis. Similarly, the right of developing countries with per capita income equal to or greater than US$1,000 to use export subsidies has been sharply curtailed, as they are required to eliminate export subsidies by 2003.

Several Uruguay Round agreements appear to preserve some of the old S&D treatment provisions. For instance, the Agreement on Technical Barriers to Trade includes a statement that developing countries are not required to use international standards which are not appropriate for their needs or which may hinder the preservation of indigenous technology. Similarly, the provisions on safeguards exempt a developing country’s exports from countervailing measures as long as its share of total imports of the product is 4 percent or less. Most provisions for S&D treatment of LDCs survived the changes introduced in the Uruguay Round; perhaps the single most important S&D provision to survive without modification is the GSP. But the Uruguay Round did nothing to eliminate or even reduce many of the
limitations (including the unilateral nature of the scheme) that have traditionally curtailed the benefits derivable from the GSP.

It may be concluded, therefore, that in general the Uruguay Round essentially reduced S&D treatment for developing countries to extended transition periods over which developing countries would assume the same levels and scope of obligations as industrial countries. But the setting of transition periods and threshold levels appears haphazard and ad hoc and is not closely linked to objective criteria reflecting differences in levels of development or a country's institutional and human capacity. In the light of experience with implementation following the Uruguay Round, the transition periods and threshold levels appear to have been excessively optimistic in many cases.

Redefining Special and Differential Treatment

The deficiencies associated with post-Uruguay Round S&D treatment provisions suggest the need for a careful rethinking of the concept—of its justification, form, and content. The absence of such rethinking during the Uruguay Round probably led to the patchwork nature of the post-Uruguay Round S&D provisions. For example, the adoption and wholesale use of transition periods appear not to have been carefully thought through. The transition periods are probably meant to reflect the costs of changes in trade policy rules for an economy. But there are typically at least three different types of cost: the costs of adjustment, of implementation, and of compliance. Some policy changes (e.g., tariff rate reduction) may be associated with minimal implementation and compliance costs, although the adjustment cost could be high if the reduction is large and is implemented quickly. A long transition (implementation) period could be a way of reducing (or perhaps spreading out) the adjustment cost. By comparison, a policy change that mandates increased protection of intellectual property rights could be associated with high costs of implementation, compliance, and adjustment, to the extent that it involves human and institutional capacity building for implementation and compliance, in addition to the cost of adjustment. In such a case the use of a transition period may, by itself, be neither wholly adequate nor appropriate for taking account of the full costs associated with the policy or rule change.

It is obvious that the limited duration of the transition periods used to reflect S&D “concessions” in many Uruguay Round agreements renders them both inadequate and inappropriate as a basis for building capacity for enhanced production and trade in low-income countries.

Redefining S&D treatment also requires multilateral agreement regarding the classification of WTO member countries and the measurable development, trade, and other parameters that should be used in this categorization. Currently, the WTO appears to recognize (implicitly, at least) three categories of countries in its membership: industrial, developing, and least developed. The WTO indirectly defines the least-developed countries by adopting the UN list. This list, however, is defective for at least two reasons. First, it is based on income and hence does not necessarily reflect trade competitiveness, with which the WTO is (or should be) concerned. Second, it excludes several very low income countries. This may be why the agreement on subsidies expands the UN list to include other countries with per capita income of up to US$1,000. As for “developing countries,” the WTO has no specific definition. In practice, it falls back on an implicit self-designation arrangement that permits countries to so describe themselves.

