

Priorities for a Development Round

5.1 The Context

As developing countries enter the trade negotiations, the natural question to ask is: *what agreement would make the most difference for them?* What should they be trying to get? There is a corresponding question: what is it that they could *give* which is of most benefit to the developed countries and involves the least cost (or perhaps even is of benefit) to themselves? The natural response of the developed countries may be to demand a *quid pro quo*. But such a demand would be to look at the current negotiation outside its historical context. The developed countries have received the lion's share of the benefits of previous trade negotiations. Accordingly, they *ought* be willing to accept a smaller share of the benefits of the current negotiations.⁵⁴ Ironically, the demands of the advanced industrial countries at Cancun, had they been accepted by the developing countries, would arguably have resulted in a new trade agreement where once again the lion's share of the benefits went to the developed world.

With little progress on the issues of concern to developing countries – non-tariff barriers, intellectual property, migration, unskilled intensive services and agriculture – and new demands in areas of dubious benefit, it was hard to see how the developing countries would gain significantly.⁵⁵ Actually, even within manufacturing, there is scope for gains to the developing countries. What matters is not just the *average* tariff rate,⁵⁶ but the structure of tariffs. Escalating tariffs, where there are higher tariffs on more processed goods than on less processed goods, inhibit the ability of developing countries to develop manufacturing capacity, especially in areas which might represent a natural comparative advantage, such as food processing or textiles.

The salient fact is that average developed country tariffs (notwithstanding important tariff peaks on agriculture and key labour-intensive goods and services) are already very low, so that developing countries would receive relatively little benefit even if they were completely eliminated.⁵⁷ Large reductions in tariffs by developing countries would place large strains on these countries. If they had full employment, a strong argument could be made that they would, nonetheless, benefit, if they were given enough time and resources to adjust. But the speed of adjustment that is likely to be demanded, and the absence of adequate resources to facilitate the adjustment, means that developing countries might be significantly worse off.

There is an important asymmetry of power in the negotiations: what developing countries do in opening up their markets to developed countries has a much smaller impact on the developed countries than the converse – what the developed countries do

in opening up their markets to the developing world. In short, the developed countries themselves gain from liberalising their own markets, because they are able to adjust and the disturbances posed to them by the developing countries are small. The developing countries are in a far more disadvantageous position; they will need assistance in making the required adjustments, and they should be given a longer time within which to do so.

Accordingly, at the centre of a development round of trade should be an expansion of Europe's 'Everything But Arms' initiative. The developed countries should:

- i. All agree to follow Europe's lead;
- ii. Extend the initiative to middle-income countries;
- iii. Extend the initiative to eliminate agricultural subsidies;
- iv. Make sure that technical provisions, such as rules of origin, do not undermine the promise of market opening.⁵⁸

In short, reciprocity should *not* be the central feature of the negotiations as it has been in the past.⁵⁹

There is one other aspect of the context in which trade negotiations are currently taking place. What distinguishes developed from less developed countries is not only the extent and nature of market imperfections, but also factor endowments. Developing countries are intensive in unskilled labour; their greatest shortage is probably in the ownership of physical capital. Developing countries are disproportionately in the tropics⁶⁰ and, currently, are more engaged in the export of *commodities*, including natural resources.⁶¹ Thus, they differ in the products that they export and import, which is why decisions about which goods and services to liberalise, and for which products there should be restrictions on subsidies, can make a big difference to the general equilibrium incidence.

Finally, we should note the dramatic transformation of the global economy. In the nineteenth century, what are now the advanced industrial economies transformed themselves from being predominantly producers of agricultural products into makers of manufactured goods. Today, only 14 per cent of employment and output in the United States is in manufacturing, and the proportion in Europe is not much higher.⁶² Now, they are transforming themselves from manufacturing economies into service and knowledge economies. Meanwhile, the developing world itself is divided into several groups: economies dependent on subsistence agriculture (much of Africa); on export agriculture (Brazil and Argentina); and those breaking out of agriculture and becoming increasingly centred on manufacturing. For the agricultural exporters, of course, the failure to liberalise trade in agriculture and to remove subsidies has been particularly costly.⁶³

There is, as a result, a fundamental tension in current trade negotiations. The developed countries want to protect their declining industries and gain market access for their expanding industries. But their declining industries are declining largely because of competitive

pressures from the developing countries. Hence, the sectors that they are most interested in protecting are precisely the sectors that are of the greatest concern to the developing world. It is not as if the United States is mostly concerned with protecting itself against Europe, or vice versa (although there is an element of that). And the sectors that are declining are, by the same token, those in which workers earn the lowest wages. Hence protection is advocated out of concern for equity and social justice *within* the developed countries – a particularly narrow vision which is out of sync with economic globalisation.

