



The Multilateral Trade Regime: Which Way Forward?

THE REPORT OF THE FIRST WARWICK COMMISSION

Published by:
The University of Warwick,
Coventry CV4 8UW, UK

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Design by Mustard: www.mustardhot.com

Printed by Hawthornes, Nottingham NG17 7HT, UK

ISBN 978-0-902683-85-3

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The University of Warwick

Among UK universities, Warwick is a uniquely successful institution with a track record of outstanding research, quality teaching, innovation and business engagement. Founded in 1965, it is one of the country's leading universities with an acknowledged reputation for excellence in research. In the last government Research Assessment Exercise, Warwick was rated fifth for research excellence, with twenty-five out of twenty-six departments achieving the top 5 or 5* ratings. In media league tables, Warwick has consistently maintained its position in the Top Ten.

Warwick's teaching and other programmes flow from this excellent research. Its undergraduate and postgraduate teaching is research-led and, as a result, students benefit directly from the work of academics and research teams. The University has a student population of around 16,000 undergraduates and postgraduates. Warwick's reputation attracts students from across the world – there are currently around 4,000 overseas students – and the University typically receives around 30,000 applications for just over 3,000 undergraduate places. Academic work is concentrated in four faculties – Arts, Science, Medicine and Social Studies. However, Warwick is particularly known for its interdisciplinary research – the Economic and Social Research Council funded the Centre for the Study of Globalisation and Regionalisation, the administrative home of this initial Warwick Commission, for example, was the first centre of its kind in Europe.

Warwick's research is also the basis for its record of innovation and its links with business, industry and policymakers. Researchers are engaged in work which is both at the cutting edge of human knowledge and is of direct relevance to society. Among our leading exemplars are:

The Warwick Manufacturing Group

Through the application of innovation, new technologies and skills deployment, WMG brings academic rigour to industrial and organisational practice. WMG is an international organisation, running teaching and research centres in Hong Kong, South Africa, India, China, Malaysia and Thailand and providing expert advice to many overseas governments and companies.

The Warwick Medical School A postgraduate medical school with an expanding research portfolio, WMS was established in 2000. WMS has particular, national and international research strengths in metabolic diseases, such as diabetes and obesity, reproductive medicine, public mental health, clinical trials and health care systems improvement.

The Warwick Business School With over 6,500 students, WBS is one of the leading business schools in Europe. Determinedly international in focus, the School's research and teaching embrace management in the private sector and public services and includes a world-leading PhD programme.

The CAPITAL Centre A partnership with the Royal Shakespeare Company, the CAPITAL Centre was established to utilise theatre performance skills and experience to enhance student learning and to draw on University research and resources to shape the development of the RSC's acting companies.

The new Warwick Digital Laboratory A £50 million project, in which researchers will work on digital manufacturing, e-security, digital healthcare and 3-D visualisation techniques.

Warwick has set its sights on becoming a universally acknowledged world centre of higher education by 2015 – its 50th anniversary. It is approaching this challenge by re-affirming its commitment to absolute academic excellence and the entrepreneurial spirit which have served it so well in the past.

Forewords

Professor Nigel Thrift

It is with great pleasure that I commend to you the Report of the Warwick Commission, entitled '*The Multilateral Trade Regime: Which Way Forward?*'

In establishing the Warwick Commissions, of which this is the first, the University aims to draw on its scholars, their expertise and their networks of professional contacts to address issues of global importance. At this juncture, there cannot be many topics of greater, current significance than the future of the world trade system in the light of the protracted, complex and, at the time of writing, unfinished negotiations on the Doha Development Agenda.

In the best traditions of intellectual discovery, the Warwick Commissions are charged with carrying out independent analysis of a particular issue with the goal of making practical and realistic recommendations about how to move it forward. The aim of the Commissions will be to make thought-provoking contributions to the debate thereby assisting policymakers to find solutions to sometimes seemingly intractable problems. Inevitably, such exercises will not please everyone and, given the controversial issues we expect to address over the coming years, it would be a false hope to expect to achieve universal agreement. Warwick Commissions will conduct rigorous enquiries and if the evidence leads them into making recommendations which some find challenging, then so be it.

The membership of the first Warwick Commission, which began its work in February 2007, was carefully selected to reflect as wide a range of skills and experience as possible. I am especially grateful to the Honourable Pierre S. Pettigrew, PC for agreeing to chair the Commission. During a distinguished career in Canadian politics, Pierre held office as both Minister of Trade and Foreign Affairs. Also, having been appointed "Friend of the Chair", Pierre presided over negotiating groups at Ministerial conferences of the WTO. He, therefore, brought to the Commission his accumulated wisdom from the highest levels of trade politics. His contribution has been invaluable.

The Report is... tightly targeted, challenging and always thought-provoking

The original idea for the first Warwick Commission inquiry was supplied by Professor Richard Higgott, a political economist at Warwick's Centre for the Study of Globalisation and Regionalisation. In addition to his scholarly interest in global trade he too has had policy experience having spent the years of the Uruguay Round of Multilateral Trade Negotiations as a member of the Australian Minister for Trade's Negotiation Advisory Group. The other 16 Commissioners, drawn from four continents, includes trade economists, political economists, a trade lawyer and a philosopher together with senior public and private sector practitioners highly experienced in the problems of trade governance. This combination of experienced trade practitioners and academics represents a deliberate attempt to bring fresh thinking to bear on the discussions about the shape of the governance arrangements for the world trade system in the early 21st century. The Commission also sought the views of over 250 experts from around the world and, with the application of innovative digital technologies, used its website to disseminate its activities and encourage the wider community to make their own input into Commission deliberations.

The result has been a lively and positive debate about the difficulties facing the world trade system. I believe that the quality of that debate is reflected in this Report, which is tightly targeted, challenging and always thought-provoking. The activities of the Commission and its Report are intended as an exercise in public policy informed by rigorous scholarly and analytical thinking. It is an excellent demonstration of the importance of good multidisciplinary social science to public policy. I anticipate that this Report will be read both by trade experts and members of the lay community who have an interest in the subject of world trade. I firmly expect that it and its recommendations will make a valuable

contribution to the growing discussion about the sort of trade system we want for the 21st century. I hope that it is judged on its merits as an honest and novel contribution to that debate.

I am delighted to take the opportunity in this Foreword to thank several organisations for their financial and in-kind support for the activities of the Commission: these include The Centre for Governance Innovation (CIGI) at the University of Waterloo, the EU Framework 6 Network of Excellence on Global Governance, Regulation and Regionalisation (GARNET), Deloitte & Touche (Canada), the Stiftung Wissenschaft und Politik, in Berlin, and last, but certainly not the least, the UK Economic and Social Research Council who have supported this Report and the Commission's work through its Centre for the Study of Globalisation and Regionalisation here at Warwick and its wider communication over the next twelve months by the award of an Impact Grant. CUTS International also assisted with the organisation of the Warwick Commission meetings in New Delhi. The Report is a genuine reflection of the ideas, inputs and deliberations of all Commissioners, both electronically and at their two meetings in Warwick and further meetings in Toronto and New Delhi. Finally, in commending this Report to you, it gives me great pleasure to thank Monsieur Pettigrew and his Commissioners for bringing the first Warwick Commission to fruition.

Professor Nigel Thrift

*Vice Chancellor
University of Warwick
December 2007*

The Honourable Pierre S Pettigrew, PC

The primary objective of this, the first, Warwick Commission has been to examine the governance of the world trading system and to make recommendations about how it can be improved.

Throughout its discussions, the Commission has assumed that the current architecture, based around the World Trade Organization (WTO), should reflect the aspirations and needs of all Member nations. Our Report contains recommendations which, taken together, propose a constructive and pragmatic way to move global trade governance beyond some of the problems which have bedevilled the Doha Development Agenda (DDA) negotiations. Our intention is that this Report be taken as a considered contribution to the inevitable debate about the future of the multilateral trading system whatever the outcome of the DDA.

The bedrock of the Commission's inquiry has been a solid commitment to the belief that multilateral trade is a force for good in the world. We subscribe to the view that the multilateralised trade system inaugurated by the General Agreement on Tariffs and Trade (GATT) and developed under the WTO has been one of the key pillars of international economic stability and increased living standards since 1945. We are also convinced of the continuing importance of the WTO. With 151 Members, coverage by the WTO is almost universal. Overall, the WTO functions well in comparison to the other major international economic institutions. The Commission's Report, therefore, supports these positive aspects of the WTO's role whilst addressing some of those elements that we judge to be working less well at the moment.

The Commission identified several key issues which it considered important to the future health of the globalised trading system. We felt that the involvement of the least developed countries was not the only issue of participation requiring consideration. Our deliberations, therefore, covered that group of nations which are emerging as significant players on the world economic scene, notably Brazil, Russia, India and China. As the

The emergence of a multipolar global economy... must be addressed if the continued viability of the trading system is to be assured

economic and political clout of these countries increases, both individually and collectively, it is a fact of life that the trading system will have to reach an accommodation with them politically as well as economically. The emergence of a multipolar global economy, one in which the United States, the European Union and Japan are no longer the only major players, must therefore be addressed if the continued viability of the trading system is to be assured. We were also struck by the paradox that, at a time when much of the developing world appears to be more supportive of the opening of markets than in the past, political and popular support for globalisation is under challenge in parts of the developed world.

The Commission believes that the sometimes conflicting views of the nature, scope and objectives of the WTO need to be resolved. WTO members need to decide what they want their organisation to do and, indeed, not to do in the coming years. Again, any such decision must properly reflect the priorities of the whole membership and not just those of the powerful few. We are concerned that the negotiating cycle within the WTO is invariably misaligned with the political cycles of the membership. In saying this, we accept that alignment is unlikely but we do believe that it is feasible, and essential, that the length of individual WTO negotiations is reduced. Not only does this make sound political sense but it also reduces the imperative for nations to seek solutions outside of the multilateral trading system.

In arriving at its recommendations, the Commission has drawn upon a very wide range of expertise. Our first meeting, at the University of Warwick in February 2007, drew up a questionnaire which was sent to over 250 experts around the world. We also made the questionnaire available on our website to anyone who wanted to express a view on the future of the world trading system. The

responses and an initial draft Report were then considered when we met in Toronto, in June. It was at this meeting that the shape of the Report began to emerge. Meetings, at Warwick, in September, and New Delhi, in October, further refined the Report and enabled us to finalise our recommendations.

As the Warwick Vice Chancellor has also noted in his Foreword to the Report, the composition of the Commission has had a crucial bearing on our work in the way it has brought together an interesting blend of academics and experienced trade practitioners. This enabled the Commission to benefit from the ideas of theorists who did not have input into the evolution of the present architecture of trade governance but who had nevertheless studied the system in operation. We were able also to bring to bear a range of expertise by involving political scientists, economists, a trade lawyer and a philosopher, thereby allowing the Commission to consider a wider set of perspectives on this subject than is perhaps normally the case within the trade policy community. The trade practitioners provided the Commission with its reality check. We knew from the outset that our objective of producing a credible report depended on the practicability of our recommendations and it was those Commissioners with a deep understanding of the day-to-day functioning of the global trade regime who ensured that we remained grounded in what it would be possible to achieve and, frankly, what we think can work. Overlaid on the issue-area expertise which individual Commissioners brought to the table was the geographical reach of the Commission, which had representation from Africa, Australasia, Europe, North America, South America and South and South-East Asia. In sum, the Warwick Commission was able to draw on a unique blend of expertise, experience and knowledge in its deliberations.

Of course each Commissioner came to this enterprise with strongly held opinions based on extensive study of the global system or a life time's experience of the impact of trade on the lives of people around the world. I would like to pay tribute to the way in which Commissioners approached their task. Our debate was always conducted in a collaborative, open and frequently robust way but it was clear to me that a genuine team spirit developed amongst the Commissioners. Our discussions sometimes were about issues which individual Commissioners found difficult, especially where they were being asked to consider compromises which challenged long-held views. Because of the sense of commitment to our work and a shared desire to bring this Report to successful completion, we are able to present a document which reflects an overall consensus on the part of the Commissioners without assuming that all of them agree with each and every statement contained in it.

I believe that this Report contains an analysis of the multilateral trade system which is both insightful and challenging. I think that it comes at a time when the multilateral trading system would benefit from the kind of independent analysis which the Warwick Commission offers. There can be no doubt that the governance arrangements for world trade need to be updated to reflect new circumstances, new economic realities and, perhaps more pressingly, new political realities. We do not pretend to have all the answers but we hope that our recommendations will be viewed as an honest attempt to reform the multilateral trade system, which we believe to be essential to the peaceful development of the world economy. We offer this Report as a complement to other analyses of global trade governance, such as the "Sutherland Report", but one which comes at a crucial time for supporters of multilateral trade.

On a personal note, I would like to thank Professor Nigel Thrift, Vice Chancellor of the University of Warwick, for his invitation to me to chair the first Warwick Commission. If my experience of this Commission is anything to go by, I believe that the Vice Chancellor's initiative in setting up the Commissions as independent committees of enquiry into matters of global importance will provide a welcome addition to the sources of advice for policymakers. For me, the past year has shown how well a previously disparate group of people, albeit with a shared interest in a topic, can come together to such good effect and I have made new friends in the process.

I would also like to thank very much Professor Richard Higgott whose expertise, professionalism and dedication have been key to the success of this ambitious enterprise. He has really been the soul of this first Warwick Commission and I know all Commissioners share my gratitude for his extraordinary commitment. I would also be remiss not to acknowledge the exceptional support we received at so many levels from Dr Andrew Roadnight and our creative administrative assistant Mrs Denise Hewlett.

Pierre S Pettigrew

Toronto

December 2007

Glossary

AB	Appellate Body
AfT	Aid for Trade
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
CACM	Central American Common Market
CU	Customs Union
DDA	Doha Development Agenda
DSM	Dispute Settlement Mechanism
DSU	Dispute Settlement Understanding
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
IF	Integrated Framework
ILO	International Labour Organization
IMF	International Monetary Fund
ITA	Information Technology Agreement
ITC	International Trade Centre
LDC	Least Developed Country
MFN	Most Favoured Nation
NAMA	Non-Agricultural Market Access
NGO	Non-Governmental Organisation
NIEO	New International Economic Order
NTB	Non Tariff Barrier
OECD	Organisation for Economic Cooperation and Development
PTA	Preferential Trade Agreement
RTA	Regional Trade Arrangement
S&DT	Special and Differential Treatment
TIM	Trade Integration Measure
TM	Transparency Mechanism
TRIMS	Trade Related Investment Measures
TRIPS	Trade Related Intellectual Property Rights
TRTA	Trade Related Technical Assistance
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Executive Summary and Recommendations

This Report examines how the multilateral trade regime can better serve the global community.

It does so by asking if the sustained and uneven transformation of the global economy, with the associated rise of new powers, heightened aspirations, and considerable pockets of societal discontent, require a reconsideration of the principles and practices that currently guide the multilateral trade regime, the core of which is the World Trade Organization (WTO). Having considered this question, the Warwick Commission sees five challenges facing the multilateral trade regime – challenges that can be addressed more effectively than at present if the steps proposed here are taken.¹ Our approach is guided as much by the practical realities of the contemporary trading regime as it is informed by analyses of long-term trends and national and regional circumstances.

We recognise – and indeed owe a debt to – prior reports on the multilateral trade regime.² The Warwick Commission Report is entirely independent and its only institutional link is with the University of Warwick.³ We believe our Report offers fresh perspectives on the future trajectory of a critical element of global governance – the management of global trade relations. We do not claim originality for all our recommendations. Where we have not been original it is because we are convinced that some old ideas are badly in need of resurrection in the face of current challenges confronting the multilateral trade regime. Moreover, not all our recommendations carry equal weight in terms of their impact on the system, were they to be adopted.

Five challenges must be met if the multilateral trade regime is to succeed in the early 21st century. These challenges are distinct yet often related, and we do not seek to prioritise them. Taken together, they arise from several sources: national political dynamics, global economic developments and inter-state diplomacy. The five core challenges we identify are as follows:

- The first challenge is to counter growing opposition to further multilateral trade liberalisation in industrialised countries. This tendency threatens to render further reciprocal opening of markets unduly limited and to weaken a valuable instrument of international economic cooperation.
- That the bipolar global trade regime dominated primarily by the United States and Western Europe has given way to a multipolar alternative is now an established fact. The second challenge is to ensure that this evolving configuration does not lapse into longer term stalemate or worse, disengagement.
- In this changing environment, the third challenge is to forge a broad-based agreement among the membership about the WTO's objectives and functions, which in turn will effectively define the "boundaries" of the WTO.
- The fourth challenge is to ensure that the WTO's many agreements and procedures result in benefits for its weakest Members. This requires that the membership addresses the relationships between current trade rules and fairness, justice, and development.
- The fifth challenge relates to the proliferation of preferential trading agreements and what steps can be taken to ensure that the considerable momentum behind these initiatives can be eventually channelled to advance the long-standing principles of non-discrimination and transparency in international commerce.

An integrated, comprehensive and systemic response is called for; key elements of which are discussed in the Report. A recurring theme

in a number of our recommendations is the need for stakeholders in the trading system to permit themselves the time and space to take a step back from negotiating, litigating and running the daily business of trade policy in order to reflect on how they would like to see the trade regime evolve over the next few years. An inter-governmental 'reflection exercise' of this nature would seek to identify diverse needs and common interests, and to inject greater legitimacy, order and dynamism into the multilateral trade regime. Reflection and dynamism are not contradictory terms. An inter-governmental reflection exercise, we believe, would be best instigated sooner rather than later.

A brief account follows of the contents of each chapter of this Report, together with the recommendations contained therein. This brief summary cannot, of course, substitute for the nuanced and more detailed reasoning in the Report. In laying out the contents and conclusions of the Report, the Commission also acknowledges that a Report of this nature cannot aspire to completeness. We have selected a range of issues we consider important, but we are acutely aware of many other issues in need of attention, related to trade but always with wider socio-political and economic ramifications. It is our hope that a reflection exercise of the kind we propose would be able to address some of these issues along with the ones we identify.

Chapter 1 of the Report assesses the implications for the multilateral trading regime of the changing political and economic landscape both within nations and between them. Two striking observations, expressed as affirmations, relevant to policymakers follow from our analysis of the context facing the multilateral trading regime in the early 21st century.

- Waning public support for the further opening of economies, which is particularly evident in many industrialised countries, now seriously threatens the conclusion of future trade agreements and the maintenance of orderly, rules-based international trade relations. National political leaders have often failed to explain adequately to the public what is at stake. Instead they have preferred silence, or worse, the politics of blame and responsibility avoidance. Governments must look beyond the electoral cycle and confront more directly the vested interests that benefit from protection and the inefficiency it breeds. Enhanced efficiency is, however, but one element in the equation of economic change. At the same time, governments must pay more serious attention to the distributional consequences of change.
- Sustaining the WTO is the collective responsibility of all its Members, in particular both the longstanding and the new poles of power and influence in the world economy. The parties concerned must reach an accommodation and act upon their common interests, as failure to do so risks paralysis at the WTO and the *de facto* disengagement of some Members. While such efforts are clearly in the common interest, it will be the smallest and weakest members of the international community that would suffer most from this failure.

Chapter 2 of this Report begins with a short discussion of the role of multilateral institutions in sustaining cooperation among nations. It then proceeds to examine decision-making in the WTO, with particular reference to agenda formation. The final part of the Chapter focuses on the WTO's Dispute Settlement Mechanism (DSM). The specific recommendations of this Chapter relate to decision-making and dispute settlement.

- 1 It is no surprise that decisions about the reach and content of WTO rules have been among the most contentious issues in the sixty-year history of the multilateral trading system. The negotiating and rule-making priorities established within the WTO are a crucial determinant of how well the

institution serves the interests of its diverse constituents. A core challenge is to shape the agenda in a way that both respects the interests of the entire membership while at the same time securing the continued commitment of all parties. In pursuit of this balance, the Commission recommends that consideration be given to the circumstances in which a "critical mass" approach to decision-making might apply. The key implication of this approach is that not all Members would necessarily be expected to make commitments in the policy area concerned. We are aware of the sensitivities inherent in this proposition and have taken care to spell out criteria that would need to be met in adopting such an approach. Among the criteria for considering a critical mass approach to defining the agenda are the need to identify a positive global welfare benefit, to protect the principle of non-discrimination, and to accommodate explicitly the income distribution effects of rule-making.

- 2 As far as dispute settlement is concerned, the Report has focused on those aspects of reform that could improve access to the procedures for the smaller and weaker Members of the WTO. In this connection, the Commission recommends that Members be given a right to the services of a Dispute Settlement Ombudsman whose role would be to mediate between potential disputants upon the request of one party at a stage prior to launching a formal complaint. Such a procedure would allow recourse to the good offices of an independent party prior to any formal bilateral consultations.
- 3 The Commission is aware of recent improvements that have been made in enhancing the transparency and accessibility of dispute settlement proceedings and recommends that these initiatives be sustained and strengthened, particularly in relation to hearings that are made open to the public and in allowing the submission of *amicus curiae* briefs before panels and the Appellate Body (AB).

- 4 One of the greatest successes of the WTO dispute settlement system, like that of the General Agreement on Tariffs and Trade (GATT) before it, has been the high degree of compliant behaviour by Members in respect of findings. Nevertheless, where Members neither comply nor offer compensatory trade policy action, the option for aggrieved parties to take retaliatory measures is neither attractive when seen against the objectives of the WTO Agreement nor feasible when small economies are pitted against large ones. In light of this, the Commission recommends that consideration be given to WTO Members accepting an obligation to provide cash compensation to aggrieved parties where compliance or trade-related compensation is not forthcoming.

Reflecting the growing influence of developing countries in the WTO and the increasing importance attached to development and developing country concerns at the WTO, Chapter 3 of the Report is devoted to considering how the WTO might be reformed so as to benefit further its weakest Members. We note that the impact of the multilateral trade regime on developing countries is influenced by effective export opportunities, the choice of the negotiation set, the policy design of negotiated outcomes and the manner in which results are implemented. Following a short discussion of links between trade and development, the Report takes up the questions of Special and Differential Treatment (S&DT) and Aid for Trade (AfT).

- 5 Debate over S&DT provisions in the WTO has been contentious and over-politicised and the need for substantive analysis has often been neglected. Critics of S&DT provisions have characterised them as insensitive to diverse conditions in developing countries, often irrelevant to real development needs, and over-reliant on best-endeavour undertakings that are often disregarded. The Commission recommends that efforts be redoubled to design clear, concrete S&DT provisions based on solid analysis of development needs and cognisant of the reality that differing needs among developing countries call for differentiated measures. The Commission commends the

approach taken in the Doha negotiating mandate on trade facilitation, where the need for technical assistance and resource support to undertake new trade disciplines is linked to the ability to do so. The Commission also believes that the systemic aspects of this issue should be taken up in the proposed reflection exercise.

- 6 The Commission notes the importance of increasing opportunities for developing countries to benefit from trade through improving physical infrastructure and human capital, modernising and streamlining administrative procedures, and strengthening trade-related regimes such as those dealing with product standards. The Commission applauds the AfT initiative and recommends that the respective responsibilities of the WTO, donor nations, potential recipient nations, and the other international organisations involved with this initiative be clearly delineated. Failure to identify the locus of respective responsibilities will weaken the effectiveness of AfT and heighten the risk that the WTO will be wrongly blamed for the lapses of others. Thus each party should be held accountable for its contribution to this initiative, which should stand apart from trade negotiations.

Chapter 4 of the Report covers the relationship between multilateralism and regionalism, a topical but vital issue in today's trading environment. Although the WTO remains the centre of gravity of the multilateral trade regime, the proliferation over the past 10-15 years of Preferential Trade Agreements (PTAs) has raised pressing questions about the quality of trade relations today and their likely future directions in what few would regard as a stable equilibrium. The Commission acknowledges that PTAs are here to stay, but is of the firm view that where feasible, the energy behind such initiatives should be channelled towards reinforcing accepted multilateral principles. We make three specific recommendations in this regard.

- 7 The Commission believes that the very rapid growth of PTAs in recent years has unnecessarily raised trade costs and carries worrying implications for the world trade regime in terms of stability, fairness, opportunity and coherence. The Commission therefore recommends that as part of a concerted response by governments to this situation, current efforts to clarify and improve disciplines and procedures in relation to WTO provisions on Regional Trade Agreements (RTAs) be intensified.
- 8 The Commission recommends that as an expression of their commitment to the multilateral trading system and of a willingness to provide leadership in maintaining and strengthening international trade arrangements for the benefit of all, the major industrialised countries should refrain from establishing PTAs among themselves. The Commission also believes that large developing countries with significant shares in world trade should similarly refrain from negotiating PTAs with each other.
- 9 The Commission recommends that WTO Members strengthen and make permanent the recently established Transparency Mechanism (TM) for reviewing RTAs. The Commission believes that this would provide crucial support for an urgently needed process of reflection, independent of negotiations, to consider how to manage the relationship between multilateral and regional trading arrangements. In this connection, the Commission recommends that consideration should be given to developing a mechanism that facilitates collective surveillance of RTAs and possibly the establishment of a code of best practices.

The themes of this Report are drawn together very briefly in a concluding section. Given that the multilateral trading system is at a crossroads, the Commission perceives an urgent need for a reflection exercise to clarify and solidify the commitment of the international community to a healthy, vibrant and equitable multilateral trade regime. We believe that this reflection exercise should be open to all Members, should welcome inputs from other interested stakeholders and should examine the wide range of issues confronting the multilateral trade regime. The terms of reference of this reflection exercise should include, but go beyond, the issues covered in this Report. An emerging issue clearly in need of attention is the relationship between climate change and trade. In addition, we believe this process should give particular consideration to the manner in which the WTO's surveillance and monitoring function could be further developed and given specific institutional form and support, so that this function can assume an importance comparable to the WTO's legislative and judicial roles.