An explicit categorization of WTO member countries based on a multilaterally agreed set of measurable criteria could also address the questions of which countries are eligible for S&D treatment and which countries should be graduated out of which S&D provisions, and when. The Uruguay Round agreement on subsidies offers an example. By categorizing beneficiaries according to per capita income, it was able to express the graduation threshold in terms of measurable economic indicators (such as exceeding a specified per capita income over three consecutive years or achieving a specified export share) rather than by assigning a transition period. Thus, a solution to the problems associated with country categorization and graduation could be the adoption and generalization of the principle used in the agreement on subsidies. As an alternative, the WTO might consider adopting the World Bank’s classification of countries as low income, middle income, and high income. This method has at least two advantages: it is determined in a transparent way, and it is widely accepted. The income-based indicator could be supplemented by a measure of trade competitiveness (for example,
manufactured products as a percentage of total exports) to distinguish between least-developed countries (less than 20 percent, in the example), developing countries (20 to 40 percent), and industrial countries (more than 40 percent).

A redefinition of S&D treatment also requires the identification and negotiation of the multilateral rules from which full or partial derogation should be granted to the least-developed and developing country categories. LDCs should probably be granted full derogation (as is essentially the case currently) except for some obligations, such as tariff binding and negotiated and phased tariff reduction, that would commit them to a regime of rational and sound trade policy conducive to their own economic growth and development.

Finally, special market access through trade preferences has historically been an important component of S&D treatment. Its actual benefits have fallen far short of the potential because of the many limitations of the GSP scheme. Negotiated MFN tariff reductions have also reduced preferential trade margins. Still, the continued importance of special market access arrangements should not be underestimated. They could provide an important boost to the exports of low-income countries, especially if current limitations regarding product coverage, rules of origin, and the unilateral nature of the schemes could be eliminated in the context of the decisions to grant duty-free, quota-free, and multilaterally bound access to industrial country markets for all LDC exports. This could be made more fully multilateral if the developing countries could also extend multilaterally bound preferential market access to LDC exports—for example, by offering to halve applied tariffs for these countries. The burden of this special market access scheme on the industrial and developing countries is likely to be small, given the rather low share of the total export market accounted for by the LDCs. Developing countries sharing in this “burden” would be an important way not only to demonstrate “South-South solidarity” but also to demonstrate the readiness of the multilateral trading system to accommodate the needs of its different categories of members.

The various S&D provisions that evolved in the GATT/WTO framework were established in response to the perceived special problems of the developing and least-developed countries. Their continued relevance must be shaped by a process of redefinition that pays attention to the changing nature and significance of these special features and problems.
Chapter 1: Trade-Related Capacity Building for Enhanced African Participation in the Global Economy

This chapter examines issues surrounding trade-related capacity building and technical assistance for the enhanced participation of African countries in the international economy. These questions have been the focus of ongoing attention from African governments and development partners since the conclusion of the Uruguay Round and in light of the challenges posed by the broader context of globalization and liberalization. There are two main concerns. The first is institutional capacity building for effective participation in the multilateral trading system. The second has to do with the supply-side constraints of African countries as trading nations. The first issue arises from identifiable weaknesses on several fronts, including capacity in many African countries, especially those designated as least-developed countries (LDCs), to formulate and manage a dynamic trade policy and to meet the demands of participation in the WTO framework (see Ohiorhenuan 1998; Blackhurst 1999a). The second issue arises from the declining competitiveness of African economies as expressed through their falling share in world trade, down to 2 percent by the end of the 1990s from 4.2 percent in 1985. The region’s share of world manufactured exports is almost negligible (World Bank 2000a: 208; AfDB 2000).

Building on efforts at policy reform and trade liberalization during the 1980s and 1990s, there has been what may be described as two waves of responses to the need for trade-related capacity building in African countries. The WTO, UNC-TAD, and the International Trade Centre (ITC), sometimes referred to as the three Geneva trade agencies, have been at the forefront in designing and implementing the required interventions. Over the years, these agencies have developed a diverse array of capacity-building tools and expertise within their respective competencies. Bilateral donors and other development agencies such as the United Nations Development Programme (UNDP), the World Bank, and the IMF have also been involved. Indeed, interagency cooperation on trade-related capacity-building interventions and assistance has proved a major challenge. This is to be expected, given the separate mandates and the different interests and approaches of donors and agencies, the range of initial conditions and needs among coun-
tries, and questions of ownership and the setting of priorities.