At the same time, by demanding market access for the sectors which are growing, the developed countries hope to catapult the advantage that they already have – the first mover advantage – into a longer-term advantage. For that very reason, if such a strategy was accepted, it would inhibit the development transformation of the poorer countries, making it all the more difficult for them to move from traditional products into becoming effective competitors with the more developed countries.

It is because the advanced industrial countries are intuitively aware of these difficulties that non-tariff barriers have assumed increasing importance. Having negotiated away tariffs, this is their one remaining protectionist instrument.

5.2 Market Access Priorities

The general argument in favour of trade liberalisation is that it allows the expansion of markets, enabling the global economy to take further advantage of economies of scale (the argument Adam Smith put forward more than 200 years ago), and that it enhances global efficiency in production and exchange. The factor price equalisation theorem stipulates conditions under which trade in goods and services leads to full global efficiency, substituting for the free mobility of factors. Those conditions are highly restrictive, and over the past decades discussion has moved from consideration of liberalisation of trade to the need for the mobility of *capital*, though not of labour. As noted earlier, the standard argument that trade liberalisation necessarily makes all countries better off (though not necessarily all individuals within each country) is predicated on a set of assumptions that is not satisfied in most developing countries: full employment, perfect competition, perfect capital and risk markets.

5.2.1 Labour Mobility and Unskilled Labour-intensive Services

The General Agreement on Trade in Services (GATS) recognises four modes of service delivery. The temporary movement of natural persons (Mode 4) has received by far the smallest attention in terms of the volume of scheduled concessions. Yet differences in factor payments across countries provide evidence that factor movements would increase global productivity. If factor payments equal marginal products,⁶⁴ then the largest discrepancies are associated with payments to unskilled labour, then to skilled labour and lastly to capital. Accordingly, agreements that provide for mobility of unskilled labour would do most to increase global efficiency.

Nor has enough attention been paid to proposals to facilitate remittances. Governments have a role to play in maximising both the value of remittances and their impact on development. Efforts to formalise the structure of remittance flow (much of which currently moves through informal channels) could make it easier, safer and cheaper to transfer funds. For example, governments could ensure that migrants have access to secure and low-cost financial services and regulate remittance-handling intermediaries to prevent malpractices. As well as increasing the flow of remittances, remittance policies can improve the development impact of remittances at the receiving end. For example, micro-finance and micro-enterprise support initiatives have encouraged remittance-receiving clients (especially small businesses) to access credit and savings accounts.⁶⁵ Finally, the further development of remittance-backed bonds could help liquidity-constrained developing countries to use future flows of remittances to raise external finance relatively cheaply.⁶⁶

Yet despite the tremendous development potential of this reform, the limited progress that has been made in this area has been largely associated with the intra-corporate movement of skilled personnel – an issue of interest to developed countries. Thus far Mode 4 has not progressed in a way that allows developing countries to use their comparative advantage in low and medium skill labour-intensive services.

As well as facilitating the movement of natural persons (Mode 4), there is scope for liberalisation of other service industries of importance to developing countries. Services account for, on average, 50 per cent of developing countries' GDP, but developing countries account for only 25 per cent of the world's services exports. While the last decade has seen considerable liberalisation of high skill services, there has been less progress in those unskilled labour-intensive services of interest to developing countries.

A large portion of the benefits of services liberalisation derive, not from seeking better market access abroad, but from the increased competitiveness and efficiency of the domestic market. However, in addition to these 'efficiency gains', developing countries have important export interests in further liberalisation of services (OECD, 2004). Many developing countries have capitalised on their comparative advantage in low skill services to develop competent and highly specialised industries. Examples are maritime services, including port services and the shipping industry; construction services; and back-office services, including data processing and call centres.

5.2.2 Agriculture

Section 2.2 highlighted the persistently high levels of agricultural protection in the OECD.⁶⁷ Yet agriculture is crucial to developing countries. It represents almost 40 per cent of their GDP, 35 per cent of their exports and 70 per cent of employment.

Because agriculture is such an important part of both national economic development and daily livelihoods in developing countries, agricultural reform must proceed carefully. Agricultural liberalisation presents developing countries with the benefits of

increased market access, but also the (potential) costs of higher prices for domestic consumers. The fundamental point is that consumers benefit from lower prices that result from large agricultural subsidies, and producers lose. The net effect of wide-ranging agricultural reform varies across developing countries depending on the composition of their exports and imports of different commodities, and the price sensitivity of those commodities to liberalisation. The potential for losses highlights the need for a more fine-tuned approach, which would differentiate among crops and countries.