- 10 The Commission therefore recommends that a process of reflection be established in the WTO, led by the Chairman of the General Council and/or the Director-General, to consider the challenges and opportunities facing the multilateral trading system and to draw up a plan of action to address them.

Introduction

'[T]hrough foreign trade, people's satisfaction, merchants' profit and countries' wealth are all increased'

Ibn Kaldun, 14th Century Arab philosopher

Five Challenges Facing the Global Trade Regime⁴

International Commerce and its Regulation

Trade is as old as humankind; indeed it could almost be thought of as a human instinct. It is normally a vehicle for progress. Trade is driven by market forces, but like all forms of human activity it requires a set of rules and institutions which, ideally, should accentuate the positive and limit the negative. The perennial question is how to secure the appropriate balance in the relationship between the power of the market and the goals of the state. The starting assumption has usually been to allow the market to determine the norms and rules of the relationship. From the time of the consolidation of the European nation state in the 17th century, mercantilism has seen trade as an instrument of national (foreign) policy and in the contemporary era, the relationship between the globalisation of trade and sovereignty has become an increasingly contentious political question.

Scholars and practitioners of economic cooperation hold to the view that the balance between the interests of the state and the free functioning of the market can be mitigated. Economic globalisation complicates, but does not eliminate, the state's ability to mitigate the dislocations and other harmful effects produced by economic activity. In the second half of the 20th century, states addressed these harms through domestic policies and through the development of sets of norms and principles and various institutional instruments of multilateral, regional and bilateral economic cooperation that are now collectively referred to as the global trade regime.

Painful lessons, drawn from the economic turmoil of the 1920s and 1930s, helped to shape the global economic system established after 1945. Rejecting economic nationalism, beggar-thy-neighbour devaluations, and tariff hikes, the major Western powers created a

set of post-war economic institutions that fostered predictability, and thus growth, in international commerce. Traders could plan, firms could invest with confidence, and for three decades sustained improvements in living standards were enjoyed by millions. The GATT, the predecessor to the WTO, was a central pillar of the post-war economic system and the principles it embodied – non-discrimination, market opening, reciprocity, procedural fairness and transparency – even if not always fully practised, still provide solid foundations for the global trading system. Tariffs imposed by Western European and North American nations on imported industrial goods have fallen dramatically since the end of World War Two, to average rates of less than 4 percent today.

From the 23 countries that were contracting parties to the original GATT, the WTO has grown to include 151 Members (as of July 2007). Only one of the world's major powers, Russia, is not yet subject to multilateral trade rules. No Member of the WTO has ever sought to leave and, indeed, there is still a queue to join. The organisation is the leading forum for arbitration and negotiation on international commercial matters, and disputes between WTO Members are almost invariably settled. Importantly, few disputes result in the imposition of trade sanctions and rarely do harm to wider international ties. Overall, the WTO functions remarkably well in comparison to the other major international economic institutions. Expectations – in both the public and private sectors – are effectively shaped by the widely accepted WTO principles of non-discrimination, reciprocity and transparency.

The Warwick Commission Report is not a study of the WTO *per se*, although for obvious reasons, the WTO is central to our study of the multilateral trade regime.⁵ The four key functions of the WTO are:

- **Reducing discrimination and furthering market-access opportunities in international commerce** The successes of the GATT/WTO system are exemplified in the progressive liberalisation of tariffs since 1947 and the near-universal membership of the WTO today. The entry requirements faced by new WTO Members are stringent; mirroring the significant recent broadening of the multilateral trading system's substantive remit. Yet the fact that twenty-three countries have nonetheless chosen to meet them since 1995 suggests that they see benefits in joining the system.
- **Formulating rules for the conduct of international trade** The depth and range of rules on cross-border trade and investment have grown significantly over the 60-year life of the GATT/WTO. Parties to the agreement have not always agreed on the desirable content of the rules but nobody contests the value of multilateral rules in fostering certainty and predictability in trade and in helping to dilute the role of power in determining trade outcomes.
- **Promoting transparency in national laws and regulations** Through its various agreements, the GATT/WTO has enhanced the transparency of commerce-related national laws and regulations through the requirement for Members to publish changes to their trade measures and notify any changes in rules. The Trade Policy Review Mechanism also plays an important transparency role.
- **Settling commercial disputes** The Dispute Settlement Understanding (DSU) of the WTO has given an unprecedented enforceability to agreements. It is one of the most successful, and the busiest, state-to-state dispute settlement systems in the history of international law. As of January 2007, WTO members had filed 356 complaints through the DSU.

While the WTO's accomplishments are no mean achievement, the current multilateral trading system, as governed by the WTO, also faces serious challenges. In particular, there is evidence that many of the lessons of the 20th

century are in danger of being 'unlearned' in the 21st century, especially in relation to the importance of multilateral institutions, and the rules, norms and principles that underpin them. That a malaise afflicts the multilateral trading regime is suggested not only by the current impasse in the Doha Development Agenda (DDA) negotiations but also by other symptoms in the contemporary global economy linked to the global trade agenda, including the protests that accompany ministerial meetings of the WTO; near permanent rumblings of discontent by diverse groups of countries from within the organisation; and growing resort to alternative forms of economic governance, including bilateral and regional PTAs. But these developments are part of a strange paradox. As we argue in Chapter 1, while there is evidence of diminishing socio-political support for trade liberalisation in many Organisation for Economic Cooperation and Development (OECD) countries there is, at the same time, ongoing trade liberalisation in the developing world. Moreover, much of the trade liberalisation in developing countries has occurred on a unilateral basis.

Of course, the trends depicted above in the relationship between industrialised and developing countries relates to more than trade. Enhanced global integration also exists in the domains of finance, technology and culture. At the same time, it is important to remember that we do not live in a simple binary world of developed and developing countries. Both these groupings are rich in contrast. We believe that these deepening interactions are not accompanied by an equivalent enhancement of the existing global governance infrastructure, which gives rise to what is frequently referred to as a 'global governance gap'. While it is important to recognise that this Report is embedded in this wider context – a context that includes serious questions about the contemporary functioning of the other international economic institutions whose mandates increasingly intersect with that of the WTO – it cannot and does not address these related issues.

The central aim of this Report is to identify a number of key problems that affect the workings of the global trade regime in general, and the WTO in particular, in the early 21st century. As we make clear, these problems have many different facets. They raise questions of politics and public policy as much as they do questions of economics. Arguing that trade reform raises the overall welfare of a nation persuades few, especially at a time when distributional concerns are growing. Traditional intra-national concerns about the political economy of trade policy are being augmented by a more diverse and often difficult set of state-to-state interactions on commercial policy matters. Both these tendencies have dogged the Doha Round negotiations.

The Report in no way suggests that the system is irrevocably broken. Rather, it asks whether the rules, principles and processes that underpin the multilateral trade system can address the challenges it faces in the first decades of the 21st century. In the chapters that follow the analysis focuses on these challenges and identifies a number of concrete, practical recommendations for policymakers. These recommendations, we believe, are reasoned rather than ideological, and reformist rather than revolutionary. In what follows, we identify five central challenges facing the world trading system and the questions and dilemmas they pose for policymakers.

1 The Rise and Decline of Support for

Openness A paradox is emerging in the current global political and economic landscape. While many governments continue to liberalise and internationalise their economies, there has been a marked reduction in public support for open markets in significant sections of the populations of major OECD countries. Concern about stagnant wages, job losses, job instability, growing income inequality and environmental degradation are a central part of political debate in many industrialised countries. Trade is seen as part of the problem rather than part of the solution by some sections of the community. At the same time, there is growing support, at least at the level of government policy, for economic liberalisation in many of the faster-growing, developing countries.

In addition to the scepticism of anti-globalisation movements, some business leaders in OECD countries also seem increasingly ambivalent towards multilaterally-brokered trade reforms, either for reasons of complacency – taking open markets for granted – or because of a growing concern that the slow pace of WTO discussions is out of “sync” with ever-accelerating cycles of corporate decision-making. Such a disconnect also helps explain the greater faith that many businesses seem to place in the faster pursuit of preferential, especially bilateral, trade bargains. Furthermore, in many cases, political leaders see further liberalising reforms as ‘no-win’ political propositions for them on the home front, thus limiting their room for manoeuvre in global trade talks. Growing discontent appears to be eating away at the domestic political roots that have underpinned reciprocity in trade relations and it raises important questions about how to restore national political bargains to support openness.

While an in-depth analysis of such domestic changes is beyond the scope of this Report, it bears noting that they undoubtedly have ramifications for the global trade regime, which is the focus of the Report. The last few years have served as a stark reminder that decision-making at the WTO can be neither swift nor seamless. Moreover, the growing mismatch between the length of time taken to arrive at agreed outcomes among WTO Members and the planning horizons of many business executives may help to explain the latter’s reduced support for trade reform. Similarly national politicians, whose focus often extends no further than the next election, may discount WTO initiatives if negotiations drag on endlessly. Innovative solutions, the most salient of which may well have more to do with the reform of domestic policies than with modifying international trade rules, are needed here.

2 Managing Multipolar Global Economic

Governance The second challenge facing policymakers is to ensure that the increasingly multipolar nature of the global trading system does not itself become a source of stalemate and dysfunction. It is clear that a

re-adjustment in power relations in the global economy is currently unfolding. The recent years have witnessed a transition from one global economic equilibrium to another as new voices and centres of gravity emerge in the world economy. In this context, careful thought and action is needed to ensure the sustained participation of all major groups of WTO Members. Simply put, the fast-growing emerging economies must assume constructive leadership roles in the global trading system while steps are needed to ensure that the originally dominant economic actors, above all the United States and the European Union, do not disengage. At the same time, the smallest and poorest WTO Members must retain a valued stake in the system. Tackling this challenge requires a revised *modus operandi* in the negotiation, content, and form of WTO agreements.

3 Defining the Contested Boundaries of the WTO The third distinct challenge facing policymakers is reconciling the sometimes competing objectives of the WTO. Accompanying their growing weight in the WTO, developing countries have rightly demanded that certain matters of particular importance to them be addressed, for example, agricultural trade barriers. At the same time, WTO Members want multilateral trade rules to keep up with commercial developments in the world economy. As the debate over the ‘Singapore Issues’ in the DDA showed, the very boundaries of the WTO are contested. This raises important questions about the remit of the WTO. For instance, should the WTO confine itself to a limited number of trade-related measures, assuming the latter term could be satisfactorily defined? If so, would such a WTO retain the interest of all of its membership? Alternatively, should the WTO gradually become the locus of economic regulation in an increasingly integrated global economy? These questions speak to the very purpose of the WTO and practical guidelines, founded in commercial, legal and political realities, need to be advanced.

4 Making the WTO Work for All Members: Justice and Fairness Issues and Development The purpose and boundaries of the WTO are not the only areas that have attracted

controversy. Decision-making processes in the WTO have come under scrutiny and not just for those concerned with issues of procedural fairness for its own sake but because process also influences outcomes. Unfair processes can result in disengagement by Members and a decline in the credibility of an organisation. The WTO attracts criticism from, among others, some Non Governmental Organisations (NGOs) and developing country governments, dissatisfied with what they see as the qualified legitimacy of its negotiation, decision-making, and dispute settlement processes. These criticisms were brought to a head at the Seattle Ministerial meeting in 1999. The WTO has been insufficiently credited for responding to this challenge since then. It has instituted several substantial reforms, especially in the direction of improving internal transparency, and it is not difficult to argue that it is ahead of other international organisations in this regard.

Nevertheless, several fundamental problems persist. These are reflected in the continuing criticism of the WTO and were evident in many of the responses to the questionnaire distributed by the Warwick Commission. The WTO needs to continue its efforts to build a more just multilateral trade system. Members need to balance the potentially competing demands for efficiency, fairness, and legitimacy within the system in such a way as to keep the diverse membership of the WTO engaged. Fairness here typically refers to procedures used in the negotiation and decision-making process (often termed “procedural justice”). They also include issues of fair representation, fair treatment, fair play, and transparency.

Development issues have become more prominent in WTO deliberations in recent years, reflecting the changing composition of its membership and a deeper but still far from perfect understanding of the relationship between trade, growth and development. Here too the trading system faces a significant challenge – that of establishing a balance of rights and obligations among Members that is both perceived as legitimate and sufficiently flexible while also addressing the trade-related development needs and priorities of individual members.

Two key elements defining the utility and relevance of the WTO to developing countries relate to S&DT and capacity building. A more de-politicised, nuanced and analytical approach is needed to define appropriate levels of commitment for individual Members in the system – levels that are commensurate with individual Members’ development status and implementation capacity. On capacity building, the WTO is but one player among many that share responsibility with the Members concerned to build capacity in order to participate more effectively in the trading system. The WTO needs both to appreciate its limitations as a source of technical assistance and to engage in those capacity-building activities it is best placed to supply.

5 Multilateralising Preferential Trade Agreements The fifth challenge facing the world trading system follows partly from a growing frustration with slow decision-making in the multilateral regime. As a consequence, policymakers are turning to other vehicles for trade reform – notably bilateral and regional trade agreements of a preferential nature. To be sure, frustration with the multilateral system is not the only spur towards growing preferentialism, but experience shows that these alternative vehicles for reciprocal trade liberalisation have important and, to the extent that they have recently taken on truly global proportions, increasingly significant knock-on effects for the multilateral trading system as the share of global trade conducted along preferential lines reaches unprecedented levels. Reconciling these approaches to trade reform is not a particularly new challenge but it is an enduring one. This Report makes a number of recommendations in this regard, including some steps to “multilateralise” regionalism.

The Structure of the Report

Chapter 1 of the Report surveys the global commercial and political context in which the Report is situated. It starts with a review of the positive elements of the contemporary global economy and the global trade regime before identifying those more troublesome elements that are making it increasingly difficult for the global trade regime to advance – what we call the paradox of deeper integration and shallower support. Chapter 2 explores the challenges of agenda-setting and decision-making in the WTO and recommends new approaches to these issues. Chapter 3 examines development issues in global trade, and makes several recommendations, notably pertaining to S&DT for developing countries and the AFT initiative. Chapter 4 focuses on the question of PTAs and makes a number of recommendations about multilateralising regionalism. The Conclusion: Which Way Forward? briefly makes one general point; that the membership of the WTO undertake a constructive, non-litigious, non-confrontational “reflective exercise.” It identifies the conditions under which such an exercise might take place as a positive approach towards cooperation in the near future.

Chapter 1

The Global Economic Paradox: Deeper Integration, Shallower Support

During the years of the GATT and through to the end of the Uruguay Round, the United States and the European Union dominated multilateral deliberations on trade policy. This bipolar system has now given way to a multipolar alternative in which Brazil, China, and India have asserted greater influence over the trajectory of the multilateral trading system. That trajectory is also being conditioned, as we will demonstrate, by a weakening in public support for open borders in the industrialised world, a worrying trend that generally speaking finds no counterpart in the developing world, where public support for the opportunities created by integration into the world economy remains high. This Chapter examines these trends and draws out their implications for a reciprocity-based multilateral trading regime where, in principle, each player has a veto.

1.1 Globalisation and the Shifting Politico-Economic Landscape

Economic globalisation, especially enhanced trade liberalisation and financial deregulation, has brought national economies ever closer together. The contours of the global economy continue to exhibit far-reaching changes. Throughout the second half of the 20th century, economic clout in matters of global commerce was chiefly concentrated in the USA, European Union and Japan. In this new century, their collective economic dominance is giving way to a dispersal of economic power in a southerly and easterly direction as developing countries come to account for a growing share of global trade and investment. Such a share has increased by fully a quarter since early the early 1990s – up from 39 percent of global Gross Domestic Product (GDP) in 1990 to 49 percent in 2006. Along with the three

traditional economic powers and Russia, Brazil, India and China have become important centres of economic and political power in the world economy. The tables that follow illustrate their growing economic importance.

Table 1 shows that together, Brazil, China, India and Russia have substantially increased their share of global GDP. These four states now account for over one quarter (26.53 percent) of global GDP in purchasing power parity terms. Their share of global exports has risen from 4.14 percent in 1990 to 14.66 percent in 2006. On the import side the share has risen from 2.75 percent to 9.59 percent over the same period. Their share of global import trade has also risen by 4 percent in the same six-year period. China's economic rise has undeniably relied on its growing trade ties with the outside world. India has positioned itself as a major international services provider. Both countries have grown as important outsourcing destinations; manufacturing in China and information technology and business services in India. By contrast, Brazil's position as a powerful agricultural and commodity trader has consolidated its position. A principal feature of our evolving world is thus one of multiple centres of economic activity. As important as they are, it would be a mistake, however, to focus on the growth of China and India alone. Other larger developing countries such as South Korea, Mexico, Egypt, Turkey, and most recently Vietnam (see accompanying box), have had similarly impressive growth rates in recent years.

Not for the first time we are at a critical moment as a global economy. Continued trade liberalisation, financial deregulation and the possibilities brought about by new technologies and the skills revolutions, the

TABLE 1: BRAZIL, RUSSIA, INDIA AND CHINA (BRICS) IN THE GLOBAL ECONOMY (percentages)

SHARE OF GDP (purchasing power parity)

	1990	1995	2000	2001	2002	2003	2004	2005	2006
BRICs	12.85	19.28	21.54	22.28	23.05	23.94	24.75	25.66	26.53
OECD	63.14	61.81	60.18	59.43	58.63	57.53	56.48	55.36	54.37

SHARE OF GLOBAL EXPORTS

	1990	1995	2000	2001	2002	2003	2004	2005	2006
BRICs	4.14	7.76	9.38	9.97	10.81	11.68	12.73	14.01	14.66
OECD	74.80	72.13	68.91	68.60	67.90	66.97	65.32	62.77	61.32

SHARE OF GLOBAL IMPORTS

	1990	1995	2000	2001	2002	2003	2004	2005	2006
BRICs	2.75	5.61	5.60	6.06	6.59	7.44	8.05	8.59	9.59
OECD	76.24	70.78	73.48	73.12	72.30	71.58	70.44	69.30	68.00

Sources: International Monetary Fund, *World Economic Outlook Database*, April 2007
 International Monetary Fund, *Direction of Trade Statistics*, June 2007

hallmarks of contemporary globalisation, have yielded undoubted benefits for many in the industrialised world. But these benefits are no longer the preserve of the wealthier nations. Major developing countries are also increasingly the beneficiaries of globalisation and its shapers too.

Accompanying their increasing global economic importance, China, India and Brazil have also become more active political and diplomatic players in many key international forums. More specifically, within the global trading system, India and Brazil have become increasingly powerful role in the negotiation processes, especially with the formation of the G-20 coalition in the WTO.⁶ The importance of the G-20 coalition as a stable and fairly united coalition of developing countries has been both symbolically and practically significant. Despite the stalemate of the talks at the Cancún Ministerial Conference, India, China and Brazil demonstrated an ability, and future potential, to exercise collective influence on the negotiations. Indeed, India and Brazil have clearly established themselves as what we would call ‘process drivers’ in multilateral trade negotiations.

However, the changing role of the large developing countries has generated new challenges for the multilateral trade system. The transformation of the old Quad group (Canada, the European Union, Japan and the USA) into the G4 (USA, European Union, India and Brazil) demonstrates a surprising flexibility and adaptability of the system, especially when contrasted with the rigidity to be found at the International Monetary Fund (IMF) and the World Bank. But the G4 is not a club of like-minded countries, in the way of the old Quad, and what role it might play in the future remains to be seen. The growing influence of Brazil and India has been accompanied by a degree of dissatisfaction among some weaker developing countries, which have sometimes questioned the ability and the willingness of these two major powers to represent fully their interests. Of course, the potentially limited consideration of the needs of weaker developing countries by Brazil and India ought to be evaluated in the light of the old regime, where developing countries’ interests were not represented at all in the Quad.

In sum, the bipolar multilateral trading system of old has given way to a multipolar alternative. Moreover, large numbers of flexible, and sometimes fluid, coalitions of WTO Members have been formed to assert more effectively national commercial objectives. This has markedly added to the complexity of agenda formation and negotiation in the WTO and the consequences have so far been mixed. The greater participation of a broader range of WTO Members, and the vibrant deliberations that this has produced, is surely to be welcomed, especially at a time when disaffection with, and in some instances disengagement from, other international economic institutions is growing. Yet, at the same time, the difficulties experienced in negotiating and concluding the DDA suggests that reaching accord is now particularly challenging. One critical factor that we believe is shaping the negotiating positions of WTO Members is public attitudes towards further opening up of national economies, a factor which we consider in the two sections that follow. In essence, we examine whether the national preconditions for successful reciprocity-based trade bargaining are under threat and, if so, what to do about it.

1.2 The Emerging Trade Powers and the Support for Openness in Developing Countries

Even though several developing countries have simultaneously emerged as leading trading powers at the same time, this does not imply that the national priorities and challenges facing policymakers in these countries are similar or that the growth trajectories undertaken by them, apart from a trend to openness, are comparable. Degrees of openness also vary by country and sector: China, for example, has opened up considerably both to trade and investment while India has been more reticent on both counts. By opening its economy, China has already become the world’s third largest importer. China has accepted and implemented obligations that go much further than those of most developing countries. By 2007, China’s average imported-weighted tariffs had come down to 6.8 percent, representing a dramatic reduction from the level in 1992, when average tariffs were 40.6 percent. China has made strategic use of

Vietnam: A New Global Player in the Making?

For critics of globalisation and sceptics of the benefits it brings, Vietnam presents major analytical problems. Most important and impressive has been the dramatic reduction in poverty, which in relative terms has been even more so than in China. Vietnam counted 61 percent of its population below the poverty line in 1993. By 1999 this rate had fallen to 35 percent and is now estimated to be below 20 percent. The country's output almost quadrupled over the past two decades from \$14.1 billion, in 1985, to \$52.4 billion, in 2005. In Vietnam's case, trade has been the locomotive of growth: from 1985 to 2004. As with China, trade has been Vietnam's locomotive of growth: from 1985 to 2000, exports increased from \$0.5 billion to \$30.4 billion while imports rose from \$0.9 billion to \$32.0 billion. In the process, Vietnam's export to GDP ratio rose from 32.8 percent, in 1995, to 66.4 percent, in 2004. Vietnam has hardly any external debt. Foreign Direct Investment (FDI), albeit still modest compared to China and a number of its neighbours, has increased from an annual average of \$1.3 billion in the late 1990s to over \$2.0 billion at present.

As with most countries in the recent decade, Vietnam is afflicted by rising inequality: by no means are all segments of the population benefiting equally from globalisation and the country's strong growth performance. Yet along with impressive economic indicators, Vietnam's social indicators reveal a broadly positive story: while ranked as a "low income country" (at a GDP per capita of about \$620), infant mortality, for example, remains extremely low when compared with other low income countries – 17/1,000 live births, as opposed to the low income country average (80/1000), and Asia-Pacific region average (29/1,000). Vietnam scores equally well in other human development indices, including school enrolment, literacy, access to water, life expectancy and gender empowerment.

the multilateral trade system to advance its interests, but at the same time, has refrained from making any explicit attempt to change the regime. By contrast, and notwithstanding that it still sees itself as a country whose overall development challenges prevent it from more fully opening its markets to foreign competition, India plays an increasingly important role in the negotiation processes as a member of the G4.

India's economic growth, like that of China and many other emerging economies, has been increasing dramatically irrespective of any resolution of the DDA. Indeed, according to one set of calculations, failure to conclude the DDA would only cost China the equivalent of three days of economic growth. For India, the gains from a successful conclusion of the DDA would be larger, but its expected gain of twenty-one days of growth would not be staggeringly high. Clearly, these numbers must be part of the explanation of China's low profile in the Doha negotiations and India's reluctance to offer reciprocal concessions on what they perceive as 'small deals' from the USA and European Union. The basic point is that for India and China the gains to be had from the liberalisation on offer in the DDA are small when compared to the gains from their own unilateral growth trajectories.

This is not to suggest that China's role in the WTO to date has been negative. By and large, its policies have been supportive of a rules-based multilateral trading order and it has used this current round of multilateral trade negotiations as a "listening and learning" exercise. But China has shown little interest so far in promoting reform of the WTO and the multilateral trade system. Although China has been present in the Doha negotiations, it has yet to develop a leadership role akin to that of Brazil or India. Furthermore, China has become very active in the recent wave of bilateral PTAs in the Asian region, which have the potential to undermine the multilateral system (for a detailed discussion of the systemic effects of the rise of trade preferentialism, see Chapter 4).

Hence it is clear that there remains a misalignment between the new roles of

China and India in the global economy and their ability, regardless of desire, to shape its institutions. However, there is a need to differentiate between these two powers as well as among institutions. As outlined above, China is supporting the conclusion of the DDA. By contrast, China's role in international finance is more difficult to interpret. The relationship between China and the IMF reflects a significant level of tension, not least in relation to exchange rates. India is much more active in the public debate on trade, partly because of its membership in the G4, but comparatively quiet in the discussions on financial affairs. Of course, this is not the only disconnect in the new economic geography. OECD countries also exhibit reluctance to accept the changing geo-economic realities of the 21st century. But it is the diffusion of global economic power to the major developing countries that has changed the nature of the power equation in the contemporary international economic order. The developing majors now have a role, a veto power even, in the contemporary era that they did not previously possess.