The “first-wave” response can be dated to the second half of the 1990s. It focused on three initiatives. The first, launched in May 1996 at UNCTAD IX in Midrand, South Africa, was the Joint Integrated Technical Assistance Programme for Selected Least-Developed and Other African Countries (JITAP). The second initiative was taken in December that year in Singapore, at the First WTO Ministerial Conference, which adopted the Comprehensive and Integrated WTO Plan of Action for LDCs. The plan envisaged closer cooperation between the WTO and other multilateral and bilateral agencies assisting LDCs in the area of trade. To implement the Plan of Action, a high-level meeting convened by the WTO in October 1997 launched the Integrated Framework for Technical-Related Assistance, Including Human and Institutional Capacity Building to Support Least-Developed Countries in their Trade and Trade-Related Activities (the Integrated Framework, or IF). Finally, a separate initiative designed to help African countries prepare for future WTO negotiations emerged, encompassing a variety of interventions, including UNCTAD’s positive agenda program.

The “second-wave” response, dating from around mid-2000, followed reviews of the experience of the JITAP and the IF. It apparently has broader objectives and a much wider scope than the initiatives in the first wave. It is concerned with “mainstreaming trade” as an integral part of the overall development and poverty reduction effort. In other words, it is more explicit in its recognition of trade as a major engine of enterprise development, diversification, economic growth, and poverty reduction. Consequently, it is focused on assisting the countries concerned to identify and prioritize structural supply-side constraints, including insufficient human, institutional, and productive capacity and inadequate trade-related infrastructure. It is significant that the second-wave response emerged in the context of a renewed effort by major international financial institutions such as the World Bank and the IMF. It further reflected a basic perception that with the increasing globalization of the world economy, the disciplines of the WTO agreements provide a framework for stable and predictable market access and for safeguarding national trading and related interests.

It was clear from the start, however, that participation in the WTO framework and in international trade would require building up the necessary capacity. Shortly after the Marrakech meeting, in October 1994, African trade ministers meeting in Tunis adopted a Framework for Action for the Implementation of the Uruguay Round Agreements by African Countries. The framework was substantially concerned with the identification of capacity-building needs for the development and management of trade policy, including the implementation of the Uruguay Round agreements, participation in the WTO framework, and the promotion of exports. The JITAP, the IF, and UNCTAD’s positive agenda interventions emerged dur-
The second half of the 1990s saw responses to these concerns. Each of these responses is briefly described below.2

The JITAP

The JITAP was established as a collaborative venture by the three Geneva trade agencies in cooperation with interested international donors. As has been noted, the Geneva trio had over the years acquired substantial expertise in providing technical assistance for various aspects of trade-related capacity building as part of their respective mandates. Indeed, the JITAP was conceived as a vehicle for utilizing this expertise by adopting a systematic approach and a framework for donor and inter-agency coordination. To enhance the sustainability of JITAP interventions, much emphasis was placed on human resource development, institutional capacity building, and strengthening of export supply capabilities.

Eight countries—Benin, Burkina Faso, Côte d'Ivoire, Ghana, Kenya, Tanzania, Tunisia, and Uganda—were initially selected for JITAP projects. The objectives of the JITAP were put into effect through a series of interconnected activities aimed at building national capacity to understand the WTO agreements and their development implications for each beneficiary country, including their implications for trade negotiations; adapting the national policy and regulatory framework to the WTO agreements; and enhancing the country's capacity to take advantage of the WTO agreements through improved export readiness. Although the JITAP concept was launched in 1996, it only took off two years later, following the establishment of a Common Trust Fund to finance program activities and the receipt of pledges to the fund from 13 donor countries, amounting to US$8.2 million of the estimated funding needs of US$10.3 million over four years. The fund is managed by the ITC and is supervised by a steering group of representatives of donors, beneficiaries, and the secretariats of the ITC, UNCTAD, and the WTO. In 1999 the three agencies implementing the JITAP delivered just under US$3 million of activities.3