The WTO should focus on liberalising those commodities which have the largest positive effect on producers and the smallest adverse consumption effects. One important determinant of the net effect of this kind of reform is the level of protection for each commodity and the consequent impact of liberalisation on prices. Tariffs are particularly high in the feed grains, dairy and food grains sectors, while dairy products, meat and livestock are the world's most subsidised exports. Producer payments are highest for the grains and oilseed sectors and lowest for meat, livestock and dairy (Hertel *et al.*, 2000).

Another important determinant of the welfare effects of liberalisation is the agricultural trade balance across countries. There is a division between temperate products (programme crops and livestock), where developing countries are largely net importers, and developed countries are largely net exporters, and tropical products where developing countries are largely net exporters. Most developing countries are net importers of programme crops,⁶⁸ which are precisely the commodities that have the highest domestic support and stand to experience the largest price increases. It is therefore not surprising that most studies predict that most developing countries are worse off as a result of the terms of trade effects following this kind of reform. Indeed Dimaranan, Hertel and Keeney (2003) find that gains accrue primarily to developed countries in the Cairns Group as well as the two largest developing country exporters, Argentina and Brazil. These countries are the strongest advocates of the existing agricultural reform agenda. Still, it is possible that as producer prices increase some developing countries will switch from being net importers to net exporters.

Moreover, Western production subsidies may have large adverse distributional effects in developing countries. Producers lose as consumers gain; the producers are typically poor farmers, often far worse off than the urban net consumers. Given the limited capacity of developing countries to effect redistributions, there can be a significant welfare loss from such adverse distributional impacts.

The existence of net losses for developing countries in some areas of reform should not imply that no reform is required – rather it suggests that a selective approach is needed. The most important subsidies to eliminate are those where the consumption benefits are small relative to the production costs. Developing countries should focus their attention on the elimination of tariffs and quotas on tropical products, processed foods and other commodities which they export or for which they have high export elasticities with respect to price. Elimination of cotton subsidies would raise producer

prices for cotton, but have a small effect on standards of living in developing countries as a result of the small increase in the price of cloth. Similarly, subsidies for crops which are disproportionately consumed by the wealthy will have the least adverse distributional effects. Soy beans, for instance, go largely into the production of animals (beef and chicken).

Furthermore, the potential adverse effects of agricultural liberalisation on large segments of society suggest the importance of a gradual approach, allowing urban workers time to adjust. It would also be desirable for developed countries to give some of the money they previously spent on subsidies to assist developing countries in the transition.

The WTO makes a clear distinction between explicit export subsidies and other forms of domestic subsidies, yet both types of payment can increase production and exports and depress world prices.⁶⁹ As domestic subsidies are treated more permissively in the WTO, several OECD countries have reduced their export subsidies and increased their direct domestic support payments to comply with their WTO commitments. In the US and EU, the annual values of export subsidies for cereals and beef fell by US\$4.1 billion between the base period and 1998 and 1999. In the same period, domestic support in the form of exempt direct payments for those commodities rose by an estimated US\$18.9 billion a year in the EU alone (ABARE, 2001). However, the trade effects of various types of domestic subsidies are often understated. While the impact of export support on developing countries per dollar of subsidy is greater than production-based support, the difference is small if the elasticity of demand is small, which is the case for many agricultural commodities. Even non-production based support ('decoupled' payments primarily in the 'green box'), have an impact on output and prices. These payments advantage OECD producers by providing them with cheap (or free) credit to potentially use for investment and expansion of production. The distinction between trade-distorting subsidies and non-trade distorting subsidies is based on a particular economic model, in which capital markets are perfect. Then, trade-distorting subsidies are subsidies which change the marginal return on production or which reduce the marginal cost of production. Thus, generalised income supports, in this view, are not production distorting, nor are payments to keep land fallow. But both of these may, in fact, be production distorting if, for instance, farmers face credit constraints. Then, in effect, the subsidies provide additional finance, which allows farmers to expand production.

5.2.3 Liberalisation of Industrial Goods

While average developed country tariff rates are low, developed countries maintain high barriers to many of the goods exported most intensively by developing countries. When weighted by import volumes, developing countries face average manufacturing tariffs of 3.4 per cent on their exports to developed countries, more than four times higher than the average rate of 0.8 per cent faced by goods from developed countries (Hertel and Martin, 2000).⁷⁰

Moreover aggregate data hide the existence of tariff peaks (discussed in Section 2.2). OECD tariffs are particularly high for goods of importance to poor countries such as low-skill manufactures (especially textiles) and processed foods. Such tariff peaks have a particularly harmful effect on development by restricting industrial diversification in the poorest countries.