Their influence is not confined to the global trade regime but felt within the global economy generally. Clashes between China and the United States or the European Union over trade balances and exchange rates illustrate this point. For the USA, the two issues have become inseparable and, a trend that also has begun to take root in many quarters of the European Union. The second half of 2007 saw considerable pressure within the US Congress to pass legislation imposing special duties on Chinese imports to offset the competitive advantage thought to accrue to Chinese goods arising from the undervaluation of the yuan. These linkages between trade and finance are part of the contextual background of this Report. Apart from the noticeable weakening of support for trade liberalisation, we are seeing a similar resistance to the free flows of capital and demands for greater control over FDI.

Within the European Union, restrictions even on intra-European investment are rising, in manufacturing and services alike, notably in Spain (energy), France (steel) and Italy (banking). Instigated in part by the rise of

government-owned investment funds in China and elsewhere in Asia and the Middle East, governments in the European Union are discussing the introduction of limitations on foreign investment. In the United States, politically imposed restrictions on foreign ownership of certain industries have long been accepted and are now accompanied by increasingly frequent calls for greater control over the activities of Sovereign Wealth Funds on national security grounds.

While there has always been political opposition to the sale of 'national assets' to foreigners, the bulk of regulatory change in investment regimes across the globe remains favourable to FDI. Of 205 regulatory changes in FDI regimes reported in 2005, 164 were liberalising, as opposed to restrictive, in nature. The political clamour to impose restrictions on foreign investment has, indeed, picked up noticeably in recent years. With it comes the risk that such pressures lead to greater inward-looking and discriminatory practices against foreign capital and, over time, foreign goods.

In contrast to growing public fears about globalisation in industrialised countries, which will be the subject of the next section, many citizens in the developing countries and, especially, the political elites of East and South Asia are coming to the conclusion that open borders are, on balance, positive for their regions. According to a 2006 Gallup Poll, 71 percent of Africans thought that globalisation was good for their own countries. In the Asia Pacific, 52 percent of those surveyed had a positive perception of globalisation, with only 5 percent viewing it as negative. This level of support in the developing world for worldwide economic change has yet to manifest itself in the unfettered commitment towards policies aimed at strengthening the multilateral trade regime by the emerging players, especially when one looks at the positions taken at the WTO by the largest developing economies in recent years.

1.3 The Waning Popularity of Globalisation in Industrialised Countries

Globalisation has come under increasing criticism in the early years of the 21st century

from the public in industrialised countries, both large and small. Increased trade growth and trade liberalisation, along with financial deregulation, have informed a better understanding of globalisation. Evidence from opinion polls suggests that the public support for globalisation in OECD economies grows when workers achieve higher wage levels and deteriorates when labour markets perform badly, when labour remuneration is stagnant or unemployment rising. In Germany, for example, trade liberalisation enjoyed overwhelming support whilst real wages were rising during the immediate post-World War Two decades. But as real wage growth has stalled since 2000, a weaker level of support for globalisation has been observed.

In the 2006 Gallup Poll, support for globalisation was weak in OECD countries. Responding to the question about whether globalisation was a good thing or a bad thing for one's country, only 26 percent of North Americans considered it 'a good thing', whilst almost as many, 24 percent, thought globalisation a 'bad thing'. Figures for Western Europe (28 percent positive, 22 percent negative) were similar. This is in sharp contrast to the wide ranging positive assessment of globalisation in developing countries reported in the previous section of this Chapter.

Looking at polls on a country-by-country basis, the emergence of a globalisation backlash in OECD countries becomes even more obvious. A FT/Harris poll, in July 2007 saw only a minority of respondents in the five largest European countries and the USA thinking globalisation had 'a positive effect in their country'. This figure was lowest in the United Kingdom, Spain and the United States (15 to 17 percent), and was, not surprisingly, highest in Germany, the world's biggest exporter (36 percent). However, the fraction perceiving the negative effects of globalisation was much higher in all six countries. Even in Germany, which has taken advantage of the trade opportunities created by globalisation for decades, 42 percent of respondents thought that globalisation was having negative effects on the country.

In the USA, for decades the world's strongest force for globalisation, the gilded age of strong

economic growth and ample opportunity for all Americans is widely thought to have ended. Although globalisation is not the cause of the problems in the American economy, it has revealed underlying weaknesses and structural faults such as unprecedented levels of governmental and international debt, a deteriorating public education network, the ever weaker social security provision for health care and unemployment. All this is accompanied by a growing concentration of wealth and power at the same time as top earners have been the prime beneficiaries of recently enacted tax cuts.

The weakening political support for globalisation in OECD countries is explainable. Concerns in the North appear to have little to do with demands of workers or with ill-founded xenophobic fears. Workers in OECD countries are simultaneously confronted with greater risks due to a new international division of labour, particularly in service industries, a cutback in social security systems, a rising inequality due to rising incomes of the richest 5 percent of the population, and reduced efforts of policymakers to counter inequality by redistributing income. The policy implication is that without state measures to influence labour market outcomes, declining support for globalisation in OECD countries can be expected to continue.

The uneven distribution of welfare gains from international trade – both among and within states – is a major issue affecting the long-term political support for the multilateral trading regime. Trade liberalisation in the past has been based on the assumption that benefits from trade are realised in all the countries that participate in the process of multilateral liberalisation. Whilst it has always been clear that some sectors of an economy may suffer from increased foreign competition, the expectation has been that national aggregate economic welfare overall would rise with trade liberalisation.

But today there is growing support for the view that the continuing division of labour brought about by the growth in the economies of major developing countries, such as China and India, is having negative consequences for

the major economies, especially the USA and European Union. After World War Two, trade liberalisation enjoyed wide political support in most industrialised countries. In the decades after 1945, most workers enjoyed both improved employment opportunities through export-led growth and an increase of their standard of living due to cheaper imports. However, this has begun to change. Although workers still enjoy the benefits of cheap developing country, especially Chinese, imports their real wages are no longer rising. In the United States, for example, more than 96 percent of all workers saw no increase or, in some cases, a decline in their real earnings between 2000 and 2006. At the same time, earnings have risen sharply for a very small elite of highly qualified people and corporate executives.

Over the past two decades, labour has become increasingly global. Population growth, and the integration of China, India, and countries from the former Eastern bloc into the world economy, has led to an estimated fourfold increase in the effective global labour force. According to the IMF, the latter could more than double again by 2050. The bigger labour pool is being accessed by industrialised countries through imports of final products, off-shoring of the production of intermediate services, and immigration. Although off-shore out-sourcing has received much attention, it is still small in relation to the overall size of the world economy. For example, off-shore inputs make up only about 5 percent of gross output in industrialised countries. This ongoing globalisation of the labour market has drawn increasing attention from policymakers and the media, particularly in the industrialised economies. The most common concern is whether the unprecedented addition of such a large pool of workers from emerging markets and developing countries is adversely affecting compensation and employment in the industrialised economies.

Integrating workers from emerging market and developing countries into the global labour force has produced big benefits for industrialised economies where, contrary to fears that globalisation is driving down wages, total labour compensation has grown by a cumulative 60 percent on average since

1980. This is in part due to greater export opportunities while productivity and output have benefited from lower input costs and better production efficiencies. The decline in traded goods prices over the past 25 years has generated an estimated 6 percent increase in both output and real labour compensation on average in industrialised economies.

Despite these benefits, the share of income accruing to labour, as opposed to capital, in industrialised economies has fallen by about 7 percentage points on average since the early 1980s, with the largest drop in Europe and Japan. It is this type of decline that fuels concerns that globalisation and two of its most important vectors, trade and investment liberalisation, rank among the chief culprits. Yet, rapid technological change, that is 'skill-biased technological change', has had a larger negative impact on the share of income going to labour than the globalisation of labour *per se*. OECD research has shown that countries adopting reforms to lower the cost of labour to business, by lowering the 'tax wedge' – the difference between the payroll cost to a firm and the net take-home pay of workers – and improving labour market flexibility, have generally had a smaller decline in labour share. There is little denying, however, that technological change is reducing the share of income going to unskilled labour, and growth in total real labour compensation in unskilled sectors has hence been sluggish. Not surprisingly, globalisation tends to be equated with rising job insecurity, often prompting calls to halt or reconsider policies of engagement towards the world economy.

Openness to merchandised commerce may well be a vital force sustaining world growth. But policymakers need to ensure that all people benefit by strengthening access to education and training, adopting adequate social safety nets, and improving the functioning of labour markets. This includes providing adequate income support to cushion, but not obstruct, the process of change, making health care less dependent on continued employment and increasing the portability of pension benefits in some countries. This last measure would enhance the flexibility of the economy by facilitating

the movement of workers from declining sectors to expanding sectors and regions.

It is in this difficult political context for globalisation in OECD countries, and perhaps most notably in the United States, that some prominent economists and policymakers have begun to question its ultimate benefits for the American economy. These are not the voices usually critical of globalisation. For example in 2004, Nobel Laureate, Paul Samuelson, questioned whether globalisation would continue to be beneficial for all economies. Productivity gains in one country could, under certain circumstances, benefit just one country and hurt the others. Mainstream trade economists, Samuelson argues, have for too long, ignored the adverse effects of globalisation on incomes in the United States. He challenged the widely held view that, overall, industrialised economies benefited from liberalisation even if the short term effects, due to the transfer of production to cheaper locations, were negative.

Alan Blinder, another respected American economist, recently added to this debate. While acknowledging the benefits of free trade, he argued that America could be hit by a wave of job losses as a result of trade liberalisation with between 22 and 29 percent of jobs in the United States at risk of being lost to 'off-shoring' with the impact no longer restricted to low-skill jobs but increasingly affecting high-skill services such as radiology, architecture and engineering. The relevance of the above insights is that they alert us to the fact that whilst the principles that underlie trade liberalisation remain largely unchallenged, even in analytical circles traditionally supportive of globalisation, they are currently undergoing a process of qualification.

In previous decades, workers in industrialised countries were partly protected from these negative effects of globalisation by social policies that mitigated the effects of the relocation of production processes in countries with lower labour costs. Thus, uneven distributional consequences of economic openness and trade liberalisation were mitigated by social safety nets and other forms of government support to assist firms and workers that were dislocated by trade

liberalisation, the so-called ‘compromise of embedded liberalism’. However, over the past twenty years or so, many such supportive policies appear to have been eroded in a number of OECD countries.

The standard economic response to this dilemma – that liberalisation enhances aggregate welfare – might well be correct. But it does not solve the political problem. It might be good economic theory but it is often poor politics. Some, but not all, objections to liberalisation are clearly just protectionism by another name. Moreover, even where material compensatory mechanisms might be adequate, the destruction of domestic social arrangements can have deleterious outcomes of their own. If knee-jerk protectionist or other nationalist responses are to be avoided in the early 21st century, then public policy must distinguish between politically inspired protectionism and legitimate welfare concerns. Securing domestic political support for the continued liberalisation of the global economy requires more than just the assertion of its economic virtue. It also requires political legitimacy.

Although the distribution of income and support for trade liberalisation are only weakly correlated, some of the legitimacy problems confronting the multilateral trade regime appear to result from a perception that growing income inequality is, in part at least, a product of trade liberalisation. We have illustrated our argument by reference to the USA given its pivotal position in the global economy, but the general argument pertains to other countries, including the dynamic developing countries. When the middle classes in OECD countries see their fortunes wane, they become inward-looking. This does not bode well for globalisation, in general, and the prospects for further trade liberalisation, in particular. Evidence is mounting that globalisation is starting to hurt skilled workers in OECD countries, exactly the groups that have to date been its main political supporters. The benefits from globalisation have to be distributed more equally if we are not to see a rise of protectionism in OECD countries.

1.4 Conclusion

Trade liberalisation, a core characteristic of globalisation, was frequently disavowed by representatives of developing countries in the past, especially during the 1970s amidst calls for a New International Economic Order (NIEO). Today, conversely, we are witnessing a rapid rise in the number of globalisation sceptics from the OECD countries. There is a significant body of evidence suggesting that there has been a substantial weakening of the political constituency for globalisation, particularly in industrialised countries. Whilst many in industrialised countries fear further liberalisation, in recent years citizens in developing countries are increasingly sharing the benefits of globalisation. Rapid economic growth in China and India, coupled with the lasting boom in prices for primary products have contributed to this perception.

To be sure, there has always been opposition to liberalisation, in industrialised as well as in developing countries. But in the early 21st century, the traditional coalition of globalisation supporters in some key OECD countries appears to be weakening. With business groups no longer as outspoken in their support of trade liberalisation, particularly at the multilateral level, as they traditionally have been and with trade unions developing a strong critique of trade liberalisation, the balance of opinion is swinging towards a sceptical reading of globalisation. However, both the economic logic and empirical evidence argue for the abandonment of the simple, and simplistic, conviction that globalisation lacks a human face, but rather suggests that it can have one. There are adverse aspects of globalisation that, for sure, need mitigating. This is not a reason for governments to turn their backs on further trade reform at the multilateral level. Rather, governments of all political persuasions need to take adjustment assistance seriously.

Given that the liberalisation function of the WTO requires reciprocity between nations as they bargain over market access and new rules, the developments described are not encouraging. As the poll data has suggested, politicians on both sides of the Atlantic face

publics that have turned sour on multilateral trade reform in increasing numbers. Meanwhile, even in developing countries that favour globalisation, reciprocal trade reform is still tough for governments. As a result, nations such as Brazil and India have under taken little reciprocal trade reform, preferring unilateral trade reform, thus preserving notions of policy autonomy and sovereignty. Long-standing practitioners of reciprocal trade reform are increasingly prone to questioning its continued benefits and those in favour of globalisation do not see the need for it. Unless measures are taken in both the industrialised and developing countries to reverse these trends, then the prognosis for opening markets through the WTO looks bleak. If these national political constraints continue to be projected to the global level, deadlock is the likely result.

This political reading of the contemporary global economy provides much of the essential context for the Warwick Commission's Report on the future of the multilateral trade regime. The origin of much of the impasse in the DDA, for example, may well lie with inadequate national policies and the adverse public reaction to their failures, especially as they relate to labour market outcomes, and much less to the design or operation of WTO rules. The challenge for policymakers is to devise new forms of national and international collective action relating to international commerce that make it easier to secure support from the new players while at the same time minimising the effects of the negative public attitudes described in this Chapter.

CHAPTER 1: AFFIRMATIONS IN LIEU OF RECOMMENDATIONS

- Waning public support for the further opening of economies, which is particularly evident in many industrialised countries, now seriously threatens the conclusion of future trade agreements and the maintenance of orderly, rules-based international trade relations. National political leaders have often failed to explain adequately to the public what is at stake. Instead they have preferred silence, or worse, the politics of blame and responsibility avoidance. Governments must look beyond the electoral cycle and confront more directly the vested interests that benefit from protection and the inefficiency it breeds. Enhanced efficiency is, however, but one element in the equation of economic change. At the same time, governments must pay more serious attention to the distributional consequences of change.
- Sustaining the WTO is the collective responsibility of all its Members, in particular both the long-standing, and the newer, poles of power and influence in the world economy. The parties concerned must reach an accommodation and act upon their common interests. We believe that failure to do so risks paralysis at the WTO and the *de facto* disengagement of some Members. While such efforts are clearly in the common interest, it will be the smallest and weakest members of the international community that will suffer most from this failure.

Chapter 2

The Management of Global Trade: Purposes, Boundaries and Decision-Making

Many, but not all, of the controversies that afflict the multilateral trading system today are a product of some of the challenges facing the main organisation that guides its workings – the WTO. The predecessor of the WTO – the GATT – had served the multilateral system reasonably well over the nearly fifty years of its existence. But its success was due, at least partly, to the fact that it operated as a club, run largely by the Quad group (dominated by the bipolar relationship between the USA and the EU), where most developing country members sat on the margins, and also because the GATT’s mandate covered a much smaller set of issues. The considerably expanded and enforceable mandate of the WTO, on the other hand, remains contentious. In this Chapter, we revisit this debate and propose several recommendations for reform. We begin by recalling the potential contributions of multilateral institutions like the WTO and its predecessor the GATT and, in the section that follows, introduce the discussion on the boundaries of the WTO in an era of proliferating and potentially conflicting policy objectives. We then proceed, in Section 2.4, to analyse the implications of alternative approaches to decision-making in defining and giving effect to negotiating agendas in the WTO. Finally, Section 2.5 reviews aspects of the WTO’s enforcement functions under the dispute settlement system.

2.1 Multilateralism: the GATT and the WTO

The purpose and boundaries of the WTO cannot be understood without a discussion of the key role that multilateralism has played in fostering the global economy to date. The goal of this section is to recall the central features of multilateral economic institutions, the reasons why they were created, and the outcomes they seek to foster.

The multilateral trading system was established in the wake of the disastrous experiences of the Great Depression when

the then developed world splintered into competing currency and trade blocs, with the world’s major powers adopting ‘beggar thy neighbour’ policies of discriminatory protection and devaluation. These policies did nothing to remedy the economic problems associated with the depression, they caused terrible damage to international economic relations in general and international trade in particular, and exacerbated the rising hostilities that led to the outbreak of war, in 1939. The GATT was established as an institution to enable nations to cooperate with each other in international trade, to provide predictability, transparency, and stability in their trade relations with one another, and to offer a forum for rule-making and liberalisation. In this regard, the GATT and its successor, the WTO, have been successful, in ways that its originators did not predict.

And yet, multilateralism is a fragile institutional form, and the robustness of the multilateral trading system should not be taken for granted. Governments can pay lip service to the WTO, while focusing their priority attention and resources on the negotiation of PTAs. Few politicians or policymakers continue to appreciate the circumstances and conditions that gave rise to the multilateral trading system, and there is a widespread assumption that multilateralism and non-discrimination can easily co-exist with bilateralism, regionalism and discrimination. How many contemporary politicians connect their embrace of PTAs with faltering Doha negotiations? The multilateral trading system has survived ‘failed rounds’ in the past, for example the 1960-61 Dillon Round, largely due to strong leadership by the United States, which propelled the system forward regardless. This was, of course, a simpler proposition since the GATT was much more akin to a club than the present day WTO. These circumstances, prevailing in the first four decades after 1945, no longer exist. While the international economy has been buoyant, as it has been since the DDA was launched in

2001, many senior policymakers from leading jurisdictions seem not to be overly concerned about the weakening of the multilateral trading system. But it is also worth remembering that the largest powers have far less to fear about the consequences of a failing WTO than do other nations, given their greater bargaining power and larger internal markets.

It is also important to keep in mind that the fundamental purpose of many international institutions relates to pre-commitment – the notion that nation states are willing to separate rules of conduct from outcomes that are impossible to predict. In this way, institutions can dilute power-driven arrangements that embody *ex ante* certainties about the distribution of benefits arising from international exchange. This is what international institutions based on rules deliver and there are strong public goods characteristics here.⁷ But someone, or something, has to take responsibility for supplying and maintaining a public good. If coercion is not to be the basis of the international economic order, we must search for a critical mass of like-minded parties. This is a tough proposition presenting numerous collective action challenges.

The Warwick Commission is concerned that, at the present time, leading decision-makers in both the public and private sectors might be forgetting the principles that drove the multilateral endeavours for much of the second half of the 20th century – a dangerous and troubling development. Those principles relate to both the functions and objectives of multilateral institutions and the associated benefits, namely:

- Institutions lower transactions costs by the provision and sharing of information;
- Institutions facilitate the agreement of common rules and associated commitments;
- Institutions help make promises to adhere to those rules and commitments credible;
- Institutions reduce uncertainty and so promote predictability in state-to-state and commercial relations;

- Institutions enhance compliance with accepted norms;
- Institutions level the playing field ensuring that gains from trade are more evenly spread than might otherwise be the case.

Forgetting these lessons has implications for the successful functioning of the WTO as it was conceived in the closing stages of the 20th century. Now, we need a more complex and nuanced understanding of multilateral institutions. In the early 21st century, the traditional rule-makers, the USA and its junior partners in the post World War Two ‘grand institutional bargain’, must not forget the utility of institutions, but they must also recognise that the interests and concerns of new rule-makers and rule-takers warrant closer attention. Generally speaking, global geopolitics has changed and new actors, for example trans-national networks, and new processes of a trans-national regulatory nature, have emerged. Not surprisingly, then, expectations of the multilateral trading system have changed and this will likely have implications for the rule-making, transparency, deliberative, and enforcement functions of the WTO – indeed, the very boundaries of the WTO. The question arises as to what considerations should determine the WTO’s future boundaries and the purpose of the following sections is to offer some pointers in this regard.

2.2 Beyond Market Access? Deliberations over the Boundaries of the WTO

One of the matters that has divided WTO members is the question of which policy domains should be included in, and excluded from, the organisation’s mandate. In fact, this is a long-standing challenge. For instance, the Uruguay Round negotiations saw a deep divide between trading nations that wished to include the so-called “new issues” of services, Trade-Related Intellectual Property rights (TRIPS), and Trade-Related Investment Measures (TRIMS) under the GATT umbrella, and others who argued that the remit of the GATT should be restricted to tariffs on goods and related market access matters. Almost two decades later, the proximate cause of the collapse of the

Cancún Ministerial Conference, in 2003, was the controversy over the proposed inclusion of the four ‘Singapore issues.’⁸ Moreover, proposals have been advanced over the years to include labour and environmental issues more directly within the GATT/WTO system and these have received a mixed reception from some quarters of the WTO membership and from civil society and elsewhere. Must disputes over the WTO’s boundaries recur or can criteria be agreed to guide policymakers in the future?

Prior experience provides little guidance. By and large, in the past, the basis for expanding the agenda of the GATT and the WTO was to be found largely in the specific bargaining context of the time. Typically there was a case-by-case analysis of the policy domain at hand and the need to identify “win-win” situations through linkages and trade-offs played an important part. A good example of the latter was the last-minute inclusion of Paragraphs 31 to 33 in the DDA on trade and the environment.⁹ Moreover, each such decision necessitated debate. Many developing countries stated that they did not have sufficient expertise or resources to devote to the study of the potential consequences of both the future negotiation of new multilateral rules in certain policy domains and their implementation. Many industrialised countries contended that prior trade liberalisation revealed the need for the further elaboration of multilateral rules.

The debates over the boundaries of the WTO revealed a number of important considerations that have some bearing on future deliberations. As WTO Director-General, Pascal Lamy has noted:

‘The goal is not freer trade for trade’s sake. It is about better living standards for all countries – developing and developed alike. Because only with higher living standards, can we contribute to the eradication of poverty, better health care and education, a clean environment, a more stable, secure and peaceful world. This is our common objective. (Remarks to the Development Committee of the World Bank, Washington DC, September, 25, 2005).’

The difficulty arises in that reasonable people disagree on the goals to guide discussions over the boundaries of the WTO.

A second often contested consideration is the impact of trade and trade reform on the policy domain in question. Consider, for example, the relationship between trade and environment. Contrary to the fears of some critical activists, the relationship between trade and environment degradation is not necessarily negative. On the other hand, contrary to the claims of some doctrinaire free-traders, these relationships are not necessarily positive either. For example, liberalised trade may harm environmental quality by promoting economic growth that results in the unsustainable consumption of certain natural resources, or production of greater amounts of hazardous wastes or other pollutants. Conversely, trade disciplines can result in the reduction of, say, subsidies that encourage environmentally harmful farming or fishing practices.

Similarly, in issues of gender, trade liberalisation has in many instances been associated with rising employment and entrepreneurial opportunities for women. In other instances, trade liberalisation can exacerbate existing gender inequalities and thus worsen women’s economic and social status. Moreover, such varied results may occur in the same economy at the same time, for different groups of women. Thus, in virtually every one of the “trade and” areas, evidence available so far suggests that liberalised trade can generate complex and often contradictory effects. Much depends on the type of trade liberalisation undertaken, and the underlying economic, legal and social conditions within which it takes place.

A related reason why controversies over the mandate of the WTO have been so difficult to resolve is that the boundaries between trade-related matters and other policies or concerns are not easy to demarcate. Consider again, for example, the trade and environment nexus. To the extent that states have poor environmental regulations, the enhanced economic activity associated with liberalised trade is likely to cause additional environmental damage. From one perspective, the “problem” is not liberalised trade but rather poor domestic environmental policy, and the “solution” has little to do with trade policy. From this it follows that, if environmental harms

are properly priced, that is internalised by polluters through green taxes and so on, then there is little reason to think that increased trade and ensuing economic growth will cause undue environmental harm.

On the other hand and to the extent that it is difficult or impossible to internalise environmental externalities, increased economic activity may exacerbate environmental harms. And if the “problem” is that increased trade causes increased environmental degradation, is the “solution” to build environmental safeguards into trade rules? Some fear that this might lead governments deliberately to degrade their nation’s environment or refuse to strengthen their environmental policies so that domestic firms gain a cost advantage. This in turn raises the distinct concern as to what the appropriate policies are for a nation given its stage of development and whether trade policymakers and the WTO have the expertise to make that assessment.

Attempts may still be made to identify initiatives in which progress towards the objectives of trade policies, environmental policies, labour policies, gender policies, and other legitimate social objectives can or cannot be made together or to reinforce one another. Indeed, in many cases the WTO membership has sought to do just that.¹⁰ The question, however, is where the mandate of the WTO stops in a coherent system of international cooperation, and how other forms of governance at the domestic, regional, and multilateral levels fit in. The Commission has considered this matter at length and the following section describes our findings in this regard.

2.3 Agenda Formation and Decision-Making in the WTO

The simplest and clearest criteria on the purpose and boundaries of the WTO would ideally be based on the goals outlined in the Agreement Establishing the WTO. Unfortunately, as even a quick glance at the Agreement reveals, the objectives of ‘full employment’, ‘raising standards of living’, ‘expanding production of, and trade in, goods and services’, ‘sustainable development’ and ‘development’ among others are not

always consistent with each other. Nor does the Agreement give us a ranking of these objectives. When text fails to provide the solution, we must resort to underlying principles and consistent logic in its lieu.