The IF

The JITAP concept of interagency coordination in the delivery of trade-related capacity-building interventions also underlies the IF's activities. The Geneva trio, along with the World Bank, the IMF, and the UNDP, constitute the six core organizations collaborating in the delivery of trade-related capacity-building assistance under the IF. The IF is the product of the expressed desire of WTO member states “to foster an integrated approach to assist least-developed countries in enhancing their trading opportunities.”4

As noted above, the IF was established at the high-level meeting organized by the WTO in October 1997 to put into effect the Comprehensive and Integrated WTO Plan of Action for the Least-Developed Countries adopted in Singapore in December 1996. The main assumption underlying the IF is that each LDC has a different set of initial conditions and therefore specific trade-related capacity-building requirements. Accordingly, it was emphasized right from the start that the interventions envisaged under the IF must be demand-driven to ensure the relevance and country ownership of the capacity-building process. Each participating country was therefore required to carry out a needs assessment for trade-related technical assistance.

The IF adopted a methodology based on a standard questionnaire that was designed to help countries carry out the needs assessment exercise with the assistance of any, some, or all of the six agencies. Following the completion of the needs assessment exercise, the six agencies were to cooperate in preparing a provisional program of trade-related technical assistance that responded to the needs which had been identified. The provisional program, which became known as the integrated response, was to be discussed and agreed on with the LDC concerned. Each of the six agencies would then assume responsibility for implementation of those aspects of the integrated response that fell within its competence and specialization. By mid-1999, 40 of the 48 LDCs had completed the needs assessment exercise.5

To facilitate implementation of the integrated response, it was further expected that the exercise would culminate in the scheduling of a trade sector roundtable meeting with donors, typically in the context of a World Bank Consultative Group Meeting or a UNDP Roundtable Meeting. The purpose of these meetings was to give development partners an opportunity to endorse a multiyear program of trade-related technical assistance and to pledge support for elements of the program. By mid-1999,
only Uganda had been able to organize such a meet-
ing, although more than 20 countries had expressed
an interest to the WTO in doing so.6

Positive Agenda Initiatives
The Singapore ministerial conference revealed seri-
ous flaws in WTO decisionmaking processes. Basi-
cally, an inner circle of only 34 of the WTO's then
128 members had taken responsibility for negotiat-
ing an agreed text on sensitive issues—including
textiles and clothing, labor standards, investment,
and competition policy—that remained to be final-
ized for inclusion in the ministerial declaration to
be issued at the end of the conference (see Black-
hurst 2001). Few African and LDC representatives
were part of this inner circle. In addition, African
and LDC representatives had little input in the
negotiations that were concluded during the confer-
ence to eliminate tariffs on information technology
products and on a number of pharmaceutical prod-
ucts. Because they lack export capacity in these sec-
tors, the WTO’s LDC members and a substantial
majority of the African delegations at the confer-
ence were effectively marginalized during these
negotiations.

The experience at Singapore raised the question
as to how developing countries in general could take
issues of interest to them forward in future WTO
negotiations. It was in response to this question that
the positive agenda initiative emerged, principally
under the leadership of UNCTAD acting in concert
with other intergovernmental organizations and
regional organizations such as UNDP, the South
Centre, the Commonwealth Secretariat, and the
Organization of African Unity (OAU). The objec-
tive of the initiative was to step up research and
analysis aimed at assisting the countries concerned
to develop a positive agenda for future WTO negoti-
ations, including the negotiations on agriculture
and services due to be launched at the Third WTO
Ministerial Conference, which was held in Seattle in
late 1999.