A second reason that developing countries should be pushing to have industrial tariffs prioritised in the Doha agenda is that barriers to south–south trade are quite high. The average import-weighted tariff on the exports of manufactured goods from developing countries to developing countries is 12.8 per cent (Hertel and Martin, 2000). Anderson *et al.* (2001) estimate that the welfare gains to developing countries derived from the liberalisation of trade in manufactures by other developing countries is \$US31 billion.

5.2.4 Non-tariff Barriers

Developing countries have repeatedly found that as they make inroads into a market in the US or Europe, they are slapped back with a non-tariff barrier. Though ostensibly the Uruguay Round marked the end of so-called voluntary export restraints, the US has talked about reinstating such restraints against China. The effect of these non-tariff barriers is far greater than that indicated by the actual duties imposed. The fear that they will be imposed has a chilling effect on development; it increases the risk associated with investing in an export-oriented industry, which is particularly important in economies already facing high interest rates. Often, initially high duties are imposed, only to be revised down substantially; but the initially high duties suffice to drive the exporting firm out of business. Finding a solution to the problems posed by non-tariff barriers should be high on the agenda of any development round.

There are four important categories of non-tariff barriers: dumping duties, which are imposed when a country (allegedly) sells products below cost; countervailing duties, which can be imposed when a country subsidises a commodity; safeguards, which can be imposed temporarily when a county faces a surge of imports; and restrictions to maintain food safety or avoid, say, an infestation of fruit flies. The advanced industrial countries have used all of these at times to restrict imports from developing countries when they have achieved a degree of competitiveness which allows them to enter the markets of the developed countries. Many of these measures are described as ensuring 'fair trade', but from the perspective of developing countries, they ensure 'unfair trade'. They are evidence of the hypocrisy of the North. Increasingly, however, developing countries are using such measures against each other and against the advanced industrial countries, and in that sense they represent a hidden threat to a trade liberalisation regime.

There has been a large increase in the number of anti-dumping claims.⁷¹ Part of the problem with the schemes is how they have been implemented. Consider, for example, the United States' use of dumping duties. The accused must respond in a short period of time to a long demand for information (in English), and when the accused is unable to

do so, the US government acts on the 'best information available', usually the information which has been provided by the American company trying to keep out its rivals. High initial duties are imposed, which regularly get revised downward when better information becomes available. But meanwhile long-term damage has been done, as American buyers will not purchase the commodity, given the uncertainty about the level of tariffs they may have to pay.⁷² The United States' provisions for dumping duties (and in some cases countervailing duties) for China and some of the former Communist countries have been particularly egregious. In the 'surrogate country methodology' which is used to assess the cost of production (the benchmark against which charges of dumping are assessed), costs of production are compared with those of a 'similar' country. In one instance, the US used Canada as the country most similar to Poland; not surprisingly, it was found that the costs of production were high, justifying a high dumping duty.⁷³

President Bush's action in imposing steel tariffs exemplifies the inequities associated with safeguards, a particular form of non-tariff barrier. With safeguard measures, one does not have to even show that the developing country has done anything wrong; in some cases, one does not even have to show that the developing country's exports are at the centre of the industry's problems. All that one has to show is that the industry faces a problem – that sales or profitability are declining – and that a 'surge' of imports contributed to the problem.⁷⁴ But if the United States, the richest country in the world, a country with low unemployment and a relatively good safety net, says that it needs to resort to safeguards to protect an industry which has long been in decline, then how much more convincing is the need for most developing countries – with high unemployment and often no safety net – to impose safeguards?

There are three reforms that would make a great deal of difference. The first is to recognise the principle of *national treatment*: in addressing problems of unfair trade, the legal framework should be the same for domestic firms as it is for foreign firms. In the case of dumping, for instance, firms are charged with selling below cost. To an economist, the natural question is, why would a firm ever sell below *marginal cost* (and what is the relevant economic concept)? The answer is to try to drive out rivals and to establish a monopoly or dominant position in a market that will enable it later on to sell at a high price well above cost. Thus, American anti-trust law, in assessing whether predatory pricing (the equivalent in a domestic context of dumping) has occurred, attempts to assess whether the price is below the *relevant* cost, and whether there is evidence of the likelihood that the accused will recoup his losses. As a result of this high standard, few cases of predatory pricing have been successfully prosecuted. Subjecting foreign firms to the same standard would ensure that dumping charges were being used to preserve competition, not to reduce the threat of foreign competition. (The double standard is highlighted by the fact that if American firms were subject to the standard used in dumping cases, a large proportion of American firms would be found guilty of dumping.)