It is perhaps useful to consider briefly some of the factors motivating WTO Members to seek an expanded WTO agenda. No exhaustive or analytically authoritative taxonomy can be developed where the underlying reasoning depends on the assignment of motive, but in thinking about motives one may be guided as to some of the prior questions that need asking about the desirability of expanding the WTO agenda in a particular direction. A first category of motivation may be to protect the existing bargain, particularly in relation to market access. This is the origin of the GATT national treatment provision, for example, which is designed to prevent governments from adding additional layers of protection against imports through internal measures once the terms of market access have been determined at the border. One could also characterise, for instance, the Tokyo Round Agreement on Technical Barriers to Trade or the Uruguay Round Agreement on Sanitary and Phytosanitary Measures in similar terms. The same logic applies to the current negotiations on trade facilitation, which build on three existing GATT Articles.

A key issue here, then, is to elaborate rules that form an intrinsic part of a contained structure of defined market access rights and obligations balanced against the pursuit of public policy objectives that transcend trading rights but should not unjustifiably undermine them. This is not always an easy balance to strike and views differ over the design of the trade-off and the degree of detail with which it should be specified in the trading rules. For example, in the case of the GATT Article XX right to prohibit the importation of products made with prison labour, governments felt no imperative to elaborate upon this public policy override to trade, in contrast to rules on, say, standards or import licensing.

A second motivation for seeking new rules on internal measures may be to redefine the conditions of competition in the market –

that is, to extend market opportunities for foreign products (goods or services) and/or suppliers. This was arguably the core logic for including trade in services under the umbrella of the WTO, and to some degree the TRIPS Agreement. Clearly, the above explanations for expanding the agenda – protecting acquired rights and pushing forward the frontiers of trade regulation – involve some overlap, since all disciplines on internal measures may be expected to influence the conditions of competition in some measure. These two categories do not exhaust all motivations for wanting to expand the WTO agenda. Governments might seek linkages between trade and non-trade issues, such as national security. This is arguably as close as one comes to a linkage that does not embody any competitiveness considerations.

We also need to distinguish the question of why the agenda for international cooperation in matters of international trade might be expanded from the question of forum selection. Doubtless some governments would prefer to deal with issues they regard as remote from the WTO's trade agenda under different instruments or in other fora. Several inter-governmental organisations exist with potentially overlapping agendas. Why, for example, should labour issues be addressed at the international level in one forum as opposed to another – the International Labour Organization (ILO) or the WTO – or intellectual property in the World Intellectual Property Right Organization (WIPO) or the WTO, or environment in the United Nations Environment Programme (UNEP) or the WTO? These questions have played prominently in past debates about international rules in their respective areas. No authoritative answer exists to these questions. Some have argued that proponents of agenda expansion have been attracted by the WTO as a forum because of its dispute settlement system and the possibility of using trade restrictions as an enforcement mechanism. Whether or not this is so, there surely are efficiency and scale considerations that should be brought to bear in thinking about the allocation of competence areas to international fora. Moreover, from a practical perspective, there is no doubt that different fora embody different cultures of cooperation.

This Report does not attempt to allocate specific areas of international cooperation to particular fora, recognising that political factors as well as technical considerations may influence these choices on a case-by-case basis. Instead, we explore, in relation to the WTO, possible approaches to deciding whether and under what conditions it might take up an issue for negotiation.

Another important point that has received less than adequate attention in debates about agenda formation is the distributional consequences from international cooperation in regulatory matters. Most standard economic analyses suggest that, save for particular circumstances associated with the terms of trade, all countries gain in some measure from reciprocal trade liberalisation. The negative distributional consequences in terms of reduced income for some occur within state jurisdictions – there are always winners and losers – and should be managed as a matter of domestic policy. But when it comes to internal measures and more or less explicit moves towards harmonised regulatory approaches, the distributional consequences of policy changes traverse jurisdictions. Different countries win and lose, and if governments are to agree voluntarily to cooperation in such areas in order to secure the global welfare gains implied by such cooperation, surely legitimacy will only be served and sustainability guaranteed if the distributional implications are rendered explicit and addressed. It should be noted, however that, at different points in time, changed circumstances in individual countries may convert them from net losers to net winners. The distributional consequences of international regulatory cooperation could be dealt with in different ways. The trade-offs could be embedded in the overall negotiating package itself, or through additional action outside the central bargain. Precise measurement is virtually impossible in such matters so, like reciprocity, technical precision inevitably gives way to a sense of justice and fairness.

Returning to our core issue, how should the WTO membership determine the scope of the negotiating agenda? Three main approaches to decision-making suggest themselves – consensus, voting, and a relaxation of the

single undertaking, or what we call critical mass. In considering each of these options briefly, we shall argue that the critical mass approach, appropriately defined and circumscribed, might be considered the preferred choice.

Consensus decision-making

The GATT/WTO has a long tradition of relying on consensus in decision-making. Notwithstanding the existence of voting provisions under the WTO Agreement and the GATT before it, governments have preferred to rely in virtually all instances upon consensus as the decision-making mode. In many ways, this has worked well, although the consensus-based approach has sometimes been criticised in terms of the procedural opacity involved in arriving at a decision. It has been argued that consensus can be a product of arm-twisting behind closed doors, reminding us that the former does not preclude the latter. This, however, should not be seen as an argument against consensus, but rather a problem of procedural transparency that can occur under any decision-making mode. In this sense, no approach to collective decision-making in and of itself guarantees that the interests of all parties will be taken into account.

Consensus-based decision-making can be cumbersome if the need for a consensus enables a single player or a few players to block outcomes and stifle progress. Preventing a decision from being taken may be entirely legitimate where vital interests are at stake, the more so if there is a shared perception among a significant group of countries that a particular outcome is undesirable. But equally, blocking may lack legitimacy where its aim is more to prevent others from moving an agenda forward than it is about avoiding a policy outcome perceived as harmful by those exercising a veto. In the history of GATT/WTO, there have undoubtedly been occasions where some parties have seen the action of others as less than fully legitimate in this regard.

Voting

The WTO voting system, like that of the GATT before it, is unweighted and grants one vote to each Member. The current procedures call for different levels of majority for a decision, depending on the matter at hand. The fact that voting is largely eschewed as a decision-making mode is attributable to at least two factors. First, the idea has always been counter-cultural in the trading system. Perhaps this is because governments have been reluctant to envisage arrangements whereby they can be overruled in respect of a decision that could significantly affect their vital interests. Second, with unweighted voting, in particular, countries responsible for a very large share of world trade could be outvoted by those with much smaller shares. Such a divorce of power from voting majorities would challenge the viability of the system, if not prove fatal.

One way of mitigating this difficulty would be to establish a weighted voting system. An idea along these lines discussed by the Warwick Commission was to create a voting arrangement embodying two thresholds. The first threshold would relate to country size, such that a decision could be carried by a certain percentage of global trade or global national income. The second threshold would require that a minimum number of countries voted in favour of a decision. This combination could protect the interests of large and small countries alike – any decision would have to command the support of a significant cross-section of national interests in order to be carried.

After much reflection, the Warwick Commission decided against recommending voting as a decision-making mode. One reason for this was the perception that governments would encounter great difficulty in agreeing upon the appropriate thresholds – a difficulty that would recur if different types of decisions required different thresholds. Secondly, the arrangement would formalise a *de facto* disenfranchisement of some countries every time a vote was taken. A final consideration was that the idea runs counter to the prevailing culture, and would be very unlikely to receive favourable consideration within the WTO.

The single undertaking and critical mass

The notion of a single undertaking has become prominent in the trade policy lexicon, as has the idea that there may be circumstances in which the single undertaking could be relaxed in relation to decision-making. In thinking about this possibility, it is helpful to consider briefly two different but not necessarily mutually exclusive meanings that attach to the concept of a single undertaking. One is the idea that in a negotiation, nothing is agreed until everything is agreed. The results of a round must go forward as a single package. In the DDA, for example, when Members agreed to give effect to the Decision on Transparency in relation to RTAs, this was done on a provisional basis as an exception to the single undertaking.

The second meaning relates to obligations rather than procedure. It is that all Members are obliged to subscribe to all the constituent parts of a negotiated package. An example of the use of this definition of a single undertaking is the manner in which the results of the Uruguay Round were agreed. Any Contracting Party of the GATT that wished to become a founding Member of the WTO, in 1995, had to accept the WTO Agreement in its entirety.¹¹ The Uruguay Round Single Undertaking implied a significant addition of obligations for many developing countries. Subsequently this proved contentious and gave rise to the implementation of S&DT mandates that were established in the years following the completion of the Uruguay Round.

The Uruguay Round Single Undertaking differed from the Tokyo Round deals, in which GATT Contracting Parties were given an opt-in/opt-out choice with respect to a range of non-tariff measure agreements negotiated at the time. It was in part this flexibility that the Uruguay Round Single Undertaking sought to eliminate.¹²

The Warwick Commission recommends that serious consideration be given to the re-introduction of the flexibility associated with what has come to be known as critical mass decision-making. Such a proposal, if implemented, would have the effect of unbundling in some measure the obligation-related single undertaking and introducing an

additional element of ‘variable geometry’. We do not believe that any voting system would be desirable in the context of critical mass decision-making. Rather, we see critical mass criteria emerging in the process of discussing and analysing proposals for new topics on the WTO agenda.

Before spelling out the conditions we would attach to this approach to decision-making, a question to consider is how much of a departure this represents from past practice. For this purpose, a distinction is required between negotiations involving market access and negotiations on rules. In the former case we have some recent and rather successful examples of negotiations based on critical mass, notably in sectors where advanced economies see themselves as net exporters; for example, the basic telecommunications, financial services and Information Technology Agreements of the second half of the 1990s. Moreover, the sectoral zero-for-zero negotiations contemplated in the ongoing Non-Agricultural Market Access (NAMA) discussions would seemingly rely on a critical mass criterion.¹³ The same can be said of the plurilateral negotiations currently taking place in the field of services.

So far, all negotiated outcomes relying on critical mass for their acceptance have been applied on a Most Favoured Nation (MFN) basis. The fundamental idea that agreements among less than the full membership should not undermine the rights of any parties, including the GATT Article I right to MFN, was originally captured in the language adopted in the Decision of 28 November 1979 (L/4905), which was formulated at the time the Tokyo Round Codes were adopted. Paragraph 3 of the Decision reads:

‘The CONTRACTING PARTIES [...] note that existing rights and benefits under the GATT of contracting parties not being parties to these agreements, including those derived from Article I, are not affected by these Agreements.’

The Warwick Commission is of the view that in the name of justice and fairness, the principle of non-discrimination should apply to all Members, regardless of whether they

participate in critical mass agreements. To the extent that benefits do not only accrue as a direct result of obligations, the idea is that non-signatories benefit from a non-discriminatory application by signatories of the provisions of an agreement as well as access to benefits arising from the agreement.

Thus, when it comes to variable geometry and rules negotiations, we have a clear precedent from the Tokyo Round Codes on standards, import licensing, anti-dumping, subsidies and countervailing measures and customs valuation.¹⁴ More recently, the agreed framework for regulation in the telecommunications sector was a critical mass agreement, whereby some Members making market access and national treatment commitments in telecommunication services did not subscribe to the regulatory framework. All this demonstrates that our proposals have precedents within the multilateral trading system. Some commentators have lamented the critical mass character of the Tokyo Round Codes, arguing that this amounted to the balkanisation of the trading system. The logic certainly influenced the formulation of the Uruguay Round Single Undertaking.

We argue that our proposals for a more flexible approach to decision-making are neither system-changing nor particularly radical. Precedent is on our side. Moreover, we consider that, by defining substantive and procedural requirements associated with a departure from the consensus rule, the proposed approach protects the integrity of the trading system as a whole and the legitimate interests of all WTO Members.

We are aware, however, that variable geometry and less-than-full consensus decision-making may combine to lessen the opportunities for trade-offs among negotiating interests, precisely of the kind that would be helpful in dealing with any adverse distributional consequences among parties that may arise from moves towards more harmonised approaches to non-border regulation. On the other hand, the determination of configurations in variable geometry scenarios involving critical mass can still provide a basis for bargaining – in other words, bargains might lie in actual configurations of critical mass agreements.

Moreover, adherence to the procedurally-oriented single undertaking requirement that everything must be agreed before anything is agreed also serves the purpose of holding together packages containing trade-offs. That was the precise thought which influenced the incorporation of the single undertaking principle in the Ministerial Declaration launching the Uruguay Round.¹⁵

A number of authors have sought to define the kind of criteria needed to protect the interests of all WTO Members in a world where the veto implicit in consensus gives way to critical mass decision-making. The Commission's enumeration of essential criteria draws partly on this work. Our criteria for what must be demonstrated and what procedures must be followed for a decision based on critical mass to be adopted are:

- That new rules are required to protect or refine the existing balance of rights and obligations under the WTO and/or that the extension of cooperation into new regulatory areas will impart a discernible positive global welfare benefit;
- That the disciplines be binding and justiciable so as to attain the objectives laid out in the first criterion above;
- That the rights acquired by the signatories to an agreement shall be extended to all Members on a non-discriminatory basis, with the obligations falling only on signatories;
- That Members shall consider any distributional consequences arising among Members from cooperation in new regulatory areas and shall consider means of addressing any such adverse consequences that they anticipate;
- Given the objectives at hand and the international cooperation sought, no other international forum provides an evidently better venue for pursuing the cooperation than the WTO;
- That the WTO membership would collectively undertake to provide any

necessary technical support, capacity-building and infrastructural needs in order to favour the participation of developing countries so wishing to participate in an agreement and derive tangible benefits from such participation;

- That all Members not forming part of the initial critical mass shall have the unchallengeable and unqualified right to join the accord at any time in the future on terms no more demanding than those undertaken by signatories to the accord in question.

In sum, based on the above considerations and criteria, we believe that serious thought should be given to critical mass as part of the decision-making procedures for delineating the WTO agenda. We believe these arrangements can protect the varied but legitimate interests of all Members of the WTO, render decision-making more supple and efficient, and reduce the risk that Members will find themselves obliged to accept legal commitments they do not consider to be in their national interest. In the Conclusion to this Report, we argue for a WTO Member-driven process of reflection on challenges and opportunities in the multilateral trading system. We believe that critical-mass decision-making would be an important element in any such deliberation.

2.4 Enforcing the Agreements

When the WTO was established in 1995, the new DSU was hailed as its jewel in the crown. Through the DSU, WTO members granted WTO panels compulsory jurisdiction over disputes arising out of the interpretation of WTO agreements; created the only standing AB in the international legal system; and authorised the possibility of virtually automatic economic sanctions against non-complying states. The WTO's dispute settlement system thus represents an unprecedented grant of legal authority to international tribunals to enforce international legal norms.

The DSU is the busiest and one of the most remarkable dispute settlement mechanisms in the history of international law. As of January 2007, Members had filed some 356 complaints. These complaints have given rise

to some 30,000 pages of dispute settlement reports, setting out a rich and sophisticated jurisprudence of WTO law. Most importantly, the DSU has produced notable successes. For example, during the early years of the WTO, the system addressed a number of highly controversial cases, including EC Bananas, Beef-Hormones, Japan-Film, Helms-Burton and Section 301 disputes. In the majority of these cases, the DSU played an important role in resolving – or at least defusing – highly charged and long-standing controversies. Over half of all disputes end prior to a panel ruling. Moreover, the vast majority of cases have been settled amicably – with the offending party taking the necessary remedial action. The DSU has been a major success. It represents a substantive advance on the previous GATT regime.

Many commentaries and analyses have been written on the DSU.¹⁶ Most of these analyses have been positive, concluding that while there is room for improvements in certain areas, the basic structure and approach has proven its worth and should not be tampered with. Among the issues that have been identified as warranting further attention, however, are the degree of appropriate “judicial activism” – also referred to as gap-filling – on the part of panels and the AB, the role of precedent in dispute settlement findings, compliance with panel and AB findings, sequencing between retaliatory action and multilateral process, remedies and damages, the role of the AB in relation to the possibility of remanding cases back to panels, access to proceedings for non-state actors through *amicus curiae* briefs, the desirable degree of confidentiality of dispute settlement proceedings, and better access for developing countries to the WTO's dispute settlement machinery. This is not an exhaustive list, nor is it the intention in this Report to examine all these questions.

This Report makes recommendations in only one area – that of improving access to dispute settlement for smaller and poorer members of the WTO. Access is not only about litigating effectively, but also about obtaining satisfaction when a panel or the AB finds in favour of a developing country litigant.

Many developing countries have made little or no use of WTO dispute settlement procedures, but some have been active. Overall, developing countries have been involved as complainants or respondents in slightly more than one-third of the cases brought before the WTO dispute settlement system. But these cases have involved very few countries, some of which are Argentina, Bangladesh, Brazil, Chile, India, Korea, Pakistan Mexico and Thailand. Several factors explain why the majority of developing countries may not have used the system to a greater degree.

- First, low participation is a reflection of the marginal role of many developing countries in world trade;
- Second, in the event that disputes arise, developing countries may be reluctant to bring them before the DSU for fear of reprisals by their trading partners. Even though the WTO is ostensibly a body of equals, power plays a key role in shaping its affairs;
- Third, the dispute settlement procedures are complex and many developing countries find them technically daunting, especially considering the human and financial resources required to use the trade system effectively;
- Fourth, the retaliatory capacity of most developing countries is limited. Even if a small developing country were to prevail in a WTO dispute against a large trading partner, in the absence of willing compliance by the responding party the threat of effective retaliatory action would ring hollow.

The first of these points reflects a reality that will change over time. As countries build a growing stake in world trade, they will be increasingly willing and able to participate in institutional aspects of the trading system, including dispute settlement. This goes to the heart of the development process itself.

Power relationships and dispute settlement

On the second point, regarding collateral coercion or retaliation when small countries

challenge large countries, one can but appeal to a shared perception among nations that their self-interest is served by a commitment to a rules-based system entailing pre-commitment, buttressed by transparency. In this context, the Commission proposes that a Dispute Settlement Ombudsman be established. The function of the Dispute Settlement Ombudsman is similar to that which is already contained in Article V of the Dispute Settlement Understanding On Good Offices, Conciliation and Mediation, which provides that the Director-General of the WTO, acting in an *ex-officio* capacity, might offer these services. The central difference in our proposal is that Members would acquire a right to the services of an ombudsman. Under the existing provisions, a request can be refused. Our proposal responds in part to the potential contribution of transparency in increasing the perceived legitimacy of dispute settlement proceedings, especially among countries of different size. When a developing country is considering bringing a dispute, the authorities would be entitled to the good offices of the ombudsman, whose primary role would be to offer mediation between the parties concerned at a stage prior to the formal request for consultations foreseen in WTO dispute settlement proceedings. This would offer an initial non-litigious avenue for settlement and would also serve to inform consultations in the next stage of the dispute settlement process should the informal mediation fail to deliver amicable settlement. The Commission believes that further reflection is called for in respect of this proposal.

The Commission urges panels and the AB to be more open to the submission and consideration of *amicus curiae* briefs by non-state actors, including civil society. Permitting non-state actors to participate in this way has the benefit of enriching the nature and quality of information that panellists have when considering disputes and of contributing to the transparency of dispute resolution processes. Such briefs may have a particular value in disputes that involve conflicts between economic and non-economic values.

We recognise that some fear the DSU could be overwhelmed by *amicus* submissions, although

that experience over the past decade suggests that this fear can be easily overstated. However, in the unlikely event that *amicus* briefs are submitted in numbers that adversely affect the dispute settlement process, the Dispute Settlement Board could explore mechanisms to limit the number of submissions. An additional contribution to transparency would be for DSU procedures, such as oral arguments, to be open to the public. This has already happened in a few disputes and is a trend that the Commission endorses, subject to exceptions such as the need to protect confidential business information.

Resource constraints and dispute settlement

As for the third point, concerning resource constraints in developing countries, there is no substitute for long-term investment in the acquisition of skills, along with an increasing capacity to find the financial resources necessary to conduct dispute settlement cases. Again, as countries become more engaged in trade, these constraints should diminish. That process can certainly be abetted through the provision of technical assistance. In addition, since 2001 the Advisory Centre on WTO Law has been providing advice to developing country Members on WTO rights and obligations, for instance in relation to specific disputes in which developing countries have been engaged.

Non-compliance and available remedies

The fourth issue concerns compliance and the scope for smaller countries to exercise their legal rights in the context of dispute settlement. A growing failure to comply would be seen as a systemic failure; without suggesting that this is a currently critical problem, it is clearly something that the system should guard against. To be specific, a problem only arises here if Members fail to act upon findings of panels or the AB. In formal terms, a party against whom a legal determination is made has an obligation to bring the offending measures into compliance. In the great majority of disputes, this is what has happened. But failing that, the offending Member may either offer compensatory measures or face retaliation from the complainant(s) in the dispute.

It is in relation to the possibility of retaliation that small countries may be at a particular disadvantage in unresolved disputes against large ones, and where WTO Members might therefore think about introducing alternative remedies. In considering this, however, the history of retaliation in the GATT and the WTO should be borne in mind. A careful reading of that history suggests that retaliation plays a limited role in prompting compliance with trade norms. During the GATT years, respondents could block the creation of a panel and the adoption of GATT reports. Although retaliation was a theoretical possibility, it was practically impossible, given the GATT's consensus requirements. Nevertheless, relatively few reports were blocked, the great majority of violation rulings were adopted, and the overwhelming majority of these findings led to substantial correction of GATT-inconsistent practices. The paradoxical contrast between the voluntary procedures and weak remedies and the obvious success of GATT dispute processes strongly suggests that retaliation plays only a limited role in inducing compliance.

WTO experience seems to confirm this, as compliance rates with WTO reports are roughly the same as with GATT reports, notwithstanding the fact that the WTO provides sanctions for non-compliance. Thus, GATT/WTO history suggests that compliance has much more to do with factors other than retaliation, including internal political dynamics in the respondent state, the perceived legitimacy of the rules and the dispute process, and reputation effects, than with the economic force of retaliatory sanctions.

Quite apart from what the history suggests, many find the imposition of trade sanctions against non-complying parties problematic. From the perspective of a system one of whose goals is to liberalise trade, authorising the imposition of trade restrictions is both counter intuitive and counterproductive. In most cases, it will increase the cost of imports and harm domestic consumers. Moreover, such sanctions carry no guarantee that larger states will be induced to modify WTO-inconsistent measures.

In these circumstances, the Commission proposes that WTO Members consider

accepting an obligation to provide cash compensation to aggrieved parties where compliance or trade-related compensation is not forthcoming. This idea, like most of the other recommendations by the Commission in regard to dispute settlement, has been mooted elsewhere, notably in the Sutherland Report.¹⁷ It would be for further consideration how far monetary compensation became a substitute for retaliation – that is, to what extent would this remedy be available generally. Clearly, this approach is not only less trade-distorting, it would also offer developing countries the possibility of neutralising what is otherwise a major asymmetry in the WTO's dispute settlement system.

A critical issue would be to set the cash compensation high enough to be effective, yet not so high as to encourage abuse. If compensation is set too low, the inducement for the losing party to a dispute settlement case to correct its offending trade practices would diminish. A related issue is whether rich countries would consider the required compensation so trivial where a small developing country was concerned as to provide an easy alternative to compliance or compensatory trade measures. This is the problem the Sutherland Report refers to as “buy out”. An additional consideration is that the payment of compensation is not self-executing. Unlike retaliation, the successful imposition of monetary fines requires an affirmative act by the defendant state. Finally, if cash compensation were considered as an inducement towards compliance and not a permanent, ongoing settlement arrangement, it is unclear whether this remedy would have the desired effect on state officials. Unlike private actors, governments are not necessarily deterred by compensation as politicians do not experience these costs directly because compensation is likely to be absorbed by politically weak constituents. One idea for dealing with the general problem that cash compensation could be considered a painless alternative in certain circumstances would be to provide for an escalating amount of compensation until an offending party complies or compensates through trade measures.

2.4 Conclusion

This Chapter has argued for the importance of the multilateral trade system and the role of the WTO in fostering international trade cooperation. To some extent, the WTO has been burdened by its own success and that of the GATT before it, and there is much pressure on it to expand its remit to include new issues. Thus, the Chapter has proposed a series of ways in which the boundaries of WTO activity could be better defined, its purpose sharpened, and its enforceability improved for all, rather than just a select group, of its Members. Reform along such lines is likely to improve the goals of efficiency, fairness and legitimacy in the WTO.

Several recommendations were made in this Chapter. Having weighed up the strengths and weaknesses of three different approaches to agenda-setting and decision-making – consensus, voting and variable geometry – the Commission recommends one form of the latter approach, namely that of critical mass decision-making, with three objectives in mind: freeing up the current blockages in the decision-making processes; ensuring that there is enough on the table to keep the major players engaged in the WTO now and into the future; and protecting the interests and needs of the smaller players. In this way, we have tried to balance the sometimes competing demands for efficiency, fairness, and legitimacy within the system in such a way as to keep the diverse membership of the WTO engaged.

In this Chapter, the Commission also proposed a number of ways in which both the transparency of, and compliance with, agreed multilateral trade rules can be enhanced. Transparency and compliance are, of course, worthy goals in and of themselves. But they also assume considerable political and practical importance. An organisation that is seen to be fair, and whose rules are respected, is likely to draw greater political support from leaders in developed and developing countries. A renewed sense of ownership of the organisation is precisely what the multilateral trading system needs in these difficult times.