Assessment
The first-wave response (including the regular
trade-related technical assistance activities of the
Geneva trio and other bilateral and multilateral
agencies outside the framework of the JITAP and
the IF) in the second half of the 1990s to the
demand for trade-related capacity-building was
designed to respond to the specific conditions of a
country—thereby avoiding “one size fits all” solu-
tions—and to facilitate preparation for future nego-
tiations. It can be argued that this effort has resulted
in greater sensitization in African countries as
regards the requirements for compliance with WTO
membership and for participation in rules-based
multilateral trade decisionmaking, including negoti-
tiations. The JITAP and the IF, however, suffered
from serious deficiencies. The JITAP was limited to
just a handful of countries and was not able to
deliver projects aimed at enhancing competitiveness
and overcoming supply-side constraints that the
beneficiary countries faced, including inadequate
investment in production and infrastructure. The IF
never really took off, although it was generally
acknowledged that the needs assessment exercise
had enabled both governments and development
partners to carry on a dialogue on trade policy
issues and priorities and to engage in serious reflec-
tion on overcoming the constraints on interagency
cooperation. Issues related to regional trade policy
were mostly ignored. This is quite a curiosity, as the
mid- to late 1990s was also a period during which
important strides were made toward regional inte-
gration, especially in eastern and southern Africa
and in francophone West Africa.

By contrast, by the time of the Seattle ministerial
conference in late 1999, the fruits of the positive
agenda initiative were clearly in evidence. During
the preparatory process leading up to the Seattle
conference, developing countries submitted well
over 100 negotiating proposals, more than half the
total (see UNCTAD 2000b: vii). African countries in
particular exhibited an unprecedented degree of
preparedness and greater awareness of the issues at
This was the result of intensive preparatory events,
as well as serious efforts to formulate an Africa-spe-
cific positive agenda, thanks to UNCTAD’s technical
cooperation activities in this area and to policy
research capacity-building programs supported by
donor agencies. In addition, the difficulties in
implementation experienced by all African mem-
bers of the WTO had increased their awareness of
the impact on their economies of rules emanating
from multilateral trade negotiations. When the
Seattle conference reverted to Singapore-style
inner-circle decisionmaking, African delegations
were at the forefront in denouncing this approach.
This was one of the factors leading to the breakdown of consensus and the eventual failure of the conference.

The “Second Wave”: Mainstreaming Trade

During 2000, mandated reviews of the functioning of both the JITAP and the IF were undertaken. These reviews occurred at a time of renewed effort at the World Bank and the IMF, and in the wider development community, to address the trade constraints faced by the poorest countries in a more comprehensive manner while taking key factors such as ownership, sustainability, market failure, and institutional resistance to donor coordination into account (see, for example, Stiglitz 1998; World Bank 1998; Kaul, Grunberg, and Stern 1999). It is therefore not surprising that these were the themes that provided the subtext for the JITAP and IF reviews.

The overall message from these reviews was the need to “mainstream” trade as an integral part of the overall national development and poverty reduction effort (see Rajapathirana, Lusthaus, and Adrien 2000). Consequently, the second-wave response lays considerable stress on ensuring that trade policy, trade-related technical assistance, and capacity-building needs are articulated in a broad development context, not addressed in isolation.

Next Steps: “JITAP II” and “IF II”

In addition to examining ways of streamlining the JITAP’s management process, the midterm evaluation carried out during 2000 emphasized the need to strengthen the role of ministries of trade as the focal point in the development of trade policy, including the provision of extension services to the private sector and engagement with the WTO. Further emphasis was to be placed on building a network of trainers through the involvement of local universities and business schools. It was also envisaged that the remodeled JITAP would be extended to an additional 10 to 15 African countries, given the demand for its accelerated and integrated mode of delivery of trade-related capacity-building interventions. Whereas regional integration considerations were mostly ignored under the original JITAP (JITAP I), it was proposed that one of the criteria for selecting the additional countries to be included in JITAP II would be their role in regional processes.