The second reform is to create a new international tribunal as the first 'court'. Today,

when, for instance, the United States accuses firms from a foreign country of dumping, it acts as prosecutor, judge and jury. Though the process is governed by a 'rule of law', in the sense that there are well-defined procedures, the process often works in a highly unfair way. There is a costly and lengthy WTO process which can, and has, been used to rectify gross abuses, as in the case of the US imposed steel tariffs. But it would be far better if the original decision was taken out of the hands of the country and put into a specialised international tribunal.

The third reform is that the implementation legislation and practices of the countries should be reviewed to ascertain whether they are fair and non-discriminatory, both *de jure* and *de facto*, and whether they are in conformity with widely accepted economic principles. An example already referred to is the use of BIA (best information available). Almost all economists agree that the relevant cost concept for judging dumping is *marginal* not average costs, yet the legislation in many countries uses average costs; this means that dumping charges are often sustained in cyclical industries in downturns, where marginal costs are considerably below average costs.⁷⁵

The determination of whether subsidies have been provided is another example which has been subject to considerable contention. A development round should clarify this, in ways which ensure that governments may undertake industrial policies to promote nascent industries. This is particularly important because the *form* of subsidy in the United States – research in the defence industry, the benefits of which spill over to civilian uses – is markedly different from that in the developing world. Allowing one, but not the other, creates an uneven playing field. Similarly, the IMF often forces developing countries to have high interest rates, well above the 'market rate'; lending money at more reasonable rates should not be viewed as a subsidy.

A third example concerns the sale of privatised assets, particularly in the former socialist economies. Assume that the original investment was subsidised, but the government privatises the industry through a competitive auction. Such an auction should extinguish the subsidy: the new investor pays, in effect, fair market value for the asset. In a way, one can look at the privatisation as a bankruptcy/restructuring proceeding. When a firm goes bankrupt, its assets are sold in an auction. The acquiring firm is not viewed as having received a subsidy. The socialist economies can be viewed as a large bankrupt enterprise, the assets of which are now being disposed of. On the other hand, when the government effectively gives away the asset, then the subsidy is clearly not extinguished. (A side-benefit of a rule that distinguishes between the two kinds of privatisations is that it would encourage more honest privatisations.)

While the argument for safeguard measures is persuasive, they have been widely abused, especially by the developed countries. If the richest country of the world, the United States, with a strong safety net and relatively high employment level, has to resort to safeguard measures to protect itself against a surge of imports, how much more justified are developing countries in imposing such measures. Indeed, it is hard to con-

ceive of many important liberalisation measures against which safeguard protections could not justifiably be invoked by developing countries. This again highlights the need to set clearer standards *at the international level*. For instance, for a safeguard measure to be imposed, not only should the country show that there is 'injury', but it should show that it is substantial, entailing a loss of, say, at least 1 per cent of the jobs in the country, and that the burden on the country's social safety net is such that it would be hard-pressed to absorb it. The threshold standard should be lower in developing countries. Such a reform would ensure that safeguard measures could only be used in cases where trade disturbances imposed significant adjustment burdens.

5.3 Priorities in Non-market Access Issues

5.3.1 Restrictions on Tax and Incentive Competition to Attract Investors

One arena in which an international agreement might be of immense benefit to developing countries concerns their competition for investment through concessionary tax rates and financial subsidies. The main beneficiary of that competition is international business and often countries suffer large fiscal losses without commensurate gains to either their domestic economy or to the efficiency of the location of international production.⁷⁶ If authorities were to embark on cross-country (or cross-jurisdiction) policy action, there are essentially three options, representing three levels of ambition with regards to the objectives being pursued. In ascending order these are: (i) transparency-enhancing obligations on firms and countries;⁷⁷ (ii) co-operation between jurisdictions;⁷⁸ and (iii) putting in place enforceable international rules.⁷⁹

Just as international agreements circumscribe subsidies in general, there should be a strong proscription on firm-specific competition. The spirit of the WTO's Agreement on Subsidies and Countervailing Measures (SCM) could be extended to new rules limiting investment competition. Under the SCM, subsidies are actionable if they can be shown to cause adverse trade effects. One of the adverse effects triggering actionability under Part III is 'serious prejudice to the interests of another member' – a principle which could be analogously applied to the incentive instruments used in investment competition.