CHAPTER 2: RECOMMENDATIONS

- 1 It is no surprise that decisions about the reach and content of WTO rules have been among the most contentious issues in the sixty-year history of the multilateral trading system. The negotiating and rule-making priorities established within the WTO are a crucial determinant of how well the institution serves the interests of its diverse constituents. A core challenge is to shape the agenda in a way that both respects the interests of the entire membership while at the same time securing the continued commitment of all parties. In pursuit of this balance, the Commission recommends that consideration be given to circumstances in which a critical mass approach to decision-making might apply. The key implication of this approach is that not all Members would necessarily be expected to make commitments in the policy area concerned. We are aware of the sensitivities inherent in this proposition and have taken care to spell out criteria that would need to be met in adopting such an approach. Among the criteria for considering a critical mass approach to defining the agenda are the need to identify a positive global welfare benefit, to protect the principle of non-discrimination, and to accommodate explicitly the income distributional aspects of rule-making.
- 2 As far as dispute settlement is concerned, the Report has focused on those aspects of reform that could improve access to the procedures for the smaller and weaker Members of the WTO. In this connection, the Commission recommends that Members be given a right to the services of a Dispute Settlement Ombudsman whose role would be to mediate between potential disputants upon the request of one party at a stage prior to launching a formal complaint. Such a procedure would allow recourse to the good offices of an independent party prior to any formal bilateral consultations.
- 3 The Commission is aware of recent improvements that have been made in enhancing the transparency and accessibility of dispute settlement proceedings and recommends that these initiatives be sustained and strengthened, particularly in relation to hearings that are made open to the public and in allowing the submission of *amicus curiae* briefs before panels and the AB.
- 4 One of the greatest successes of the WTO dispute settlement system, like that of the GATT before it, has been the high degree of compliant behaviour by Members in respect of findings. Nevertheless, where Members neither comply nor offer compensatory trade policy action, the option for aggrieved parties to take retaliatory measures is neither attractive when seen against the objectives of the WTO Agreement, nor feasible when small economies are pitted against large ones. In light of this, the Commission recommends that WTO Members consider accepting an obligation to provide cash compensation to aggrieved parties where compliance or trade-related compensation is not forthcoming.

Chapter 3

Trade and Development: Making the WTO Deliver More for its Weaker Members

A key challenge for contemporary global economic governance is to reconcile trade and development under conditions of globalisation. Trade and development are closely connected. Trade growth and trade liberalisation are clearly necessary, albeit not sufficient, conditions for development. As we discussed in Chapter 1, contemporary conditions are very different from those that prevailed in the era of decolonisation between the late 1950s and the early 1970s when trade, in the language of dependency theory, was seen as a process of unequal exchange with adverse effects on the newly independent developing countries. At this time, development strategies were largely underwritten by policies of national protection and import-substituting industrialisation at home, and calls for a NIEO abroad. It was also popular to refer to the 'South' with little or no attempt to disaggregate it into very different categories of developing countries.

The above matters are seen differently in the early 21st century, as indeed they have been since the recognition that the success of the first, and indeed subsequent, waves of newly industrialising countries was built on export-oriented strategies rather than import substitution. We believe there is now broad acceptance of the notion that effective integration into the global trading system is a major, but far from the only, key to accelerating growth and eradicating poverty in developing countries.

3.1 Trade and Development Strategies and the Role of the WTO

We do not claim an authoritative interpretation of the precise nature and causal direction of interactions between trade, growth and development. The intricacies of these relationships are the subject of longstanding academic debate. Rather, the modest aim of this Chapter is to offer some practical suggestions about how to tackle trade

and development as policy questions, notably as they relate to the role of international trade rules and commitments in furthering development and the role of AfT in trade-related capacity building.

As we have already noted, developing countries that, later if not sooner, opted for export oriented strategies, especially in East and South Asia, have fared better than those that have not. But trade liberalisation has not resulted in significant economic development for all, especially for many countries in Africa. Between 1965 and 2004, per capita GDP in Sub-Saharan Africa fell from 17.1 percent of the world average to 9.7 percent. Although a certain degree of trade liberalisation has taken place in some of these countries while standards of living have declined, international trade is generally not considered to be the prime factor in the weak development of the poorest countries. The strength and quality of institutions, political stability, functioning domestic markets, adequate physical and economic infrastructure and appropriate domestic policies equally are all essential ingredients of sustained growth and development.

WTO rules and procedures affect the interests of developing countries in at least three ways. First, the very choice of the negotiating agenda for trade rounds can influence the development prospects of the WTO's weaker members. The prominence given to reform of national agricultural policies in the DDA, for example, reflects the strong conviction of many developing country governments, and others, that the subsidies paid to farmers in certain industrialised countries retard rural economic development in poorer countries. Second, the set of principles that guide WTO negotiations will have implications for development. The insistence, in the DDA, on less than full reciprocity in favour of developing countries is an example of such a principle.

Third, the manner in which WTO obligations are implemented also affects developing countries, and many concerns were raised after the completion of the Uruguay Round about the potential cost of complying with the numerous commitments made in that negotiation. There are, however, important examples where WTO rules and initiatives have advanced the cause of development. The decision taken on access to medicines at the WTO Ministerial Conference in 2001 was widely regarded as pro-development, and it should not be forgotten that one of the core obligations of WTO membership – that of MFN treatment – substantially weakens the ability of powerful states to pick on weaker counterparts in the application of their commercial policies.

The challenge in the 21st century is not to protect the poorest developing countries from trade, but to enable them to participate in the international division of labour on more equal and successful terms. What rules and procedures would enable these countries to secure the maximum benefit from a liberalising trading order? Without denying the virtues of open, freer trade, many developing countries nowadays believe that some WTO norms and applications are inimical to their development. Some would argue that the system today is based more on assumptions of reciprocity stemming more from the theory of club goods than a theory of public goods predicated on non-rivalry and non-excludability and availability to all. One observer captured perfectly the dilemma of seeing the international trade regime as a global public good and the DDA as a ‘development round’.

*‘The adjustment burden of new rules will mostly fall on developing countries, as the rules that are likely to emerge will reflect the status quo in industrial countries (‘best practice’) ... If the Doha Development Agenda is to live up to its name, the fact that country priorities and capacities differ enormously will need to be addressed. There are two basic options: shift back to a club approach, or pursue universal membership agreements that are accompanied with more development provisions.’ (Hoekman, B, ‘Operationalizing the Concept of Policy Space in the WTO: Beyond Special and Differential Treatment’, *Journal of**

International Economic Law 8 (2) 2005: 406, emphasis added)

To move beyond this dichotomy, we recommend that pursuing a more variegated approach comprising the following three elements may hold greater promise: (i) critical mass-based initiatives (to facilitate the provision of club goods); (ii) a richer set of S&DT provisions for developing countries than employed at present; and (iii) a strong commitment to Aft measures that ease the implementation burdens weaker WTO members may face. The first elements of this approach were discussed in Chapter 2; the balance of this Chapter is devoted to the second and third elements.

3.2 Special and Differential Treatment

Defining and operationalising development provisions – commonly referred to in WTO discussions as Special and Differential Treatment – is a major political and economic challenge. It is political precisely because, in our view, much of the discourse has been over-politicised. It is economic because S&DT will only serve its true purpose if it responds adequately to the development needs of individual WTO Members.

We know from our earlier discussion of the increasingly complex politico-economic geography of the contemporary era that part of the political problem stems from the very success of large parts of the developing world in addressing development challenges through trade growth. But now, previously little-challenged key actors in the developed world are feeling the heat of competition in a heretofore unprecedented way. India, China and Brazil may still exhibit economic characteristics of developing countries, but they are also now major players in global political terms. The United States, the European Union and others are increasingly reluctant to consider them as developing countries for negotiation purposes, hence their reluctance to sign off on S&DT provisions that do not distinguish among the varying needs of individual Members.

Much of what has been written into WTO agreements regarding S&DT is operationally problematic for at least two reasons. First, many provisions are of a “best-endeavour” nature, offering no guarantee of an appropriate balance of rights and obligations within the system. Second, many current S&DT provisions seem to be predicated on the notion that the development challenges faced by WTO Members are broadly the same and can be attended to by uniform rules – in other words, the assumption is that “one size fits all”. We believe the latter needs to be modified through a more nuanced design of obligations.

In sum, the challenge of S&DT is to develop an approach that defines clear and concrete rights and obligations for all Members, while at the same time recognising that the development needs of Members are varied and call for differentiated responses. This is a difficult task, but shunning it will ensure that S&DT remains an issue of political contention that carries both systemic and developmental costs, the consequences of which weigh on the WTO as an institution and its entire membership.

A final and distinct aspect of S&DT concerns market access. On the export side, many developing countries, especially the poorer among them, benefit from non-reciprocal preferences granted by larger partners, mostly but not exclusively, developed countries. This aspect of S&DT has become a growing source of controversy as developing countries have voiced concern over the effects of multilateral trade liberalisation on their preference margins. A number of suggestions have been made on how to deal with preference erosion, but the issue remains contentious. Non-preferential and preferential margins will be continually eroded, logically as a result of the further spread of preferences, including RTAs, as well as any multilateral liberalisation. In the Commission’s view, if any compensation for countries suffering from preference erosion is to be contemplated, this should be through resource transfers rather than the denial of trading opportunities to those outside such arrangements. In other words, further multilateral trade-opening should not be impeded on the altar of preserving preference margins.

The other aspect of S&DT relating to market access concerns the quantum of liberalisation that should be offered by developing countries in the context of multilateral trade negotiations. This is a key issue in the DDA, just as it has been in previous rounds. We make no attempt in this Report to calibrate appropriate levels of liberalisation commitments among Members. But we do believe that the ability of nations to take advantage of open trade is influenced significantly by the degree to which they are able and willing to manage the distributional consequences of changes brought about by liberalisation and to make investments to overcome supply side bottlenecks and related weaknesses.

As we have argued in Chapter 1, too little attention is paid to the distributional impact of trade-opening domestically, including at the sectoral level. Ignoring this reality courts political trouble as it risks alienating a regime’s constituent members. We need to find ways to allow liberalising states effectively to help liberalisation’s losers to take advantage of the commercial opportunities created by trade reform. Prominent among the means of doing this is the AfT initiative, to which we now turn.

3.3 Aid for Trade

The WTO is not a development bank, an aid agency, or other funding body; and nor do we suggest it should become any of these things. Little in the WTO’s history, or the expertise of its staff, let alone the trade diplomats sent to represent their countries’ interests at the WTO, suggest that this international organisation has the capacity to identify, design, fund, and implement development projects. Moreover, the WTO has enough demanding and important functions to execute as it is.

Nor, in similar vein, should we assume, on the one hand, that the evolving patchwork of bilateral, regional, and multilateral trade-related capacity building initiatives pursued by national aid ministries and international organisations can meet all of the legitimate needs of developing countries or, on the other, that attaining these ends can solely be a matter of implementing commitments made

by nations at the WTO. Indeed, nowadays it is almost conventional wisdom that WTO Members, including developing countries, must take complementary measures to make the most of opportunities created by trade agreements. These measures can include improving national transportation and communication infrastructures, taking steps to meet international safety and product standards, and training for trade officials, potential exporters and staff in a diverse range of regulatory agencies.

While the nuanced perspective identified above is welcome, it poses significant challenges for the WTO membership and for the very reputation of the WTO; challenges which the current AfT initiative has brought to the fore. Calls for greater coordination among donors and providers of technical assistance, although not new, are not particularly surprising in this context. “Coherence” may seem an unquestionably desirable goal but is the AfT initiative likely to deliver it? We consider this question below.

The Doha Declaration contains multiple references to the need for technical assistance and capacity-building to help poorer countries meet WTO commitments and to benefit from the Round. This emphasis effectively builds from 1996 Singapore Ministerial Meeting, which led to the creation, in 1997, of the Integrated Framework (IF) of Trade Related Technical Assistance (TRTA). This facilitated cooperation amongst several organisations to provide for horizontal inter-agency coordination of trade adjustment assistance to Least Developed Countries (LDCs).¹⁸ In response to calls from G7 Finance Ministers in 2005, the World Bank and the IMF produced their paper ‘Aid for Trade: Competitiveness and Adjustment’.¹⁹

The initiative was endorsed at the July 2005 Gleneagles G8 Meeting and then picked up again when the 2005 Hong Kong Ministerial Meeting put AfT (or TRTA) on the WTO agenda and established a Task Force on how best to operationalise it within the wider development framework of the DDA. AfT, as the Hong Kong Declaration noted, aims to help developing countries, particularly LDCs, ‘build

the supply-side capacity and trade-related infrastructure...’ that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade. The WTO’s current role is to ‘mobilise, monitor and evaluate’ AfT. It is doing this through a series of regional reviews and a major review in Geneva, in November 2007.

But aid resources devoted to trade development are limited – and what is currently available is not concentrated or targeted in its distribution. Funding for trade facilitation development currently comes from a range of separate activities including the IMF’s Trade Integration Mechanisms (TIMs), World Bank development policy lending for adjustment, individual OECD donor programmes and the IF (already based in Geneva). A purpose-specific Multilateral Fund, a second pillar, to respond to trade needs in a dedicated way beyond these funds, is under consideration. But AfT needs to build on existing mechanisms which in turn have to improve their ability and effectiveness in the delivery of AfT.

For the developing countries, AfT is a potentially important vehicle for capacity building but not before a series of questions have been addressed. These questions concern factors such as (i) the adequacy of donor commitments and whether donor promises will be met; (ii) the degree to which AfT will reflect developing country, rather than donor, priorities; (iii) the coherence and coordination of AfT amongst the institutions that are currently party to its administration; and perhaps most importantly, (iv) developing countries are concerned lest AfT come to be linked to their negotiating positions in multilateral trade negotiations. This would be considered totally unacceptable. Furthermore, it should always be explicit that AfT is a complement to, not a substitute for, other existing aid programmes.

The Warwick Commission believes there are four principled reasons for prioritising AfT in the early 21st century and strengthening the role of the WTO in taking this process forward.

They are:

- The WTO is the point of entry for the negotiation and implementation of multilateral trade policies.
- Trade reform and liberalisation in developing countries to enhance competitiveness is essential and desirable if developing countries are to take long term responsibility for their own development. But the institutional capacity for trade and investment policy formulation in poor countries is often weak and requires considerable strengthening.
- Development strategies based on trade liberalisation are not without cost. Support for developing countries to meet such costs – and not just their WTO obligations – is necessary. Indeed, the poorest countries need support to realise the benefits of WTO membership, not least because the costs of trade reform are often invariably incurred “up front” while the benefits are often ‘downstream’.
- Not only is AfT good for the poorer countries, it bolsters the multilateral trading system at a time when multilateralism needs strong moral and practical support. While it should not be seen as a substitute for, rather than a complement to, the DDA, it will be important to the poorer countries whatever the outcome of the Round. AfT is ethically appropriate and makes good economic and political sense.

To the extent that the AfT initiative provides the impetus to eliminate duplications in aid programmes and to meet the unfulfilled needs of developing countries, then this is clearly a good thing. However, it is unclear precisely how a non-binding, exhortatory initiative of this type will alter the interests, incentives, and priorities that have generated the diverse array of trade-related aid initiatives in the first place. Previous attempts at coordination among donors have often yielded little and it is not apparent why matters should be any different this time around. Our concerns are particularly heightened by the often muted support given by industrial country aid ministries. Many of

these are solely focused on poverty reduction agendas and act as if they perceive little positive contribution by trade to economic development, consequently not funding AfT initiatives and associated trade-related capacity building and technical assistance.

Worse still, the broadening definition of what constitutes AfT has enabled an increasing number of aid projects to be classified as trade-related thus creating the impression that substantial funding of these matters is currently taking place.

The consequences of inadequately pursuing the current AfT initiative could be particularly adverse for the WTO. Once again, expectations among poorer countries and civil society will have been raised about the pro-development impact of the WTO and these may not be fulfilled; not unlike the impact of giving the DDA a “development” label. Care needs to be taken in deciding which institutions and policymakers are responsible for what – here accountability is crucial. The WTO Secretariat and its Director-General may have convening power but that does not confer responsibility on them for meeting the aid-related promises made by WTO Members at various Ministerial Conferences and elsewhere. It should be made clear that the WTO’s negotiating and juridical functions relate to creating and preserving commercial opportunities for its Members.

To the extent that the WTO plays a role in trade-related capacity building it should focus on ensuring coherence and accountability. Information gathering, the development and exchange of best practice approaches and reporting any gaps between commitments made and actions taken are all part of this contribution. In the months and years ahead it will be important to remind trade and development policymakers, civil society, and the media where the WTO’s obligations really lie and why others, including the aid ministries of national governments and the providers of technical assistance, should not fail in their trade-related aid commitments to developing countries. Responsible WTO Members and commentators should avoid creating expectations regarding AfT that might not be fulfilled by this initiative.

3.4 Conclusion

The relationship between trade and development is highly contentious and, as this Report argues, it involves a number of significant economic and political considerations. The importance of trade to development is universally recognised but the opportunities provided by trade liberalisation do not always translate into benefits for all countries. Countries hamstrung by inadequate infrastructure, inefficient bureaucracy, immature legal regimes and macroeconomic instability will not increase their exports as their overseas market access increases.

The multilateral trading system needs to offer meaningful support to developing countries that not only assists them in key elements of their development strategies, especially trade liberalisation, but also convinces them of the utility and legitimacy of the WTO. This understanding is the basis for the AfT discussions. It may be a cliché, but the WTO still needs to find a greater role for developing countries as stakeholders in the institution, while maintaining the engagement of the rest of the membership. In this Chapter, we have suggested more nuanced and relevant approaches to S&DT as well as one principled – as opposed to strictly practical – argument as to how this process may be advanced, namely by insisting on a key role for the WTO in the development and delivery of AfT. AfT has a purpose that remains valid outside the context of the Doha talks and thus should, in line with the recommendations of the WTO Task Force on the matter, continue to unfold despite the stalled negotiations.

CHAPTER 3: RECOMMENDATIONS

- 5 Debate over S&DT provisions in the WTO has been contentious and over-politicised and the need for substantive analysis has often been neglected. Critics of S&DT provisions have characterised them as insensitive to diverse conditions in developing countries, often irrelevant to real development needs, and over-reliant on best-endeavour undertakings that are often disregarded. The Commission recommends that efforts be redoubled to design clear, concrete S&DT provisions based on solid analysis of development needs and cognisant of the reality that differing needs among developing countries call for differentiated measures. The Commission commends the approach taken in the Doha negotiating mandate on trade facilitation, where the need for technical assistance and resource support to undertake new trade disciplines is linked to the ability to do so. The Commission also believes that the systemic aspects of this issue should be taken up in the proposed reflection exercise.
- 6 The Commission notes the importance of increasing opportunities for developing countries to benefit from trade through improving physical infrastructure and human capital, modernising and streamlining administrative procedures, and strengthening trade-related regimes such as those dealing with product standards. The Commission applauds the AfT initiative and recommends that the respective responsibilities of the WTO, donor nations, potential recipient nations, and the other international organisations involved with this initiative be clearly delineated. Failure to identify the locus of respective responsibilities will weaken the effectiveness of AfT and heighten the risk that the WTO will be wrongly blamed for the lapses of others. Thus each party should be held accountable for its contribution to this initiative, which should stand apart from trade negotiations.

Chapter 4

Reconciling Parallel Universes: Multilateralism and the Challenge of Preferentialism

The previous chapters of this Report have focused on the multilateral trading regime and the role of the WTO as its central institution. But trade governance and trade liberalisation are not simply a multilateral enterprise. In the last two decades, significant trade liberalisation has been achieved outside the multilateral arena, with most tariff reductions coming from unilateral liberalisation.

For some scholars of global trade, growing recourse to bilateral and regional preferential agreements is simply an inferior policy choice that undermines multilateralism and should be avoided. Yet trade governance and liberalisation are not as simple as that. PTAs need not, in all circumstances, be counterproductive in terms of a wider multilateral trade agenda. Moreover, such agreements, along with regional activity in other economic policy domains such as monetary relations, are increasingly a fact of life in contemporary international economic relations and they will not simply disappear.

Even commentators favourably disposed towards PTAs as a vehicle of international cooperation recognise their downside from a more inclusive, multilateral perspective. The Commission's recommendations set out below seek to minimise the friction between regionalism and non-discriminatory trade relations presided over by the WTO. The WTO rules on Free Trade Areas (FTAs) and Customs Unions (CUs) have been notably unsuccessful in disciplining and regulating PTAs and this raises the question of what can be done about the rules. The Commission argues that the WTO needs to take a fresh look at the way it addresses regionalism and, as we shall discuss, a promising start has been made in this direction with the recent adoption of the new Transparency Mechanism.

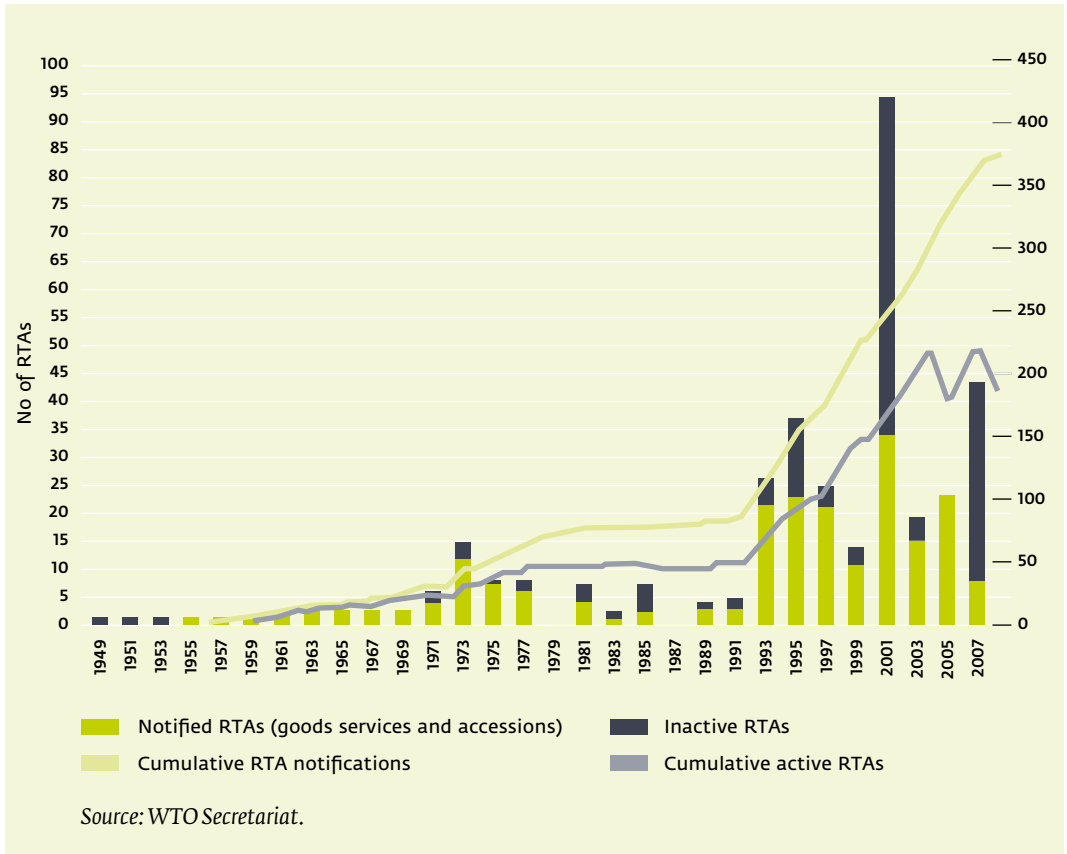
4.1 Why countries enter PTAs and what this implies for multilateral trade relations

Since the beginning of the 1990s, PTAs have multiplied rapidly. As of July 2007, 380 PTAs had been notified to the WTO. Taking into account agreements that have not been notified, as well as those that will come into force by the year 2010, the number of existing preferential agreements is around 400. It is said that the only WTO Member that has not signed or is not negotiating at least one PTA is Mongolia. In thinking about why this explosion is taking place, it is useful to consider first some of the salient features of contemporary regionalism.

Distinguishing features of PTAs

Some of the reasons why governments enter into PTAs can be illuminated by reference to two key architectural distinctions among these agreements. The first of these is the distinction between CUs and FTAs. When governments take the extra step of unifying their external trade regimes with respect to third parties, as they do in the case of CUs as opposed to FTAs, it is highly probable that the motivations driving such agreements include a strong economic component, underwritten by a willingness to pool sovereignty across a range of policy areas, with limited exceptions.

The establishment of a common external tariff in a CU involves a greater degree of negotiated integration than FTAs, which rely on rules of origin to regulate the rights of third party suppliers and suppliers in the PTA area. CUs also set the scene for an easier process of deeper integration involving internal measures that affect trade. In addition, members of a CU cede an additional measure of sovereignty in trade policy action, since they should not, in

FIGURE 1: THE EVOLUTION OF PREFERENTIAL TRADE AGREEMENTS 1948 TO 2007²⁰

principle, be at liberty to negotiate FTAs with third parties or MFN tariff reductions without the consent of their CU partners.²¹

These stronger integrationist tendencies in CUs may partly explain why there are so few CUs in existence, and why virtually all recently constituted PTAs are FTAs. Only some thirteen out of the 380 PTAs notified to the WTO to date are CUs. Moreover, a number of these CUs fall far short of meeting the basic characteristics of a fully fledged CU. This observation merely reinforces the notion that real CUs are generally very different from what pass as FTAs. Much of the current literature on regionalism and what it means for the trading regime is therefore focused on FTAs.