For IF-eligible countries, the centerpiece of the IF-II arrangements is that trade-related technical assistance and associated programs and projects are to be carried out through a country-led process of defining national poverty reduction strategies. This would be ensured principally through such instruments as the national poverty reduction strategy papers (PRSPs) and the United Nations Development Assistance Framework (UNDAF), which are to provide the basis for a program of assistance agreed on with development partners. This mainstreaming effort is to be led and coordinated by the World Bank, according to the principles of its Comprehensive Development Framework, with participation and input from other core agencies and other stakeholders. Building on initial needs assessments and subsequent work, the IF-II approach would involve formulating country-specific trade programs as part of the broader poverty reduction strategies. These activities are expected to feed into the World Bank Consultative Groups and UNDP Roundtable Meetings, where countries will present their medium-term policy frameworks and financing needs, including needs for trade-related assistance, for support by the donor community.

Another change was the decision to seek donor support for and voluntary contributions to an IF Trust Fund (IFTF). The IFTF, which would involve about US$20 million over a three-year period, would be primarily dedicated to helping LDCs develop the necessary analytical and policy framework for mainstreaming trade into national development strategies and for developing programs and projects. It was subsequently agreed that implementation of IF II would proceed on the basis of a pilot scheme to assist countries that demonstrated a clear choice and commitment to mainstream trade as part of their country development strategies as expressed through PRSPs or the UNDAF. Thus, under the new IF-II arrangements, the need for trade-related assistance was to be assessed alongside a country’s other priorities and supported accordingly by the government concerned and the donor community. This approach was expected not only to ensure that trade takes its rightful place in policy terms but also to create a viable framework for making available the resources required to foster the necessary skills, institutions, and infrastructure for the effective integration of the LDCs into the world economy.
Assessment

It is too early to assess the second-wave response, since implementation has hardly begun. A few positive elements, however, that have emerged from the reviews of the JITAP and the IF could potentially bridge the major gaps evident in the first-wave response.

JITAP II. The effort that is to be made in JITAP II to strengthen the role of ministries of trade as the focal point for trade policy is to be welcomed. The experience of several developing countries in East Asia, Latin America, and elsewhere has shown the need for such a corporate framework to manage the trade policy process; to oversee policy issues concerned with multilateral and regional trade agreements, including compliance and negotiation; and to facilitate coordination with other institutions concerned with national economic management, with a view to ensuring that supply-side constraints are adequately addressed.

In this regard, human resources development and training for trade-supporting services are essential. The JITAP II proposal for a stronger involvement of local universities and business schools to complement other activities aimed at strengthening the network of trainers, if acted on, will be a significant contribution. There is considerable scope for intercountry cooperation in this area in promoting high-quality regional centers of excellence to fulfill training, advisory, analytical, and research functions. These could be developed from within existing institutions.

JITAP II further proposes to address relevant regional integration elements by including as criteria for the extension of the program to other countries such factors as the role of a country with respect to regional integration; the country's potential to benefit from the program; proximity to regional clusters; and possibilities for regional synergies and economies of scale at the implementation stage.

IF II. The IF was originally an unfunded mandate, and donors and agencies differed in the priority to be given it. Situating it at the center of a beneficiary country's program of assistance with development partners provides a more solid basis for establishing the link between trade and development, on the one hand, and development strategy and poverty reduction, on the other. If IF II takes off as expected, the proposed trade chapter of the PRSPs would include the identification and prioritization of trade-related capacity requirements, from infrastructure to human resources, within a coherent policy framework.

It has been suggested that, ultimately, mainstreaming trade will give greater visibility to the linkages between trade and all other related policy areas, including health, education, and general social conditions (see Fried 2000). This would require governments to reflect on how they can most efficiently use the limited resources they are able to devote to trade. In this regard, it is to be hoped that in the reassessment of the use of resources, such constraints as the understaffing of the WTO missions of African countries in Geneva and cases of complete nonrepresentation would be resolved in a decisive manner (see Blackhurst, Lyakurwa, and Oyejide 2000). By the same token, it would require development partners to reexamine development assistance priorities to ensure that they are sending a coherent message across their various assistance mechanisms and institutions. The World Bank, in particular, as the lead agency in the mainstreaming exercise, faces a major challenge to ensure that it becomes more proactive in engaging national trade policymakers to determine the nature and extent of trade-related technical assistance and capacity building needed by a country.