The EU (which has been operating state aid guidelines now for several decades) provides an example of how rules might be developed. Although grants and subsidies to foreign direct investors are not explicitly targeted by Commission policy, in practice they are one of the main forms of state aid regulated by it. The definition of state aid clearly encompasses traditional instruments of investment attraction. Indeed, the European Commission classifies state aid as including: (i) grants to firms; (ii) loans and guarantees; (iii) tax exemptions; and (iv) infrastructure projects benefiting identifiable end-users. These payments are regulated by the European Commission, which claims some success in reducing subsidies in the EU.⁸⁰

5.3.2 Anti-corruption Policies

One particularly insidious interaction between foreign firms and developing countries is rampant corruption: it is often less expensive to bribe government officials to obtain, say, a concession, than to pay the full market price. International non-bribery agreements (such as America's Foreign Corrupt Practices Act) should be made part of an international agreement. There should be full disclosure of all payments made to foreign companies (publish where you pay). There should be an agreement that only disclosed payments will be tax deductible; but even stronger enforcement measures should be undertaken.

Secret bank accounts facilitate corruption by providing a safe haven for funds stolen from a country. This has severe adverse effects on developing countries. There should be an international agreement proscribing bank secrecy (the importance of which has recently been recognised in the case of terrorism). This too can be easily enforced. No bank should be allowed to deal with any bank in a country which does not conform to agreed transparency standards. It should be possible to sue any country that does not enforce such a sanction (for example under provisions similar to those outlined above in relation to fair competition).

5.3.3 Policies Against Civil Strife and Pro-environment Policies

Trade agreements have been largely designed to *expand* the scope of trade, on the premise that trade is beneficial. Trade policy has become controversial because there are some notable instances where this does not seem to be the case. The most obvious are the arms trade, especially trade in small arms, trafficking in diamonds and other minerals which help finance the purchase of arms and the narcotics trade. It is accepted that countries that export drugs have a responsibility to contain the sale of those drugs. This perspective has been pushed by the advanced industrial countries; as they have realised that they are unable to control consumption and demand, they have put increasing responsibility on the supply side. The same principle should hold for the arms trade – it may be far easier to control the sale of arms than the purchase.

In its appellate decision in the shrimp-turtle case, the WTO recognised the importance of global environmental concerns. This recognition needs to be strengthened and its scope extended, most importantly to recognise that allowing firms within a country to take advantage of a global economic resource and to deplete that resource unduly or to excessively harm it, is an unfair trade practice which should be subject to sanctions. The failure to impose charges for the use of global environmental resources (including the atmosphere) encourages such abusive practices. Some developing countries face severe adverse effects from global warming, even if temperate advanced industrial countries will not be so seriously affected.

5.3.4 Responding to Crises: From Beggar-thy-neighbour to Help-thy-neighbour

One of the original motivations for international trade agreements was the fear of the kind of beggar-thy-neighbour policies which marked the Great Depression. Nonetheless,

even within the WTO, there are provisions (almost never invoked) that allow countries to take emergency measures. The issue is important because given the unstable global financial and economic system, country after country has faced crises in recent years; by one reckoning there have been 100 crises in the last three decades. Rather than resorting to beggar-thy-neighbour policies and encouraging countries to return to protectionist measures in the event of a crisis, it would be far better to encourage *other* countries to take special measures to open up their markets. For instance, in the Argentine crisis, if countries had provided special access for Argentinian beef or wine, it might have been possible to modulate the downturn and facilitate a quicker restoration of the economy. An international panel within the WTO should assess whether a crisis exists which might be ameliorated by special trade opening measures, and how these help-thy-neighbour policies might be implemented.

5.3.5 Trade Implementation and Environment Facility

The developing countries are at a marked disadvantage not only in negotiating fair trade agreements, but also in their implementation. We noted one aspect of this earlier: their difficulty in mounting challenges to bio-piracy actions under TRIPS.

Some developed and many less developed countries subsidise the use of energy, which has adverse effects on the global environment. The costs of global warming are likely to be particularly severe for some developing countries, for example Bangladesh.⁸¹ The international community has recognised the need to assist developing countries to face the incremental costs associated with implementing environmentally sound technologies; this should include adjustment assistance to help developing countries bear the costs of eliminating subsidies for (fossil fuel) energy.

5.4 What Should Not Be on the Agenda

The preceding is a partial list of some of the items that should have a high priority in any round of trade negotiations that calls itself a *development* round. Many of the items listed have received little or no attention. Equally remarkable are the items (especially the so-called Singapore issues) that are on the table. Some of these would almost certainly impede development. The fact that the United States and Europe put these items on the agenda and continued to push them for so long within the so-called development round is worrying. Were they merely bargaining chips? Was there no real comprehension of what should be meant by a development round?