Turning to FTAs, the second basic distinction referred to above relates to the relative size of the

parties involved and the number of members in a FTA. Some FTAs comprise several countries of similar size. Such FTAs often involve clusters of developing countries and can be explained by a variety of motivations, which can include a strong interest in the economic gains from trade. Again, the validity of this statement will vary among agreements and across time. But a growing number of FTAs are not agreements among similar-sized (developing) countries. Rather, they involve one large developed country and one or more developing countries. Moreover, many recent FTAs are in fact bilateral in nature, and these bilateral agreements typically involve a large developed country and a small developing country.²² These FTAs tend to have mixed motives on both sides, are mostly of relatively recent vintage, and embody particular characteristics. We note two of these characteristics.

First, a growing number of bilateral FTAs involve countries that are not geographically contiguous. Examples of such agreements are those between the United States and certain Middle Eastern and Latin American nations. Such agreements may have important economic implications for at least one party, but generally they are strongly motivated by political and strategic considerations. To the extent that such FTAs involve a large (developed) and one or more small (developing) countries, their global economic impact will not be very significant and one would need to look at more localised regional factors to understand their effects on third parties.

Second, large countries entering into such arrangements sometimes apply a standard policy template that embodies elements going beyond WTO provisions (the so-called “WTO-plus” provisions), either in terms of the areas covered or the depth of commitments. This may be seen as strategic behaviour, perhaps motivated more generally by foreign policy considerations. Alternatively, such PTAs could be part of a broader demonstration of the characteristics of international trade policy regimes sought by the large country concerned.

Smaller countries may also pursue these arrangements in part for strategic reasons, relating both to the search for stability and certainty in their trade relations with major partners and perhaps to a desire to define and tie in domestic policies in a manner that make them harder to change. Developing countries may be willing to accept WTO-plus provisions in exchange for these perceived benefits.

A final point relevant to this brief discussion on typology refers to what has become known in the literature as “hub and spoke” agreements. These are essentially a series of bilateral agreements maintained by a single large trading entity (the hub) with a collection of smaller trading partners (the spokes). In economic and political terms, the large countries are doubtless well served by such arrangements, but the spokes are generally less well off than they would be if they formed part of a larger whole in which they were integrated among themselves in a larger arrangement with the erstwhile hub. This is but one of the

considerations that inform the Commission’s recommendations spelt out below in relation to the multilateralisation of regionalism.

One could argue that as long as trade liberalisation occurs, as it does with unilateral liberalisation, it matters less whether it is at a bilateral, regional or multilateral level. In theory, preferential agreements can have significant benefits, e.g. promoting technology and knowledge transfers, domestic reforms, productivity gains and improved developmental prospects. Critics of preferential agreements, however, would emphasise the negative effects, including the distortion in trade patterns between ‘insiders’ and ‘outsiders’ which undermine the welfare gains arising from expanded trade. Critics also stress that the trade distortions create incentives for inefficient resource allocation. The institutional dimensions of rules also matter; especially the ‘spaghetti bowl’ effect of multiple agreements with separate rules of origin. The operational costs of meeting different requirements in different countries pose a major challenge, especially for small and medium-sized enterprises. Preferential trade agreements with these outcomes are clearly a second-best option compared to a multilateral agreement at the WTO with uniform rules applicable to all members.

Motives for PTAs

Our discussion about different kinds of PTAs requires us to provide a more systematic consideration of what motivates governments to enter into PTAs. In the past, unilateral liberalisation and preferential agreements co-existed with the development of multilateralism. It has been suggested that, at least during the first phase of regionalism after World War II, in the 1960s, these three dimensions complemented rather than competed with each other. The 1980s saw the launch of the Uruguay Round in 1986, major steps forward in European as well as North American integration as well as unilateral liberalisation. With the completion of the Uruguay Round in 1994, we saw both a remarkable achievement for multilateralism and some important preferential initiatives. Thus, we could assume that there is little

need to see a threat to the multilateral regime emerging from preferential agreements. There is, however, evidence to suggest that today's preferential agreements create a different environment which poses threats to the multilateral trading regime.

First, the United States is actively pushing for PTAs. The country that helped shape and underwrite the post World War II non-discriminatory trading regime has been at the forefront of those emphasising the development of PTAs in recent years. Whilst the number of PTAs between the United States and other countries has been somewhat limited, in part due to the linking of trade and security policy, the continuing push for preferential agreements represents a break with US policies of the past. Similarly, the European Union has long been actively pursuing PTAs although many of them have been with countries either on the European continent or with which the EU has enjoyed strong historical relations. Today, the EU is entering negotiations with some of the few remaining countries with which it still trades on MFN-basis.

Third, Asian countries have joined the trend. Whilst important East Asian countries, Japan, South Korea and China, long refrained from negotiating preferential agreements these countries have been extremely active in the push for PTAs since the turn of the century. Fourth, many PTAs are about much more than regulating trade. The United States, for example, uses a template in its PTAs that also has the effect of shaping domestic regulation in the partner countries. The consequence is the creation of parallel regulatory spheres that, at least in some cases, make international trade more difficult than under the umbrella of the WTO. A plethora of competing and overlapping norms and regulations does not facilitate international trade.

Beyond this political context there is a vast economic literature on this subject and it is not our intention to rehearse it here. We simply recount some of the more important explanations that are linked to perceived shortcomings in the multilateral trading regime and the capacity of the WTO to deliver

an adequate framework for international trade relations. Other motivations for establishing PTAs simply cannot be seen as shortcomings of multilateralism. In this sense, improvements in the WTO system and the way it works may certainly help to deal with some of the drawbacks of regionalism and engender greater systemic coherence, but however well they are executed, they will not make PTAs disappear. This is why the Commission believes that the contribution of the WTO in managing regionalism should go beyond merely seeking to enforce treaty-based rules.

Ten of the most important reasons why governments may become involved in PTAs are:

- To protect a larger market from external competition, or in other words to divert trade and protect local enterprises;
- To enlarge a trading entity in order to increase bargaining power when dealing with other trading partners;
- To secure additional benefits from open trade and trade rules that cannot be realised at the multilateral level because multilateral negotiations are unsuccessful or too slow;
- To go further and deeper in terms of policy coverage and commitments ("WTO-plus");
- To promote good neighbourliness or to secure any other of a range of political or foreign policy objectives that focus on a subset of the international community (non-trade objectives);
- To reap short-term political advantage and publicity through signing agreements where the act of doing so may be seen as more important than the substance of a contemplated agreement (Bhagwati's CNN effect);
- To lock in domestic reforms in a fashion that a WTO commitment does not guarantee either because of the reach of its rules, the nature of exceptions to the rules, or the absence of a strong enough compliance imperative;

- To allow experimentation with respect to different approaches to international rule-making or with trade liberalisation (the “laboratory motive”);
- To insure against future policy instability or uncertainty, particularly in the markets of major trading partners (the “insurance motive”);
- To avoid exclusion as other countries and competitors secure advantageous access to markets via PTAs (the “domino effect”).

These ten considerations are by no means exhaustive, but they are among the factors frequently cited as motivations for negotiating PTAs. Research is lacking in respect to which of these reasons, or which other reasons, are the most salient, but the picture is likely to be highly varied across regions, among agreements, and over time. As noted above, the variegated motivations for seeking alternatives to the WTO raise challenging questions about how the WTO might contribute to minimising the adverse fallout from discriminatory trade policy initiatives.

The impact of regionalism on the multilateral trading system

As with every other aspect of regionalism, much has been written about the impact of PTAs on the multilateral trading system. Most commentators agree that a multilateral approach to trade relations is generally preferable to the fragmentation that is today’s PTA panorama. This tends to be true of those who are relatively sanguine about the adverse effects of regionalism as much as it is of those who worry about its corrosive impact on international trade relations. The Commission is firmly of the view that concerted action is needed to bring greater order and coherence to the present confusing web of criss-crossing PTAs around the world.

We briefly identify six considerations that signify the need for caution in the creation, design and management of PTAs. These considerations also provide pointers as to what might be done to promote coherence, fairness and stability in trade relations. They may be

characterised as concerns about distortions, exclusion, instability, inefficiency, the circumscription of liberalisation opportunities, and diverted attention.

First, the jury seems to be out on the question of how trade-distorting PTAs have become, or in other words, how much trade diversion they cause. Evidence goes both ways, but this is clearly a source of legitimate concern and underlies the design of some of the WTO rules on regional agreements. Moreover, where PTAs go further than the liberalisation of trade at the border to cover regulations and internal measures, they carry the risk of further segmenting markets and distorting trade in ways not fully understood.

Second, PTAs can exclude countries, especially small ones that offer limited attraction in terms of their market size. In this sense, regionalism can engender unfairness in the system and carry a cost for the most vulnerable.

Third, each time a regional agreement is struck, it carries implications for existing PTAs in terms of relative trade advantages. In other words, preference margins acquired as a result of existing PTAs are rendered less valuable with the addition of each subsequent PTA. In stark contrast to MFN liberalisation, these arrangements are inherently unstable and potentially unsettling for trade relations.

Fourth, the very nature of FTAs and the need for rules of origin, engender trade costs and uncertainty, particularly when such rules overlap among Members that are party to several such agreements. These effects become more troublesome in a world where production processes are situated across multiple jurisdictions and when much cross-border trade and investment activity concerns intermediate inputs and services. These rules are wasteful as they incur costs which in turn reduce trading opportunities and the benefits that flow from FTAs. As discussed below, there are ways of limiting the dampening effects on trade of rules of origin.

Fifth, one less than universally appreciated feature of preferentialism in trade is the effect it has on the ability of governments to address the

most intractable trade policy problems. Regional agreements typically pick off the easiest liberalisation opportunities, leaving the harder parts as exceptions to free trade under PTAs. These exceptions tend to be found in similar areas to those encountered in multilateral trade negotiations, such as trade in agriculture and in labour-intensive manufactures. By liberalizing in the “easy” areas PTAs are eroding the scope for future trade-offs, both domestically and internationally. Those who pay are in the sectors where liberalisation is more difficult, as there is less to trade off in a reciprocal negotiation.

Sixth, a number of commentators have argued that an additional burden imposed by regionalism is that it diverts attention from multilateral negotiations. This can be true in two senses. First, governments may believe, or be lulled politically into the conviction, that they can acquire all they need by way of trade policy through regional arrangements. This will lead to neglect of the relative costs and benefits, especially over time, of regional versus multilateral approaches to trade relations. The second way in which RTAs may crowd out serious consideration of the frequently harder business of making multilateral agreements is through the resource costs of actually carrying out negotiations. Even the biggest and best organised countries can be challenged when it comes to negotiating trade agreements at these two different levels.

Taken together, these six concerns in regard to prevailing FTAs raise questions about the appropriate multilateral rules for PTAs. In the next section we first describe briefly the existing multilateral rules pertaining to these arrangements and then consider whether they fall short.

4.2 WTO rules, the erosion of non-discrimination and options for reform

The three key WTO provisions permitting departures from the non-discrimination principle on the grounds of regional integration are found in GATT Article XXIV and the ‘Enabling Clause’²³ for goods and the General Agreement on Trade in Services (GATS) Article V for services. Today, the increased use

of these exceptions arguably makes MFN look like the exception rather than the rule. The European Union, for example, applies MFN tariffs to only nine trading partners and around half of world trade now takes place on a non-MFN basis.²⁴

GATT Article XXIV permits CUs and FTAs and stipulates that they should be designed to facilitate trade among the parties concerned and not raise barriers to the trade of third parties. Thus, CUs and FTAs are required to liberalise substantially all trade among the parties and not to raise additional barriers against outsiders. They may take the form of interim agreements in the first instance, but save in exceptional circumstances should be fully compliant within ten years.

The 1979 Enabling Clause codifies various elements of special and differential treatment for developing countries, including in respect of PTAs. Provided the PTA in question is only among developing countries, it may be constituted as long as it does not raise barriers or frustrate the trade of other parties nor ‘constitute an impediment to the reduction or elimination of tariff and other restrictions to trade on a most-favoured-nation basis.’²⁵ Perhaps most significantly, the Enabling Clause has removed the “substantially all trade” requirement for CUs and FTAs exclusively comprising a developing country membership.

GATS Article V is similar in intent, both with respect to the effects on outsiders of discriminatory liberalisation and the coverage among the parties to an agreement, although the provisions are phrased in somewhat dissimilar language to take account of differences in how services trade is conducted. Moreover, the provisions are arguably couched in somewhat less precise terms. The Article is entitled Economic Integration and the equivalent of “substantially all trade” in Article XXIV is the requirement of substantial sectoral coverage (with no a priori exclusion of a mode of supply) and the absence or elimination of substantially all present and future discrimination. However, in evaluating whether these conditions are met, consideration may be given to ‘a wider process of economic integration or trade liberalization

among the countries concerned.²⁶ In addition, developing countries are to be accorded appropriate flexibility in meeting the criteria set out for a conforming agreement.

Criticisms of the rules

The first of two well known criticisms of the WTO rules is that they have never been adequately enforced. The GATT/WTO membership has almost never agreed that a PTA presented for examination is in conformity with the rules, nor insisted on any modification to bring an agreement into conformity. This has created a major hole in the multilateral system of trade disciplines. It is the result of wilful neglect on the part of the membership, reflecting in no small part the comfort of mutual indulgence. Second, the rules themselves are vague and incomplete. Efforts over the years to render them more precise and to clarify their reach have met with limited success, doubtless for the same reason that the PTA examination process has generally been inconclusive and lacking in influence. Moreover, there are significant gaps in the rules.

The most notable of these gaps on the goods side is the absence of disciplines on rules of origin, which in the particular case of FTAs are crucial in shaping the conditions of competition within the preferential area and the terms upon which third parties can benefit from new trading opportunities within the preferential area. Rules of origin are used to determine how much non-local content is permitted in the production of a good without that good losing originating status, and therefore duty-free treatment, within the preferential area. These rules can be complex, opaque, highly varied across sectors, strongly protectionist and costly in terms of both administration and compliance. Strict rules of origin are, in effect, becoming a new form of non-tariff barrier. The abuse of rules of origin for protectionist purposes can cast a shadow over the legitimacy of PTAs. Tailor-made rules of origin can be used to provide protection to a very specific sector of a country's economy. It is this that makes the use of rules of origin in PTAs so attractive to political leaders: they can be tailored to serve the interest of certain interest groups.

Addressing the rules on permissible departures from MFN for PTAs

Given the strong probability that not all PTAs are net welfare enhancing in global terms, a key question is whether there are ways to improve multilateral disciplines applying to these agreements. Despite successive negotiating mandates to revisit the rules on regionalism, particularly GATT Article XXIV, only relatively slight clarifications and improvements have been forthcoming. Similarly, certain disputes have provided clues as to possible future interpretation, but few would claim the rules are adequate or effective.

The most elegant way of eliminating the discrimination inherent in preferential agreements would be to reduce all MFN tariffs to zero. Considering the low level of tariffs on many products, both in developed and developing countries, this idea may not seem far-fetched in the not-too-distant future. Indeed, recent work on “mutlilateralising regionalism” explores the idea that as overlapping PTAs multiply, pressures may mount in favour of dismantling the preferential tangle in favour of a more multilateralised approach to trade relations. The essential dynamic at work here is that, in a world of internationalised production structures and falling tariffs, increasing trade costs associated with overlapping and differentiated systems of origin rules, possibly combined with localised regulatory obstacles, will rebalance producer interests and raise demands for a more rationalised and global approach to integration through trade. The research on these questions is ongoing, but basic market realities may be turning the tide towards a greater appreciation of the advantages of multilateral trade policy and a finer appreciation of the costs implicit in a PTA proliferation.

However, for the time being other means of reconciling PTAs with the multilateral system could usefully be explored. The Doha Declaration mandated negotiations for the purpose of ‘clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements.’ How might the WTO membership address this mandate? Many reform proposals have been put forward both in negotiations

and the academic literature. It is not our intention to revisit these or add to them. Suffice it to say that the Commission strongly endorses continuing efforts to improve the rules governing PTAs. Such efforts should not shun the more difficult issues, such as the “substantially all” requirement, the period within which a PTA should become fully operational, timely notification obligations, and of course, the rules of origin.

Improving the rules: dealing with origin

The fact that no international disciplines exist for preferential rules of origin²⁷ has obviously left room for different brands of creativity, not all favourable to an integrated world economy. One way of mitigating the more restrictive aspects of origin rules is to broaden the cumulation criteria. In other words, rules of origin can be made less restrictive through an extension of the geographical area from which qualifying inputs can originate. An example of this would be if the “hub” in a “hub and spoke” network of PTAs were to allow cumulation for the designation of origin to extend to all the “spokes”. In other words, inputs from all the “spoke” economies could count as originating for the purposes of trade between any one “spoke” and the “hub”. This would have the effect of making a “hub and spoke” arrangement look much more like a plurilateral PTA, with attendant increases in trading opportunities and a concomitant decrease in both compliance costs and likely trade and investment diversion. There would also be significant advantages in rendering different systems of origin rules more uniform and less confusing and costly for those whose activities require that they operate in a world of multiple origin systems.

The Transparency Mechanism: a fresh approach

Recently, the WTO membership took a different tack by agreeing to institute a new Transparency Mechanism²⁸ under which Members are required to notify the WTO and provide information on newly signed RTAs. In turn, the WTO Secretariat will prepare a factual presentation on the RTA in a timely manner. This is a promising avenue. The exercise will

contribute to knowledge on the details of regional agreements. Transparency is typically a precondition for progress in improving the policy environment. The Commission strongly endorses this initiative, which has been adopted on a provisional basis, since it was negotiated in the context of the DDA. We believe that the mechanism should be accorded permanent status and strengthened as necessary to ensure a continuing high-quality flow of information on PTAs among WTO Members.

The Commission also believes that an effective transparency exercise is but a beginning that affords an opportunity for the membership of the WTO to engage in a reflection exercise on the question of how to render the parallel universes of multilateral and less than fully multilateral trade relations more coherent and more beneficial to the entire community of trading nations. This proposal is consistent with the Commission’s broader recommendations regarding the enhanced role of the WTO as an institution that fosters reflection and the exchange of ideas, thus providing a constructive supplement to its functions as a forum for negotiating trade rules and settling disputes.

In the particular case of regionalism and its relationship with multilateralism, the Commission recommends that a reflection on the future role of the WTO in managing regionalism should include consideration of an exercise to establish best practices to be followed by Members engaging in PTAs. This exercise is already being undertaken by APEC and it may be possible to learn from that experience. A key challenge would be to distinguish the comity-based exchange of ideas about appropriate ways of approaching regional agreements – best practices – from the WTO’s rule-making functions. We do not for a moment suggest that the WTO should be seeking to soften binding law and substitute it with best-endeavour understandings. On the contrary, the conversations around best approaches to managing regionalism are designed not only to enhance mutual understanding and improve policy approaches, but also to inform law-making and lessen the likelihood of trade disputes.

A leadership role for the major trading nations

One reason why half of world trade is still conducted on a MFN basis, notwithstanding the existence of an even greater number of PTAs, is that the largest trading nations have so far desisted from negotiating PTAs among themselves. No such agreements exist, for example, among the United States, the European Union and Japan, although the United States and the European Union have signed a 'Framework for Advancing Transatlantic Economic Integration' in April 2007. Relatively few agreements exist between the three major players and major developing countries. None of the three have PTAs with China or Brazil, for example. However, other large developing country traders such as South Korea and Mexico do have PTAs with at least one of them.

If the WTO membership is to engage seriously in addressing what has clearly become a challenge to the coherence and stability of the trading system, the largest trading nations in the system should show leadership. They should be willing to underwrite the "public good" of non-discriminatory multilateral trade. In short, the Commission believes that the major industrial countries should, as a matter of principle, forswear the establishment of PTAs among themselves. We believe that they should also be mindful of the systemic implications of establishing additional PTAs with other large trading countries. If PTAs were to be negotiated among the major trading nations, the very real risk is that such agreements would be seen by their signatories as a new template for redefining the multilateral trade regime. It is hard to imagine a more contentious and destructive scenario for international trade relations.

4.3 Conclusion

The Commission is convinced that the WTO alone has the capacity to address PTAs as a collective action problem confronting the multilateral trading regime. We do not believe that regionalism will disappear, nor that the WTO is necessarily well placed to achieve everything that governments seek to attain in terms of their international trade relations with other nations. But we do believe that the

explosion of regionalism in recent years has been sub-optimal in systemic and political terms.

Recent developments carry the risk of undermining the fabric of inclusive, fair and stable institutional arrangements that underpin international trade. Governments should not forget the post-war lessons learned from the *débat* of largely institution-free trading arrangements in the first half of the twentieth century. We also believe that poorly conceived regionalism carries many avoidable costs and tends to penalise the weaker and smaller members of the trade community. These are the considerations informing the Commission's recommendations in this area.

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- 7 The Commission believes that the very rapid growth of PTAs in recent years has unnecessarily raised trade costs and carries worrying implications for the world trade regime in terms of stability, fairness, opportunity and coherence. The Commission therefore recommends that as part of a concerted response by governments to this situation, current efforts to clarify and improve disciplines and procedures in relation to WTO provisions on RTAs be intensified.
- 8 The Commission recommends that, as an expression of their commitment to the multilateral trading system and of a willingness to provide leadership in maintaining and strengthening international trade arrangements for the benefit of all, the major industrialised countries should refrain from establishing PTAs among themselves. The Commission also believes that large developing countries with significant shares in world trade should similarly refrain from establishing PTAs with each other.
- 9 The Commission recommends that WTO Members strengthen and make permanent the recently established Transparency Mechanism for reviewing RTAs. The Commission believes that this initiative would provide crucial support for an urgently needed process of reflection, independent of negotiations, to consider how to manage the relationship between multilateral and RTAs. In this connection, the Commission recommends that consideration be given to developing a mechanism that facilitates collective surveillance of regional trade agreements and to the establishment of a code of best practices.

Conclusion

Which Way Forward?

This Report is finalised at a time when the outcome of the Doha negotiations is still to be determined.

That the DDA has not been the focus of attention of this Report is not to underestimate the importance of securing an optimal outcome as soon as possible in the DDA. Rather, we have focussed on a number of specific aspects of the management of the global trade regime that transcend issues specific to the DDA. This is a reflection of our belief that there are a number of important questions to be addressed about the health of the multilateral trading system irrespective of whether a Round is in train or not. As was demonstrated in Chapter 1, the global economy in general, and the multilateral trading system in particular, are at crossroads. Support for an open, liberal trading system is neither consistent nor unambiguous. Indeed, in Chapter 1, we identified five challenges that are modifying the politics of international trade, in general, with implications for the multilateral trading system, in particular.

In such a context, the Commission came to the view that three matters, at least, need to be addressed in the contemporary trading system: the need to improve the management of agenda setting, decision-making and participation in global trade; the need to define more tightly the relationship between trade and development; and, finally, the need to understand, and respond to, the increasingly complex relationship between the multilateral system and the growing number of preferential trade relationships. These issues were tackled respectively in chapters 2-4 of the Report. This concluding section does not rehearse these arguments or indeed the recommendations of the respective chapters. Rather it seeks to advance one over-arching recommendation.

The Warwick Commission is of the view that it is time for the membership of the WTO to undertake a constructive, non-litigious, non-confrontational ‘reflective exercise’. Lest this should seem a naïve or trivial suggestion let us recall that such exercises have been undertaken in the past; for example, by the Working Party on Structural Adjustment that met in the early 1980s and the various deliberations of the old Consultative Group of Eighteen (CG18). We are not, of course, suggesting the latter consultation processes as a model for the early 21st century. Rather, in recognising the importance of procedural justice, we would envisage a reflection process open to the entire membership rather than simply a section of it. In our opinion, such an initiative should be led by either the Director-General or the Chairman of the General Council. Issues for consideration in such a consultation exercise should be wide ranging, including emerging issues such as the relationship between climate change and trade, but it would also clearly offer an opportunity to discuss several of the recommendations identified in this Report.

For a ‘reflection exercise’ to be a significant initiative it needs to be based on improved information provision. Contemplation without superior information will be a limited exercise. As an example of what we mean, we developed a discussion in Chapter 4 of the importance of monitoring all new RTAs. More generally, we are advocating the enhancement of the WTO’s abilities and tasks in the area of monitoring and surveillance of trade policy and activity. The purpose of such activity is not simply knowledge for knowledge’s sake, but rather as a means to developing more positive attitudes

towards cooperation in the years to come. The monitoring and surveillance functions of the WTO have expanded and must surely continue to do so as WTO obligations become deeper and obstacles to trade, such as Non Tariff Barriers (NTBs), become more complex. By cooperation we mean here not only the full implementation of existing obligations, but also enhanced thinking about the direction that cooperation might take in the future. We cannot simply assume that the right path will be followed. A period of structured and meaningful reflection is required. In this regard, we think that the timing is right for our proposed reflection exercise which would aim to develop a longer term understanding of the contemporary functioning and future direction of the trade system in general and the WTO in particular.

CONCLUDING RECOMMENDATION

- 10 The Commission therefore recommends that a process of reflection be established in the WTO, led by the Chairman of the General Council and/or the Director-General, to consider the challenges and opportunities facing the multilateral trading system and to draw up a plan of action to address them.

References

EXECUTIVE SUMMARY AND RECOMMENDATIONS

- ¹ The Commission Report and its recommendations reflect an overall consensus on the part of the Commissioners without assuming that all of them agree with each and every statement contained in it.
- ² We refer, in particular, to the Leutwiler Report, *Trade Policies for a Better Future*, Amsterdam: Martinus Nijhoff Publishers, 1987; *The Sutherland Report: A Report of the Consultative Board to the Director-General, Supachai Panitchpakdi, The Future of the WTO: Addressing institutional challenges in the new millennium*, Geneva: WTO, 2004, and Ernesto Zedillo, Patrick Messerlin and Julia Nielson, *Trade for Development*, UN Millennium Project Task Force on Trade, London: Earthscan, 2005.
- ³ All members of the Commission serve in an individual, not representational capacity.