Conclusion

This chapter has revisited the question of trade-related capacity building for enhanced African participation in the international economy. It has suggested that the first-wave response to this question during the second half of the 1990s led to greater sensitization in African countries on international trade issues, including participation in the WTO. The JITAP and the IF, however—as the main instruments of capacity-building interventions—were constrained by serious deficiencies. The JITAP was limited to just a few countries and was not able to deliver projects to enhance competitiveness and overcome constraints on the supply side, including those in production and infrastructure. The IF itself never actually took off. Issues related to intraregional trade policy were mostly ignored.

Still, by the time of the Seattle ministerial conference in 1999, there was much evidence that the
effort given to technical assistance to prepare
African countries for trade negotiations had paid
off. In Seattle African countries exhibited an
unprecedented degree of preparedness and greater
awareness of the issues at stake. At the next ministe-
rial meeting, in Doha, they played an active role.
Technical assistance for trade negotiations is an
ongoing activity that will call for improved coordi-
nation among the various partners involved.

Mandated reviews of the JITAP and the IF during
2000 resulted in a second-wave response concerned
with mainstreaming trade as an integral part of the
overall development and poverty reduction effort.
For the JITAP, specifically, the review resulted in a
commitment to extend JITAP II to an additional 10
to 15 countries, given the demand for its accelerated
and integrated mode of trade-related capacity-
building interventions. It was further proposed that
one of the criteria for selecting the additional coun-
tries should be their role in regional integration
processes. For the IF, the centerpiece of the new
arrangements is to place trade-related technical
assistance within the framework of a country’s
national PRSP process. This is expected not only to
ensure that trade takes its rightful place in policy
terms but also to create a viable framework for making
available the resources required to foster the
necessary skills, institutions, and infrastructure for
the effective integration of IF-eligible countries into
the world economy. IF II will require complex inter-
ventions, demanding a coherent approach from
African policymakers, development partners, and
other actors.

Notes
An earlier version of this paper was presented at the African Eco-
nomic Research Consortium (AERC) Seminar on Assistance in the
Preparation of African Countries for the WTO Trade Negotiations,
Geneva, March 9, 2001. The author may be reached at
<David.Luke@ties.itu.ch>.

1 See, for example, the Framework for Action for the Implement-
tion of the Uruguay Round Agreements by African Countries
adopted at a meeting of African trade ministers in Tunis, Octo-
ber 1994 (available from the Organization of African Unity),
and OECD (1999b).

2 It should be noted that the regular trade-related technical
cooperation activities of the Geneva agencies and of other
bilateral and multilateral donors continued outside the frame-
work of the three initiatives.

3 See, for example, UNCTAD, “Review of Technical Co-operation
Activities,” TD/B/47/2/Add.1, 2000, and ITC, “JITAP Mid-term

4 See WTO, “Singapore Ministerial Declaration,” WT/Min

5 See WTO, “High Level Meeting on Integrated Initiatives for
Least-Developed Countries, Trade Development, Outcome and
Follow-up, Report of the Director-General,” WT/MIN (98)/2,
1998, and WTO, Sub-Committee on Least-Developed Coun-
tries, “Note on the Meeting of 12 July 1999,”
WT/COMTD/LDC/M/16, 1999.

6 See WT/COMTD/LDC/M/16, 1999.

7 See also WTO, “Review of the Integrated Framework: Commu-
niqué from Heads of the Six Core Agencies,”
WT/LDC/SWG/IF/2, July 12, 2000: 2.

8 See ITC, “JITAP Mid-term Evaluation, Management Response,”

9 See WT/LDC/SWG/IF/2, July 12, 2000.

10 See WTO, Sub-Committee on Least-Developed Countries,
“Integrated Framework—Proposal for a Pilot Scheme,”