5.4.1 Investor Agreement

Developed countries have put considerable effort into expanding investor rights. As we noted earlier, facilitating the free mobility of capital is far less important for global economic efficiency or for the developing countries themselves than facilitating the movement of labour, particularly that of unskilled workers. Indeed, there is a strong case that capital market liberalisation may actually lower global economic efficiency.⁸²

Moreover, as we have also noted, to the extent that there is validity in the argument that improved investor protection will attract more capital, each country can do that on its own. Developing countries do not need to rely on an international agreement. But free labour mobility can only be achieved through international negotiations.⁸³ There is, accordingly, a far stronger argument for focusing on the 'rights of labour' than on the 'rights of capital'.

Equally troubling is that, arguably, some of the items that were on the agenda would actually have an adverse effect on the well-being of developing countries. The United States tabled the issue of capital market liberalisation, and has insisted on such provisions in bilateral agreements (for example with Chile and Singapore). There is mounting evidence that full mobility of short-term speculative capital (hot money) would actually increase economic instability, in turn increasing poverty. There is little evidence that it enhances economic growth. Indeed, the instability which it generates may well impede investment and growth. The problems of Latin America in recent years, and of East Asia at the end of the last decade, can be directly traced to capital market liberalisation.

The problem with many investor protections is that other rights have been compromised in the attempt to enhance the rights of investors. Such investor rights are not costless. But those whose rights are being compromised do not have a seat at the table (see the discussion of institutional reforms in Section 5). For instance, Chapter 11 of NAFTA grants investor rights which compromise the rights of government to provide for the general welfare, through health, safety and environmental regulations. Recent decisions suggest that the right of a community to protect itself against toxic waste may also be compromised.

There are already mechanisms for the protection of investors against expropriation, both internationally (for example the Multilateral Investment Guarantee Agency) and on the part of many of the investing countries (the Overseas Private Investment Corporation (OPIC) in the United States.) There has not been a convincing case made that these are inadequate or, if they are, that they cannot be strengthened. The new investor protections go beyond concerns about expropriation to the granting of additional rights to investors.

5.4.2 Intellectual Property Rights

Had such a provision not been part of the Uruguay Round, it is doubtful whether the TRIPS agreement would have passed muster. Clearly, the provisions relating to compulsory licensing of drugs has had an enormously adverse effect on many of the poorest people in the developing countries.

While there have been a few dramatic bio-piracy cases,⁸⁴ the full impact of the TRIPS agreement remains unclear. Yet, because of the huge inequities which it suggests, it has taken on symbolic value, and accordingly it is difficult to conceive of a *fair* trade agreement that does not address the issue.

The arguments of Bhagwati and others that intellectual property should not be included in a trade agreement are sufficiently compelling to determine that there should be a complete roll-back of TRIPS. The issues should be switched to another international forum such as the World Intellectual Property Organisation (WIPO).

Whether within the WTO or in this alternative forum, a new intellectual property regime needs to be created which balances the interests involved more carefully, for example the interests of users in both developed and less developed countries (including researchers, for whom knowledge is one of the most important inputs) and producers of knowledge. This should be reflected in all the provisions, including the tests of novelty,⁸⁵ as well as the breadth and scope of the patent. There should be a stronger presumption for narrowly defined patents, and the issue of patents for business practices as well as other recent extensions of patent coverage should be examined *and agreed to* within an international process that is centred in the scientific community, rather than in ministries of trade. There should also be sensitivity to the disadvantageous positions of developing countries in pursuing legal recourse.⁸⁶ (The issue of intellectual property rights is discussed further in Section 6.)

5.4.3 Other Services

In our list of priorities, we have emphasised the opening up of markets to unskilled labour-intensive services and the movement of unskilled labour (sometimes in support of such services). Earlier rounds of trade liberalisation focused on financial services, the benefits of which are arguable. The standard argument is that more efficient financial service intermediation lowers the cost of doing business and thus promotes economic growth; it is therefore pro-development. But a closer look at the record reveals a more mixed picture. In at least some developing countries there are concerns that the purchase of local banks by foreign banks has reduced the flow of credit to domestic small and medium-sized enterprises, and has impeded economic growth. (There is a long history of such concerns, evidenced in the United States by restrictions on interstate banking, intended to prevent New York and other money centre banks from buying up other banks, thereby impeding regional, and especially rural, development.) The agreements on financial services should be re-examined to ascertain whether there is sufficient protection for developing countries. In particular, the right of developing countries to impose lending requirements (analogous to those provided for in the US Community Reinvestment Act) to force more lending to under-served populations should be explicitly recognised.