INTRODUCTION

- ⁴ All sources referred to in the text of this Report can be found in Appendix I
- ⁵ We are not revisiting the WTO in the fashion of the Sutherland Report, but we would refer readers of this Report to it.

CHAPTER 1

- ⁶ Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela, Zimbabwe.

CHAPTER 2

- ⁷ Public goods are characterised by non excludability and non rivalry. Public goods are, thus, available to all.
- ⁸ The ‘Singapore Issues’ cover foreign investment, competition policy, government procurement and trade facilitation.
- ⁹ In paragraph 32, the Committee on Trade and Environment is urged to consider ‘the effect of environmental measures on market access, especially in relation to developing countries, in particular the least developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development.’
- ¹⁰ For example, the link between trade and environment is explicitly referred to in the preamble to the Marrakesh Agreement Establishing the World Trade Organization, which talks of:

‘...allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with [the Parties’] respective needs and concerns at different levels of economic development’

Similarly, on labour standards the text of the 1966 Singapore Ministerial Declaration states the following:

'We renew our commitment to the observance of internationally recognised core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalisation contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration'

- ¹¹ Exceptions to the Uruguay Round Single Undertaking were the Agreement on Trade in Civil Aircraft, the Agreement on Government Procurement, the International Dairy Arrangement and the International Bovine Meat Agreement.
- ¹² The Uruguay Round Single Undertaking also resulted in universal acceptance of other elements of the package emerging from the Round, including the new agreements on trade in services and trade-related intellectual property rights.
- ¹³ "Zero-for-zero" negotiations reduce tariffs to zero in selected sectors among participating parties.
- ¹⁴ The Agreement on Government Procurement was, and has remained, an exception since signatories are permitted to discriminate against non-signatories in this domain.
- ¹⁵ Paragraph B(ii) of the Declaration reads:

'The launching, the conduct and the implementation of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or definitive basis by agreement prior to the formal conclusion of the negotiations'

It would seem from the single undertaking language quoted here that, in 1986, governments were primarily concerned with ensuring the coherence and completeness of the process – in other words that nothing would be agreed until everything was agreed. It was only some seven years later in the closing stages and aftermath of the Round that it became fully apparent that every negotiating party would only become a Member of the WTO upon signature of every agreement in the Uruguay Round package – in other words, that the critical mass aspect of variable geometry embedded in the Tokyo Round results was no more.

- ¹⁶ A commentary on the DSU can be found in the Sutherland Report.
- ¹⁷ See Chapter VI, Section D.

CHAPTER 3

- ¹⁸ Principal membership includes the IMF, World Bank and WTO as well as the International Trade Centre (ITC), the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Development Programme (UNDP).
- ¹⁹ Aid for Trade comprises technical assistance, capacity building, institutional reform, investment in trade related infrastructure, assistance to off set adjustment costs in making transitions from tariffs to other sources of revenue.

CHAPTER 4

- ²⁰ Some 300 of them are trade agreements covering trade in goods and are notified under Article XXIV, whilst 58 cover trade in services and are notified under Article V of the GATS, and 22 are notified under the Enabling Clause of 1979, that is agreements between developing countries.
- ²¹ This last constraint does not apply if a CU partner has an applied common external tariff that is lower than a MFN binding, provided the negotiated MFN reduction in the bound tariff does not bring the latter to a level lower than the applied common external tariff.
- ²² An exception is the agreement between the Central American Common Market (CACM) and the United States, but even in this case, because the CACM is a CU, this was essentially a bilateral negotiation.
- ²³ The formal designation of the 1979 Decision referred to as the Enabling Clause is the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.
- ²⁴ Whether companies utilise tariff preferences or prefer to pay tariffs varies according to the restrictiveness of the rules of origin regime and other factors.
- ²⁵ Enabling Clause, paragraph 3(b).
- ²⁶ GATS Article V, paragraph 2. One interesting feature of Article V is the paragraph 6 requirement that foreign investors from outside the preferential area are to enjoy the benefits of the agreement if they have substantial business operations within the area.
- ²⁷ Negotiations have been going in respect of non-preferential rules of origin since the entry into force of the results of the Uruguay Round in 1995.
- ²⁸ See the Decision of 14 December 2006 entitled 'Transparency Mechanism for Regional Trade Agreements.'

Appendices

Appendix I

The Multilateral Trading System: A Short Bibliographical Note

For the purposes of readability, this Report is written in a non-scholarly style. Footnotes and referencing in the text have been kept to an absolute minimum. However, the Report has drawn on a wide range of sources and literature. This short bibliographical note is indicative only. In no way does it purport to comprehensiveness. But it does provide a guide to some of the materials that have informed the preparation of this Report and which anyone wishing to follow up further on various sections of the Report might find useful.

INTRODUCTION

Five Challenges Facing the Global Trade Regime

By way of background, we should note that the Warwick Commission is not the first inquiry to engage in an analysis of the challenges for the multilateral trade regime in general and the GATT/WTO in particular. Previous exercises include the Leutwiler Report, *Trade Policies for a Better Future*, Amsterdam: Martinus Nijhoff Publishers, 1987; *The Sutherland Report: A Report of the Consultative Board to the Director-General, Supachai Panitchpakdi, The Future of the WTO: Addressing institutional challenges in the new millennium*, Geneva: WTO, 2004, and Ernesto Zedillo, Patrick Messerlin and Julia Nielson, *Trade for Development*, UN Millennium Project Task Force on Trade, London: Earthscan, 2005.

The literature on the World Trade Organization (WTO) is vast. Those interested in the agreements of the WTO in general, and recent negotiations in particular, should start at the website of the Organization (www.wto.org) and the Doha briefings of bodies such as the International Centre for Trade and Sustainable Development (www.ictsd.org/pubs/dohabriefings). The recent impasse of the Doha Development Round raises immediate concerns regarding the progress of the trade negotiations, but also longer term questions about the sustainability of the processes and everyday workings of the system in its current form. A good starting point here is Paul Collier, 'Why the WTO is Deadlocked: And What Can Be Done About It', *The World Economy*, 29(10) 2006: 1423-1449, but see also the essays in Donna Lee and Rorden Wilkinson (eds.) *The WTO after Hong Kong: Progress in, and prospects for, the Doha Development Agenda*, London: Routledge, 2007.

For more general analyses of the legal, political and economic processes that underpin the workings of the WTO, see *inter alia*: John Jackson, *The World Trade Organization: Constitution and Jurisprudence*, London: Royal Institute of International Affairs, 1998; Michael Trebilcock and Robert Howse, *The Regulation of International Trade*, London: Routledge, 2005, 3rd edition; Robert Howse, *The WTO System: Law, Politics and Legitimacy*, London: Cameron May, 2007; Bernard Hoekman and Michel Kostecki, *The Political Economy of the World Trading System: The WTO and Beyond*, Oxford: Oxford University Press, 2001, 2nd edition; Kyle Bagwell and Robert Staiger, *The Economics of the World Trading System*, Boston MA: The MIT Press, 2003; John H. Barton, Judith L. Goldstein, Timothy E. Josling, & Richard H. Steinberg, *The Evolution of the Trade Regime: Politics, Economics and Law*, Princeton NJ: Princeton University Press, 2006, and Rorden Wilkinson, *The WTO: Crisis and the Governance of Global Trade*, London: Routledge, 2006.

CHAPTER 1

The Global Economic Paradox: Deeper Integration, Shallower Support

For an introduction to the classic case for globalisation, see Jagdish Bhagwati, *In Defence of Globalization*, New York: Oxford University Press, 2004 and Martin Wolf, *Why Globalization Works: The Case for the Global Market Economy*, New Haven: Yale University Press, 2004. Bhagwati argues that properly regulated, globalisation is the most powerful force for social good in the world. It leads to greater general prosperity in an under-developed nation; it can reduce child labour, increase literacy, and enhance the economic and social standing of women. Wolf presents a detailed reply to the critics of globalisation and demonstrates the advantages of a relatively globalised market economy over alternative systems. He holds not only that globalisation works, but also that it is needed if we are to aspire to extend prosperity and freedom. For other general reviews see Manfred B. Steger, *Globalization: A Very Short Introduction*, Oxford: Oxford University Press, 2003 and Michael Veseth, *Globaloney: Unravelling the Myths of Globalization*, Lanham MD: Rowman and Littlefield, 2005.

Critiques of globalisation range from the “critical reformist” (pace Joseph Stiglitz, *Globalization and its Discontents*, New York: W.W. Norton, 2002, and *Making Globalization Work*, New York: Penguin, Allen Lane, 2006); the ‘Fair Trade’ advocates, for example, Laura T. Reynolds, Douglas Murray and John Wilkinson (eds.) *Fair Trade: The Challenges of Transforming Globalization* London: Routledge, 2007; and the globalisation ‘rejectionists’ (pace Walden Bello, *De-Globalization: Ideas for a new World Economy*, London: Zed Books, 2002, and groups such as Focus on the Global South at www.focusweb.org).

On some of the recent controversies surrounding the contemporary relationship between globalisation and trade see Dani Rodrik, *Has Globalization Gone too Far?* Washington DC: Institute for International Economics, 1997; Michael J. Hiscox, *International Trade and Political Conflict: Commerce, Coalitions and Mobility*, Princeton NJ: Princeton University Press, 2002; Moisés Naím, ‘The Free-Trade Paradox’, *Foreign Policy*, September/October 2007, posted at http://www.foreignpolicy.com/story/cms.php?story_id=3953; and Kenneth Scheve and Matthew Slaughter, ‘A New Deal for Globalization’, *Foreign Affairs*, 86(4) 2007: 34-47. Statistical analyses on the impact of globalisation may be obtained in the International Monetary Fund (IMF) publication series, *World Economic Outlook*, particularly the April and October 2007 volumes on *Spillovers and Cycles in the Global Economy*, and *Globalization and Inequality* respectively. These documents can be accessed at www.imf.org/external/pubs/; see also the Globalization Index at <http://www2.warwick.ac.uk/fac/soc/csgr/index/download>.

Some limits to neo-classical economic theory under conditions of contemporary globalisation have been recently outlined by Nobel Laureate Paul A. Samuelson, ‘Where Ricardo and Mill Rebut and Confirm Arguments of Mainstream Economists Supporting Globalization’, *Journal of Economic Perspectives*, 18(3) 2004: 135-146. This debate was continued with Alan Blinder’s essay on ‘How Many U.S. Jobs Might Be Offshoreable?’ CEPS *Working Paper No. 142*, March 2007. See also Sandra Polaski in *U.S. Living Standards in an Era of Globalization*, Carnegie Policy Brief, No. 53 (July 2007).

Opinion poll data in Chapter 1 provide some indicators of popular responses to globalisation. See FT/Harris Poll (July 2007), ‘Monthly Opinions of Adults from Five European Countries and the United States’, www.harrisinteractive.com/news/FTHarrisPoll/HI_FinancialTimes_HarrisPoll_July2007.pdf.

For a discussion of the new actors, especially India and China, and their changing role in the multilateral trading system see Andrew Cooper, Agata Antkiewicz and Timothy M. Shaw, *Economic Size Trumps All Else? Lessons from BRICSAM*, Centre for International Governance Innovation, Working Paper Series, Waterloo, ON: April, 2006: 1-26. On India, see Praesentjit K. Basu, Brahma Chellaney, Parag Khanna and Sunil Khilanani, *India as a New Global Leader*, London: The Foreign Policy Centre, 2005; *India Rising: A Medium Term Perspective*, Frankfurt: Deutsche Bank Research, 2005 at www.dbresearch.com; John Humphries and Dirk Messner, ‘China and India as New

Global Governance Actors: Challenges for Developed and Developing Countries', *IDS Bulletin*, 37(1) 2006: 107-114; and J. Orstrom Moller, 'China and India: Rise of the New Global Powerhouses', *The National Interest*, 17 September 2003. On China and the impact of its economic growth, see Robert Z. Lawrence, 'China and the Multilateral Trading System', <http://ksghome.harvard.edu/~RLawrence/Lawrence%20China%20and%20the%20Multilateral%20Trading%20System.pdf>. For more cautionary and nuanced analyses see Shaun Breslin, *China and the Global Political Economy*, Basingstoke: Palgrave, 2007 and Albert Keidel, *China's Economic Fluctuations and their Implications for its Rural Economy*, Washington DC: Carnegie Endowment for International Peace, 2007.

For a discussion of the current role and policies of the traditional powers in the multilateral trade system, see I. M. Destler, *American Trade Politics*, Washington DC: Institute for International Economics, 2005, 4th Edition; and Daniel Drezner, *US Trade Strategy: Free Trade versus Fair Trade*, New York: Council on Foreign Relations, 2006. On the European Union, see Simon Evenett, *EU Commercial Policy in a Multipolar Trading System*, The Centre for International Governance Innovation, Working Paper No. 23, 1-38, Waterloo, ON: April 2007. See also Stephen Woolcock, 'European Trade Policy' and Tony Porter, 'The United States in International Trade Politics: Liberal Leader or Heavy Handed Hegemon', in Dominic Kelly and Wyn Grant (eds.) *The Politics of International Trade in the 21st Century*, Basingstoke: Palgrave, 2005.

CHAPTER 2

The Management of Global Trade: Purposes, Boundaries and Decision-Making

As this Report has argued, recent problems in the WTO are sometimes symptomatic of deeper issues regarding the role and functioning of international institutions in the context of contemporary world order and global governance in general, and the structure and process of trade negotiations and trade governance in particular. Key works on the theory and practice of international institutionalism include John Ruggie's classic statement on multilateralism in 'Multilateralism: the Anatomy of an Institution', in Ruggie (ed) *Multilateralism Matters: The Theory and Praxis of an Institutional Form*, New York: Columbia University Press, 1993 and Robert Keohane's insights into the role of institutions, especially *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton NJ: Princeton University Press, 1994; the essays in *International Institutions and State Power: Essays in International Relations Theory*, Boulder CO: Westview Press, 1989; and *Power and Governance in a Partially Globalised World*, London: Routledge, 2002. See also Beth Simmons and Lisa Martin, 'International Organisations and Institutions', in Walter Carlsnaes, Thomas Risse and Beth Simmons (eds.) *Handbook of International Relations*, London: Sage, 2002.

Michael Barnett and Martha Finnemore make the case for the importance of rules and norms in the management of the global order in *Rules for the World: International Organizations in Global Politics*, Ithaca: Cornell University Press, 2004. Important recent analytical commentaries on global institutional order include Daniel W. Drezner, *All Politics is Global: Explaining International Regulatory Regimes*, Princeton NJ: Princeton University Press, 2007 and Lloyd Gruber, *Ruling the World: Power Politics and the Rise of Supranational Institutions*, Princeton NJ: Princeton University Press, 2000. The classic sceptical view on the role of international institutions is to be found in John Mearsheimer, 'The False Promise of International Institutions', *International Security*, 19(3) 1994: 5-49.

A summary of the different approaches to negotiation processes and their implications for the WTO can be found in Bernard Hoekman and Michael Kosteki, *The Political Economy of the World Trading System*, Oxford: Oxford University Press, 2001, 2nd Edition and Amrita Narlikar, *The World Trade Organization: A Very Short Introduction*, Oxford: Oxford University Press, 2005. Some of the normative underpinnings of the multilateral trading system are explored in Roger B. Porter, Pierre Sauv e, Arvind Subramanian and Amerito B. Zampetti, (eds.) *Equity, Efficiency and Legitimacy: The Multilateral System at the Millennium*, Washington DC: Brookings Institution Press, 2001, and in Jock A. Finlayson and Mark W. Zacher, 'The GATT and the Regulation of Trade Barriers: Regime Dynamics and Functions', *International*

Organization 35(4) 561-602. Readers interested in the debates surrounding the Single Undertaking and issues of “Variable Geometry” should see Thomas Cottier (ed.) ‘Mini-Symposium on The Future Geometry of WTO Law’, *Journal of International Economic Law*, 9(4) December 2006 and C. Van Grassek and P. Sauvé, ‘The Consistency of WTO Rules: Can the Single Undertaking Be Squared with Variable Geometry?’ in *Journal of International Economic Law*, 9(4) 2006: 837-864.

Since the inception of the multilateral trading system there have been calls for more explicit disciplines on certain types of trade policy measures. A good starting point for those interested in the boundaries of WTO activity, and possible directions of expansion, is the Agreement Establishing the World Trade Organization, available at www.wto.org. The debate on this question and proposals for reform can be followed in Simon Evenett, ‘The Failure of the WTO Ministerial Meeting in Cancún: What Implications for Future Research on the World Trading System?’ *CESifo Forum*, 4(3), Autumn 2003: 11-17 and, especially, the recent *World Trade Report*, Geneva: WTO, 2007 which discusses a number of policy areas that have been subject to negotiation in the GATT and/or the WTO. The outcome of these negotiations has differed significantly across policy areas.

In his article, ‘When should new areas be added to the WTO?’ *World Trade Review*, 4(2) 2005: 273-293, Peter Lloyd explores how WTO members might make decisions about the addition of new areas to WTO rules, and applies his criteria to three particular areas: international investment, competition law and the environment. Lloyd argues that the Doha Development Agenda opened the door for negotiations on the environment and competition policy and, conditional upon the protection of intellectual property rights in the WTO, a case may even be made for including competition rules. Keith Maskus resists this line of argument, especially with regards to environmental regulation and labour standards (see Keith E. Maskus, ‘Regulatory standards in the WTO: Comparing intellectual property rights with competition policy, environmental protection, and core labour standards.’ *World Trade Review*, 1(2) 2002 135-152). The controversy surrounding the Singapore Issues presents an important insight into the contested scope of the WTO and its evolving agenda. See Simon Evenett, ‘Five Hypotheses concerning the fate of the Singapore Issues’, 4 August 2007, *Oxford Review of Economic Policy*, forthcoming, accessed at http://www.evenett.com/articles/Fate_SIs.pdf.

A 2002 special edition of the *American Journal of International Law* 96(1) 2002 also addresses the boundary questions in the WTO’s mandate. K. Bagwell, P.C. Mavroidis, and R. Staiger, ‘It’s A Question of Market Access’, (pp 56-76) argue that market access issues associated with the question of the optimal mandate of the WTO should be separated from non-market access issues. They identify “race-to-the-bottom” issues as market access issues and suggest that the WTO should address these concerns. Other relevant papers in this special edition include Robert Howse, ‘From Politics to Technocracy – and Back Again: the Fate of the Multilateral Trading System’ (pp 94-117) and John Jackson, ‘Afterword: The Linkage Problem – Comments on Five Texts’ (pp 118-125).

One scholar questions whether the difficulties in reaching an agreement in the Doha Round signal the need for institutional reform of the WTO. Procedural improvements by themselves will not solve policy disagreements, but the lessons being learned in the Round on how to manage traditional negotiations involving many more Members within a changing global power structure might pay off in any subsequent negotiations (see Robert Wolfe, ‘Can the trading system be governed? Institutional implications of the WTO’s suspended animation.’ Working Paper, Centre for International Governance Innovation, No. 3: 2-92, Waterloo, Canada, 2007). In an interesting theoretical exploration of these boundary issues, Paola Conconi and Carlo Perroni analyse “issue tie-in” – the possibility to make trade-co-operation conditional on co-operation in another field – between multilateral trade negotiations and environmental issues. They suggest that linking the two negotiations could in some situations play a facilitating role, while in other situations could lead to worse negotiation outcomes in both fields (see Paola Conconi, and Carlo Perroni, ‘Issue Linkage and Issue Tie-in in Multilateral Negotiations’, *Journal of International Economics*, 57, 2002: 423-447).

A key question in the management of global trade relates to issues of justice and fairness in the negotiating and decision-making process. For a persuasive theoretical discussion of the importance of concepts of justice and fairness in trade negotiations see Cecilia Albin, *Justice as Fairness in International Negotiation*, Cambridge: Cambridge University Press, 2003. See also Robert Keohane and Joseph Nye Jr., 'Between Centralization and Fragmentation: The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy' in Roger B. Porter, Pierre Sauvé, Arvind Subramanian, and Americo Beviglia Zampetti, eds. *Efficiency, Equity, and Legitimacy: The Multilateral Trading System at the Millennium*, Washington: Brookings, 2001 and John S. Odell, *Negotiating the World Economy*, Ithaca, NY: Cornell University Press, 2000. For an empirical analysis of these issues, see Sheila Page, *Developing Countries: Victims or Participants Their Changing Role in International Negotiations*, London: Overseas Development Institute, 2003. The radical critique of the limits of justice and fairness in WTO decision-making can be found in Aileen Kwa and Fatoumata Jawara, *Behind the Scenes at the WTO: The Real World of Trade Negotiations*, London: Zed Books, 2003, while an interesting attempt to explore the prospects of securing alternative forms of democratic decision-making within the WTO is Ilan Kapoor, 'Deliberative democracy and the WTO,' *Review of International Political Economy*, 11(3) 2004: 522-541.

Chapter 2 also deals with the issue of dispute settlement. For a compendium of recent legal and economic research on the WTO dispute settlement mechanism see Petros C. Mavroidis & Alan O. Sykes, (eds), *The WTO and International Trade Law/Dispute Settlement*, Northampton, MA: Edward Elgar Publishing Inc., 2005; and John H. Jackson, 'The Role and Effectiveness of the WTO Dispute Settlement Mechanism', *Brookings Trade Forum*, Washington DC: The Brookings Institution, 2000: 179-219. For a good starting discussion of the pros and cons of retaliation as a measure of last resort see Kym Anderson, 'Peculiarities of Retaliation in WTO Dispute Settlement', *World Trade Review* 1(2) 2002: 123-134.

Shortcomings in the current dispute process, such as "foot-dragging" tactics by offending WTO Members are identified in Robert Z. Lawrence, *Crimes and Punishments? Retaliation under the WTO*, Washington, DC: Institute of International Economics, 2003. To mitigate this, Lawrence proposes that Members pre-commit sectors that they promise to liberalise in case they lose a dispute. Other authors have proposed making retaliation rights tradable, such that Members who do not find it opportune to retaliate can obtain some monetary reparation, while others would acquire the right to protect their industries, supposedly at a discount (see K. Bagwell, P. C. Mavroidis and R. W. Staiger, 'The Case for Auctioning Countermeasures in the WTO', *Working Paper No. 9920*, Cambridge, MA: National Bureau of Economic Research, 2003.

In order to increase the incentive to comply, Chad Bown proposes "stiffer" penalties, that is, deliberately punitive damage awards, in 'The Economics of Trade Disputes, the GATT's Article XXIII, and the WTO's Dispute Settlement Understanding', *Economics and Politics* 14(2), 2002: 283-322. Other proposals for implementing monetary compensation can be found in N. Limão and K. Saggi, 'Tariff Retaliation versus Financial Compensation in the Enforcement of International Trade Agreements', *World Bank Policy Research Working Paper No. 3873*, Washington, DC: World Bank, 2006. They recommend that each country post a bond with a neutral party at the time a trade agreement is concluded. If a country is found to have violated its commitments, it has to decide whether to pay the fine and recover the right to its bond or to not pay the fine and forfeit the bond, which is then disbursed to the damaged country as compensation.

The other key issues for consideration surrounding dispute settlement include why countries choose to file complaints in the first instance, the costs of retaliation, and the plaintiff's legal capacity and retaliatory power on the one hand and defendant government's willingness to comply on the other. These issues are discussed in C. P. Bown 'On the Economic Success of GATT/WTO Dispute Settlement', *Review of Economics and Statistics* 86(3) 2004: 811-823. Bown argues that a government's decision to initiate a formal complaint is determined primarily by a

country's retaliatory and legal capacity and its relationship with the defendant, for instance through preferential agreements (see C. P. Bown, 'Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders', *World Bank Economic Review* 19(2) 2005: 287-310). While differences in legal capacities are important, dispute patterns can also be explained by the diversity and value of exports (see H. Horn, H. Nordström and P.C. Mavroidis, 'Is the Use of the WTO Dispute Settlement System Biased?' *Discussion Paper 2340*, London, Centre for Economic Policy Research, 1999).

Other analysts have shown that the decision to bring a case depends on the strength of the implementation mechanism and the probability of reaching a favourable decision. Both aspects were strengthened with the Dispute Settlement Understanding, which removed the possibility to block panel establishment and reports as well as introducing sophisticated implementation procedures. This can help explain the boost in WTO dispute settlement activity relative to the GATT (see M. Büttler, M. and H. Hauser, 'The WTO Dispute Settlement Mechanism: A First Assessment from an Economic Perspective', *Journal of Law, Economics, & Organization* 16(2) 2000: 503-33).

It is now understood that early settlement offers the greatest likelihood of securing full concessions from a defendant, but developing countries have been less able to do so than developed ones (see M. L. Busch and E. Reinhardt, 'Developing Countries and General Agreement on Tariffs and Trade/World Trade Organization Dispute Settlement', *Journal of World Trade* 37 (4) 2003: 719-735). Small countries are frequently confronted with higher costs of information gathering given that the national mechanisms, as well as resourceful private groups, that could monitor foreign trade practices are often lacking. Once a violation of another country has been detected, many developing and Least Developed Countries may only have limited legal expertise at their disposal to bring or defend a case and may have to rely on (expensive) outside expertise (see B. Hoekman, and P. C. Mavroidis, 'WTO Dispute Settlement, Transparency and Surveillance', *World Economy* 23(4) 2000: 527-542). Unsurprisingly, therefore, developing countries are likely to pursue complaints according to their immediate trade interests. The literature suggests that while they may not be deterred from filing a dispute against bigger players, they often face difficulties in detecting an infringement and building a case and, hence, are constrained in their capacity to launch disputes (see A. T. Guzman and B. A. Simmons, 'Power Plays and Capacity Constraints: The Selection of Defendants in World Trade Organization Disputes', *Journal of Legal Studies* 34(2) 2005: 557-598).