5.4.4 Other Regulatory Interventions

Developing countries worry that new trade agreements will create new barriers to the entry of their goods into developed country markets, impeding their development. They worry about blue tariffs (impediments based on labour standards) and green tariffs (impediments based on environmental standards.)

Standard economic theory suggests that, with some exemptions, which are noted below, weak standards do not necessarily improve a country's competitiveness, and therefore the issue of standards should not, in general, be embraced within a trade agreement. In standard theory, in a competitive market, any costly provision (such as improved working conditions) is simply reflected in the wage paid. Such restrictions affect the *form* of compensation, but not the overall level of compensation. In general, there is no reason for the international community to intrude into the forms of compensation.

There are three basic exceptions to these principles. The first is when the global community is affected (a principle which has already been recognised in the appellate decision in the shrimp-turtle case in the area of the environment and endangered species).⁸⁷ The international community has a right to take actions to address global public goods and externalities, and among the most important of these is the global environment. Trade policy should recognise that not forcing firms to pay the true social costs of their environmental damage is a form of subsidy, which countries should have the right to take action against. Since developing countries as a whole are more likely to be adversely affected by global warming than, say, the United States,⁸⁸ using trade policy to force compliance by the advanced industrial countries with the Kyoto Protocol could well be considered an important part of a pro-development trade agenda.

The second exception is related – matters of human rights. Clearly, when individuals are *forced* to provide labour services (for example when they are prisoners) or when the use of child labour is allowed, costs of production may be lowered. The global community does not wish to provide economic incentives for such behaviour; on the contrary, it wants to discourage it. By the same token, when governments have seized the land of indigenous peoples, and provides the fruits of that land to others at discounted prices (even if those prices are above its cost of acquisition), then this should be viewed as an unfair subsidy. Countervailing duties against minerals and lumber produced in many countries would be justified by such a provision.

The third exception, which may also be related, concerns circumstances in which countries can take actions which unfairly affect the costs of production. The most notable example of this is restrictions on collective bargaining and the right to take collective action. The bargaining relationship between workers and firms then becomes one sided, and firms can use their economic power to drive down wages and labour costs, making their products more competitive than they would otherwise be.

In all of these cases, some argue that since they are not matters of trade (though the first clearly constitutes a trade-distorting subsidy), it is preferable to address these problems through other channels. Without prejudging the validity of this argument, the fact is that few other channels exist. In the absence of alternatives, trade sanctions are one of the few ways that the international community can enforce its will, and though resort to such measures should be carefully circumscribed, the examples listed above are among those where sanctions may arguably be justified.⁸⁹

On the other hand, there are a host of other regulatory interventions which may adversely affect foreign businesses, sometimes differentially, but whose primary motivation is to enhance economic development. We referred to one earlier – restrictions on banks that require that they lend certain minimal amounts to small and medium-sized domestic enterprises and to other under-served communities. It is a legitimate role of government to undertake such actions. The US, Japan and many other countries did so in their earlier stages of development – and continue to do so. Because foreign banks may not be in a position to screen such loan applicants as effectively as domestic banks, such regulations may have a differentially adverse effect on foreign banks.

By the same token, governments may decide that affirmative action programmes are desirable for social purposes, and may require that all employers hire workers from certain disadvantaged groups. These restrictions might, conceivably, impose greater costs on foreign firms, which are used to hiring Western-educated individuals, but they reflect a legitimate aspiration of governments to create a more equal society.

5.4.5 Exchange Rate Manipulation

The US has recently levelled charges of exchange rate manipulation against China. Global financial markets have exhibited enormous instability. Exchange rate volatility presents a particular problem for developing countries. Markets are thin, and thus subject both to greater volatility and manipulability. Government intervention is, accordingly, often viewed as desirable. There are a variety of mechanisms through which the government can affect the exchange rate, and there are a variety of policies which the government undertakes which affect the exchange rate indirectly. Bad economic policies (large deficits), for instance, may lead to a devaluation of the currency, whether that is the intention of the policy or not. Given the large adverse consequences of trade deficits, there should be a presumption that countries that have only a moderate trade surplus are not engaged in exchange rate manipulation. The complexities involved suggest that there should be a high threshold test for taking action in the event of an accusation of exchange rate manipulation and that, at the very least, only multilateral trade surpluses, not bilateral trade deficits, should be presented as evidence of such manipulation.