The literature also suggests that participation of third parties, including at the consultation stage, has a major impact on dispute settlement outcomes. Third party participation increases the transaction costs of reaching a mutually agreed solution and may deter disputes from being filed in the first place (see M. L. Busch, E. Reinhardt, 'Three's a Crowd: Third Parties and WTO Dispute Settlement', *World Politics*, 58(3) 2006: 446-77). The nature of the disputed issue also has an impact on the likelihood that settlement will be reached through consultations. When the subject matter of the dispute – such as a health measure – has an all-or-nothing character and leaves little room for compromise, there is considerably less opportunity for a negotiated compromise than when "continuous" variables, such as tariff levels are concerned (see A. T. Guzman and B. A. Simmons, B. 'To Settle or Empanel? An Empirical Analysis of Litigation and Settlement at the World Trade Organization', *Journal of Legal Studies*, 31(1) 2002: S205-S235).

CHAPTER 3

Trade and Development: Making the WTO Deliver More for its Weaker Members

There is another large literature on the relationships between international trade, WTO rules, and the development of nations. But not only large, this literature is often a contested area of inquiry. A survey of the contribution of trade policy to the development process can be found in the 2003 *World Trade Report*, Geneva: WTO, 2003. The various writings of Joseph Stiglitz, Dani Rodrik, and Bernard Hoekman referred to in this Bibliographical Note contain a number of different critical

perspectives on the effect of WTO rules and negotiating processes on developing countries. More positive assessments of trade policies' contributions to development can be found in the writings of Jagdish Bhagwati and Martin Wolf noted earlier. Particularly useful are the essays gathered together in Bernard Hoekman, Aaditya Mattoo and Philip English (eds.) *Development, Trade and the WTO*, Washington: The World Bank, 2002.

Most analysts, both scholars and practitioners, today recognise that trade is a necessary, if not a sufficient, condition for growth and development. Accounts of the other necessary factors in development, especially institutions, are presented in the work of economists such as Dani Rodrik. See, for example, Dani Rodrik, Arvind Subramanian and Francesco Trebbi, 'Institutions Rule: The Primacy of Institutions over Geography and Integration in Economic Development', *NBER Working Paper* 9305, Oct. 2002 and Rodrik, 'Global Governance as if Development Really Mattered: UNDP: www.undp.org/mainundp/propoor/docs/povglobal_governancetrade.pub.pdf.

Reflective essays on the prospects for the Doha Round, albeit time-limited in their utility, can be found in Richard Newfarmer, *Trade, Doha and Development: A Window into the Issues*, Washington DC: World Bank, 2005; Bhagirath Lal Das, *The Current Negotiations in the WTO: Options, Opportunities and Risks for Developing Countries*, London: Zed Books, 2005; and Joseph Stiglitz and Andrew Charlton, *An Agenda for the Development Round of Trade Negotiations in the Aftermath of Cancun*, London: Commonwealth Secretariat, 2005, subsequently revised as *Fair Trade for All: How Trade Can Promote Development*, Oxford: Oxford University Press, 2006.

More relevant to this Report are two key issues identified in Chapter 3, Special and Differential Treatment (S&DT) and Aid for Trade (AfT). For a good survey of the S&DT literature in terms of both development issues, such as preferences and industrial policy, and implications for WTO rules, such as questions of differentiation and adjustment assistance, see P. Kleen and S. Page, 'S&DT of Developing Countries in the World Trade Organization', *Global Development Studies* No. 2, 2005 Stockholm: Ministry of Foreign Affairs, Sweden. The many types of S&DT, their apparent rationales, and potential reform are discussed by Alexander Keck and Patrick Low, 'Special and Differential Treatment in the WTO: Why, When and How?' in Simon Evenett and Bernard Hoekman, (eds.) *Economic Development and Multilateral Trade Co-operation*, Basingstoke: Palgrave and Washington DC World Bank, 2005. They argue in favour of an issue-specific approach to S&DT that would not require an *a priori* differentiation between developing country Members. Derogations from the rules would be based on economic arguments for otherwise prohibited government interventions. Access to these exemptions would be conditioned on the fulfilment of measurable provision-specific criteria. The authors demonstrate how the list of eligible countries would vary depending on the S&DT provision in question and the threshold criteria used.

Bernard Hoekman in 'Operationalizing the Concept of Policy Space in the WTO: Beyond Special and Differential Treatment', *Journal of International Economic Law* 8(2) 2005: 405-424, suggests that rather than creating formal S&DT exceptions, complaints against developing countries that do not implement "resource-intensive" obligations should be made conditional on prior approval by an independent oversight body that determines the likely benefits of implementation versus the costs of compliance – 'the development test'. In an earlier article, Z. K. Wang and L. A. Winters argued that the capacity of developing countries to implement new WTO rules should be assessed on a country-by-country basis – 'implementation audits'. (See Z. K. Wang, and L. A. Winters, *Putting 'Humpty' Together Again: Including Developing Countries in a Consensus for the WTO*, Centre for Economic Policy Research (CEPR) Policy Paper 4, London: CEPR, 2000).

AfT, as this Report argues, can present an important vehicle for harnessing trade for development. For a discussion of the origins of the policy see IME/World Bank, *Doha Development Agenda and Aid for Trade*, Washington DC: 2005 and Susan Prowse, *Aid for Trade: Increasing Support for Trade Adjustment and Integration*, (A Draft Concept Paper, London: UK Department for International Development, May

2005). The debate over AfT and its implementation has been usefully surveyed by Sheila Page in a recent paper, *The Potential Impact of the Aid for Trade Initiative*, UNCTAD, G-24 Discussion Paper Series No. 45, April 2007. One set of comments on the importance of AfT is to be found in the recent writings on the subject by the WTO Director-General Pascal Lamy (see <http://www.ideas4development.org/contributors/lamy/en/>). South Africa's Ambassador to the WTO, Faizel Ismail, sees AfT as 'an essential component of the multilateral trading system'; see Ismail, *Mainstreaming Development in the WTO: Developing Countries in the Doha Round*, New Delhi: Fredrich Ebert Stiftung and CUTS International, 2007.

CHAPTER 4

Reconciling Parallel Universes: Multilateralism and the Challenge of Preferentialism

The seminal work on the problems of Preferential Trade Agreements (PTAs) is Jacob Viner's *The Customs Union Issue*, London: Stevens & Sons, 1950. Viner first theorised the difference between trade creation, which is a positive, welfare-enhancing development, and trade diversion, which is welfare-reducing. Nobel Laureate James E. Meade added to the debate with his book on *The Theory of Customs Unions*, Amsterdam: North-Holland, 1955.

Jagdish Bhagwati has been a relentless critic of the trend towards preferential agreements. In 'Regionalism and Multilateralism: An Overview', in Jaime de Melo and Arvind Panagariya (eds.), *New Dimensions in Regional Integration*, Cambridge: Cambridge University Press 1993: 22-51, he makes a principled argument against PTAs addressing both the contradictions of preferential agreements and the political economy problems of opening up alternative venues for trade governance via bilateral and regional agreements. See also Jagdish Bhagwati and Anne O. Krueger, *The Dangerous Drift to Preferential Trade Agreements*, Washington DC: The American Enterprise Institute Press, 1995, and Jagdish Bhagwati, David Greenaway, and Arvind Panagariya, 'Trading Preferentially: Theory and Policy', *The Economic Journal* 108 (1998): 1128-1148.

Kala Krishna and Anne O. Krueger pioneered theoretical work on rules of origin. In 1993, Krueger pointed to the protectionist dimension of rules of origin in Free Trade Agreements. See Anne O. Krueger, 'Free Trade Agreements as Protectionist Devices: Rules of Origin', *Working Paper No. 4352*, Cambridge, MA, National Bureau of Economic Research, 1993. Krishna and Krueger further developed their arguments in 'Implementing Free Trade Areas: Rules of Origin and Hidden Protection', *Working Paper No 4983*, Cambridge, MA: National Bureau of Economic Research, 2005. A thorough overview of today's application of rules of origin has been provided by Antoni Estevadeordal, Kati Suominen and Mathew Shearer, 'Multilateralizing RTAs in the Americas: State of Play and Ways Forward', *Conference on Multilateralizing Regionalism*, Geneva, 10-12 September 2007, text at www.wto.org/english/tratop_e/region_e/con_sep07_e/estevadeordal_shearer_suominen_e.pdf.

In its publication, *Trade Blocs*, Oxford: Oxford University Press, 2000, the World Bank provides an overview section of the theory and practice of regional preferentialism. For good general texts see Jeffrey Frankel, *Regional Trading Blocs in the World Economic System*, Washington: Institute for International Economics, 1997, and Richard Pomfret, *Unequal Trade: The Economics of Regional Trading Arrangements*, Oxford: Blackwell, 1997. For a good survey of the 'non-traditional' motives – that is beyond trade creation – for why countries enter into PTAs, see Raquel Fernandez and Jonathan Portes 'Returns to Regionalism: An Evaluation of Non-Traditional Gains from Regional Trade Agreements', *World Bank Economic Review* 12(2) 1998: 197-220. Among the motives they identify are policy credibility, signalling, insurance, through secured access to large markets, increased bargaining power and coordination. G. M. Grossman and E. Helpman in 'The Politics of Free Trade Agreements', *American Economic Review*, 85(4) 1995: 667-690 offer the classic demonstration of how political economy motivations can provide a strong reason for the formation of regional trade agreements. The longstanding propensity of nations to depart from Most Favoured Nation

treatment has been analysed by T.N. Srinivasan in 'Nondiscrimination in GATT/WTO: Was There Anything to Begin with and Is There Anything Left?' *World Trade Review* 4(1), March 2005. Richard Baldwin, 'A Domino Theory of Regionalism', in R. Baldwin, P. Haaparanta, and J. Kiander, (eds) *Expanding Membership of the EU*, Cambridge: Cambridge University Press, 1995: 25-48 shows that the establishment of RTAs create strong incentives for non-members to want to join in.

The debate over the theory and practice of regional preferentialism has been particularly strong in East Asia and the Pacific in the early 21st century. See *inter alia* Aggarwal, Vinod K. and Min Gyo Koo 'The evolution and implications of BTAs in the Asia-Pacific', in Vinod Aggarwal and Shujiro Urata (eds) *Bilateral Trade Agreements in the Asia-Pacific*, London: Routledge, 2006; Barry Desker, 'In Defence of FTAs: from purity to pragmatism in East Asia', *The Pacific Review* 17 (1): 3-26 and Christopher Findlay, Pui Hafilah and Mari Pangestu, *Trading with Favourites: Free Trade Agreements in the Asia Pacific*, Pacific Economic Papers, Number 335, Canberra: Australia-Japan Research Centre, 2003.

Recent literature has begun to reformulate the traditional opposition to preferentialism. Without ignoring the potentially sub-optimal nature of many preferential practices, several studies now address the manner in which regionalism might in some ways be reconciled with multilateralism. See Richard Baldwin, 'Multilateralising Regionalism: Spaghetti Bowls as Building Blocs on the Path to Global Free Trade', *The World Economy*, 29(11) November 2006: 1451-1518. Richard Baldwin, Simon Evenett and Patrick Low have made proposals aiming at the multilateralisation of preferential agreements in 'Beyond Tariffs: Multilaterising Deeper RTA Commitments', *Conference Multilateralizing Regionalism*, Geneva, 10-12 September 2007, at www.wto.org/english/tratope/regione/consep07e/baldwin_evenett_low_e.pdf.

Appendix II

Membership of the Warwick Commission

CHAIR, THE WARWICK COMMISSION

The Honourable Pierre S. Pettigrew, PC

Pierre Pettigrew is Executive Advisor, International with Deloitte & Touche in Toronto. He has had a distinguished career with success in both public and private sectors. He held a number of senior departments in his 10 years as a minister in successive governments of Canada. In 1996, Prime Minister Jean Chrétien appointed him Minister of International Cooperation and Minister responsible for “la Francophonie”. Minister Pettigrew was promoted to the key social and economic department of Human Resources Development in October 1996 and from 1999 to 2003, he was Minister for International Trade in the Chrétien Government and Minister for Foreign Affairs in the Martin Government. In December 2003, Prime Minister Paul Martin appointed him Minister of Health, Minister of Intergovernmental Affairs and Minister responsible for official languages. He was also the senior minister for Québec in the Government of Canada. At inter-governmental level, having been appointed “Friend of the Chair”, Pierre Pettigrew presided over negotiating groups at three Ministerial conferences of the WTO. Between 1985 and 1995, Pierre Pettigrew was Vice-President of Samson Belair Deloitte & Touche International (Montréal) where he acted as international business consultant.

DIRECTOR, THE WARWICK COMMISSION

Professor Richard Higgott

Richard Higgott is Pro Vice Chancellor and has been Professor of Politics and International Studies at the University of Warwick since February 1996. He was Foundation Director of the Centre for the Study of Globalisation and Regionalisation and is now Senior Scientist and Director of the European Union Framework 6 Network of Excellence on Global Governance, Regionalism and Regulation (GARNET). Previous chair level appointments have been held at the University of Manchester and in the Research School of Pacific and Asian Studies at the Australian National University, where he was Director of Graduate Studies in Foreign Affairs and Trade. He was a member of the Australian Government’s Trade Negotiation Advisory Group during the Uruguay Round of Multilateral Trade Negotiations. He is active in the work of the Council for Asia Europe Cooperation and the Evian Group. He is editor of *The Pacific Review*. He is the author/editor of some 16 books or monographs and 100 or so refereed articles and book chapters in the areas of international politics and development studies.

WARWICK COMMISSIONERS

Professor Cecilia Albin

Cecilia Albin is Professor of Peace and Conflict Research at Uppsala University, Sweden. Educated in the US, she was previously on the faculty at Cambridge University and Reading University, UK. Her main research interests include international negotiation, issues of justice and ethics, and international cooperation over global issues. Current projects explore different relationships between justice and durable peace. Among her publications are *Justice and Fairness in International*

Negotiation, 2001, 'Negotiating International Cooperation: Global Public Goods and Fairness', *Review of International Studies*, Cambridge, 2003, and *Distributive Justice and the Durability of Negotiated Agreements* (with Daniel Druckman), 2007.

Professor Ann Capling

Ann Capling is Professor of Political Science and Director of the Centre for Public Policy at the University of Melbourne, Australia. Her main areas of expertise are trade policy, the multilateral trade system, and global economic governance. Her recent books include *All the Way with the USA: Australia, the US and Free Trade*, 2005 and *Australia and the Global Trade System: From Havana to Seattle*, 2001. She is currently undertaking a major research project on the new politics of trade policy in the Asia-Pacific region.

Professor Andrew F. Cooper

Andrew Cooper is the Associate Director of The Centre for International Governance Innovation (CIGI) and a Professor in the Department of Political Science at the University of Waterloo, where he teaches in the areas of International Political Economy, Comparative and Canadian Foreign Policy, and Global Governance and the Practice of Diplomacy. He works in the areas of Canadian and Comparative Foreign Policy, International Institutional Reform, Diplomatic Innovation and Practices, The Americas (particularly Democracy Issues), Canada-Australian Relations and Celebrity Diplomacy. He has led training sessions on trade issues/governance/diplomacy in Canada, South Africa and at the WTO in Geneva. He is currently a member of the GARNET International Advisory Board and a member of the Hague Journal of Diplomacy's editorial board.

M. Pierre Defraigne

Pierre Defraigne is an economist and worked as a European civil servant from 1970 to 2005. He presently heads eur-IFRI, the Brussels based think tank of the *French Institute for International Relations* (Ifri). Pierre retired as Deputy Director-General in DG Trade in March 2005. He had been formerly Head of Cabinet for Pascal Lamy, European Commissioner for Trade (1999-2002), after having been Director for North-South Relations, and previously Head of Cabinet for Étienne Davignon, Vice-President of the European Commission (1977-1983). He teaches European Economic Policy at Université Catholique de Louvain. His interests focus on international economic policies, political economy and relations with developing countries.

Ambassador Barry Desker

Barry Desker is the Dean of the S. Rajaratnam School of International Studies, Nanyang Technological University (NTU) and concurrently Director, Institute of Defence and Strategic Studies, NTU. He was the Chief Executive Officer of the Singapore Trade Development Board from 1994 to 2000, after serving in the Foreign Service since 1970. He was Singapore's Ambassador to Indonesia from 1986 to 1993, Director of the Policy, Planning and Analysis Division of the Ministry of Foreign Affairs, from 1984 to 1986 and Deputy Permanent Representative to the United Nations, New York, from 1982 to 1984. Ambassador Desker concurrently holds a number of other appointments, including the chairmanships of the Singapore International Foundation, Jurong Port Pte Ltd and Singapore Technologies Marine.

Dr Heribert Dieter

Heribert Dieter has been an adjunct professor (Privatdozent) at the Free University of Berlin since 2005. He works as Senior Fellow in the Research Unit Global Issues at the German Institute for International and Security Affairs, Berlin. Since 2000, he has also been Associate Fellow, Centre for the Study of Globalisation and Regionalisation at the University of Warwick. Dr Dieter has

worked on a broad range of issues related to the development of the world economy. Specifically, he has written about regional integration in the Asia-Pacific, Africa and Central Asia, monetary regionalism and the international financial system. His current research focus is on the further development of globalisation, the development of monetary regionalism in Asia and other parts of the world and on the future of the global trading system, which appears to be undermined by the mushrooming of bilateral trade agreements.

Professor Jeffrey L. Dunoff

Jeffrey Dunoff is Charles Klein Professor of Law & Government and Director, Institute for International Law & Public Policy at Temple University Beasley School of Law, Philadelphia, Pennsylvania, USA. Following law school, Professor Dunoff clerked for two years for a federal judge. He then practised law in Washington, DC, where he specialised in the representation of developing country governments in international litigations, arbitrations and transactions. Professor Dunoff left practice to accept a Ford Foundation Fellowship in Public International Law at Georgetown, and joined the Temple faculty in 1993. At Temple, his scholarship has focused on public international law and international trade law. During the 2007-08 academic year, Professor Dunoff will serve as a Visiting Senior Research Scholar in the Program in Law and Public Affairs at the Woodrow Wilson School at Princeton University.

Professor Simon J. Evenett

Simon Evenett is Professor of International Trade and Economic Development at the University of St. Gallen, Switzerland. In addition to his research into the determinants of international commercial flows, Professor Evenett is particularly interested in the relationships between international trade policy, national competition law and policy, and economic development. Professor Evenett has been a (non-resident) Senior Fellow of the Economic Studies Programme in the Brookings Institution, Washington, DC. Previously, he has taught at Oxford University and Rutgers University as well as serving twice as a World Bank official.

Professor Jean-Pierre Lehmann

Jean-Pierre Lehmann is Professor of International Political Economy, IMD Lausanne, Switzerland and Founding Director of the Evian Group. The Evian Group, which he founded in 1995, is a coalition of business, government and opinion leaders from both North and South, committed to an open, inclusive, equitable and robust world economic agenda. Since January 1997, he has been Professor of International Political Economy at IMD in Lausanne, Switzerland. Prior to joining IMD, his career, which has included academe, journalism and strategic consulting, has encompassed activities in virtually all Asian and Western European countries, as well as North America. He is the author of several books, numerous articles and reports on modern Asian history, global governance, development, trade and the international political economy.

Dr Patrick Low

Patrick Low is Chief Economist (Director of Economic Research and Statistics) at the World Trade Organization. He was first appointed Chief Economist in May 1997 and then served as Director-General Mike Moore's Chief of Staff from September 1999 to December 2001, after which he returned to his previous post of Chief Economist. From 1995-1997 he was in the WTO's Trade in Services Division. He worked from 1990-94 in the World Bank's research complex (International Trade Division). Prior to that, he taught at El Colegio de México in Mexico City and worked as a consultant, from 1987-90. From 1980-87, Patrick worked at the GATT Secretariat in Geneva. He has written widely on a range of trade policy issues.

Mr Pradeep S. Mehta

Pradeep Mehta is the founder Secretary General of the Jaipur-based Consumer Unity & Trust Society (CUTS International), a leading economic policy research, advocacy and networking non-governmental group in India, with offices in London, Nairobi, Lusaka and Hanoi. Mehta serves on several policy-making bodies of the Government of India, related to trade, environment and consumer affairs, and is currently advising the Commerce & Industry Minister of India. He has also served as an NGO Adviser to the WTO Director General, Dr Supachai Panitchpakdi. He chairs the advisory committee of the South Asia Watch on Trade, Economics and Environment (SAWTEE), Kathmandu. He has served on the governing board of the International Centre for Trade and Sustainable Development on the Global Policy and Campaigns Committee on Economic Issues of Consumers International, London. He has published/edited several books and papers on trade, investment, competition and development.

Dr Amrita Narlikar

Amrita Narlikar is University Lecturer in International Relations at the Centre of International Studies, University of Cambridge, and Senior Research Associate, Centre for International Studies, University of Oxford. Prior to taking up her post at Cambridge, she taught at the University of Exeter, held a Junior Research Fellowship at St. John's College, Oxford, and was also Visiting Fellow at Yale University. She is the author of *The World Trade Organization: A Very Short Introduction*, Oxford: Oxford University Press, 2005. Her research interests lie in the areas of trade negotiations, international organisations, and developing countries. She is currently completing a jointly authored book on Emerging Powers in International Regimes, based on a three-year project that was funded by the Nuffield Foundation.

Professor Pierre Sauvé

Pierre Sauvé is a faculty member and Senior Research Fellow at the World Trade Institute (WTI), in Berne, Switzerland, where he directs a Swiss National Foundation research project on the evolving international regulatory framework in service industries. He holds Visiting Professor appointments at the College of Europe in Bruges, Belgium, at the London School of Economics and Political Science, where he also serves as a Research Associate of the LSE's International Trade Policy Unit, and at the University of Barcelona, whose LL.M. programme in international economic law and policy (IELPO) he co-directs. He is also a Fellow of the European Centre for International Political Economy (ECIPE), in Brussels, Belgium. He served as Canada's services negotiator in the North American Free Trade Agreement and was a staff member at the Bank for International Settlements, the General Agreement on Tariffs and Trade and the OECD Trade Directorate. Professor Sauvé's research interests focus on the evolution of rule-making for services trade and investment, labour mobility and the impact that regional integration agreements exert on the design and operation of the multilateral trading system.

Dr Mills Soko

Mills Soko's research interests include international trade, international business, emerging markets, globalisation, foreign direct investment and government-industry relations in South Africa. He is a senior lecturer at the University of Cape Town Graduate School of Business, and a founding director of Mthente Research and Consulting Services. He is a member of the editorial boards of *AfricaGrowth Agenda* and *New Agenda*. He is also a member of the board of trustees of Inyathelo (The South African Institute of Advancement), and of The Evian Group's Brains Trust. He completed a doctoral thesis on the political economy of trade policy reform in post-apartheid South Africa at the University of Warwick. He was previously employed as Director of Policy and Legislative Research in the National Council of Provinces (NCOP), the upper chamber of the South

African Parliament. Before that he worked as a researcher to the Select Committee on Trade and Industry, Foreign Affairs and Public Enterprises in the NCOP.

Dr Diana Tussie

Diana Tussie directs the Department of International Relations at the Argentine Campus of the Latin American School of Social Sciences and is the founding director of the Latin American Trade Network. She is a senior research fellow at CONICET (National Council for Technical and Scientific Research). Her latest books include: *Luces y sombras de una nueva relación: el Banco Interamericano de Desarrollo, el Banco Mundial y la sociedad civil* (ed.), 2000; *The Environment and International Trade Negotiations: Developing Country Stakes*, 1999 and *The Inter-American Development Bank*, 1995. She was Guest Editor of the fall issue (volume 6, 2000) of the journal *Global Governance*.

Professor Brigitte Young

Brigitte Young has been Professor of International/Comparative Political Economy at the Institute of Political Science, University of Muenster, Germany since 1999. Between 2000 and 2002, she was Expert Advisor to the high-level Enquete-Commission of the German Parliament on 'Globalization of the World Economy – Challenges and Responses'. She is a senior scientist in the Network of Excellence, funded by the EU-6. Framework Program, 'Global Governance, Regionalisation, and Regulation: The Role of the EU' (GARNET), and is the project leader of the 'Virtual Network' and 'Gender in Political Economy'. Her research areas include globalisation and global governance; transformation of the world economy, trade and financial markets; trade in services (GATS and EU); international political economy, feminist macroeconomics. She has written widely on these topics in English and German. Her book, *The Political Economy of Trade in Services (GATS). Gender in EU and China*, 2007, has just been published (in German) – an English translation will appear in the spring of 2008.

SECRETARY, THE WARWICK COMMISSION

Dr Andrew Roadnight

Andrew Roadnight is an administrator at the University of Warwick supporting major research projects and assisting in the preparation of research-related policy and strategy. Before joining Warwick, he was a tax inspector and trade union negotiator in HM Customs & Excise (1974-91) and then a student at Warwick, where he gained a BA (Hons) in Comparative American Studies and a PhD in American Diplomatic History. He is author of *United States Policy Towards Indonesia in the Truman and Eisenhower Years*, 2002 and 'Sleeping with the Enemy: Britain, Japanese Troops and the Netherlands East Indies, 1945-1946', 2002.

Notes

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