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Rebuilding confidence in the multilateral trading system: Closing the “legitimacy gap”

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Introduction

I am a firm believer in the multilateral trading system. It is the most effective way of defending the interests of the weaker members of the trading community. However, this does not mean that we should passively accept the system as it is, in terms of the decision-making process and particularly in terms of the imbalances and asymmetries that have accumulated over the years. As stated in the Bangkok Plan of Action negotiated by the member states of the United Nations Conference on Trade and Development (UNCTAD), what is needed is a “commitment to a multilateral trading system that is fair, equitable and rules-based and that operates in a non-discriminatory and transparent manner and in a way that provides benefits for all countries, especially developing countries.”¹

Recent events, particularly those related to the third Ministerial Conference of the World Trade Organization (WTO) at Seattle and the uncertainties concerning its follow-up, pose serious challenges to the international community. One of the challenges is that the legitimacy of the multilateral trading system in which we all believe is being increasingly questioned. There is therefore an urgent need to

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analyse the factors that led to the inability to forge a consensus on a new agenda for multilateral negotiations, so that steps to close the “legitimacy gap” can be taken. In my statement at Seattle, I observed that, for any international organization, “legitimacy” depends on three main interrelated factors: universal membership and accession mechanisms; participatory and effective decision-making; and fair sharing in the benefits of the system.² This paper deals with these questions and other related matters.

The road to Seattle

Seattle was not an isolated event in the evolution of the multilateral trading system. Without delving too far back in history, the 1990 Brussels Ministerial Session of the Trade Negotiations Committee of the General Agreement on Tariffs and Trade (GATT), in which I participated in my capacity as Ambassador of Brazil to GATT, also broke up in disarray—this time as a result of an impasse caused by the refusal of a small number of Latin American countries, members of the Cairns Group, to continue the negotiations when it became evident that the European Community was not prepared at that stage to envisage anything more than a minimal outcome to the negotiations on the reform of agricultural trade. For those Latin American countries, the negotiation process would have lost any real meaning had the Brussels Conference resulted in such an outcome, because it would have precluded the possibility of their deriving a fair share of the benefits from the eventual results.³

At Marrakesh in 1994, some countries pressed for the introduction of a future work programme for the new proposed organization, containing new issues that had not been dealt with in the Uruguay Round, as a component of the final package. A compromise was reached in the form of a statement by the Chairman of the Trade Negotiations Committee listing possible issues for inclusion in the work programme. This included items proposed by developed countries, such as labour standards, investment, and competition policy, as well as some of interest to developing countries, including compensation for the erosion of preferences, commodities, and immigra-

tion. In the period between the official establishment of the World Trade Organization and its first Ministerial Conference, developed countries pursued these issues.

The idea of negotiating multilateral rules for investment within the WTO attained a particularly high profile, owing to the parallel negotiations of the Multilateral Agreement on Investment (MAI) in the Organisation for Economic Co-operation and Development (OECD). Developing countries had differing views on the advisability of bringing the negotiations to the WTO, where they would have some influence over the outcome, or leaving them in the OECD, where it would not bind them. Many developing countries opposed the inclusion of investment in any WTO work programme, and even more firmly opposed any mention of labour rights; there was also significant resistance to further work on environment and even competition policy. During the period of negotiation of what was to become the Singapore Declaration, those developing countries focused attention on keeping these issues off the agenda.

When I attended the WTO Ministerial Conference in Singapore in December 1996, it was the first time I had participated in a meeting of the GATT/WTO since leaving my post as Ambassador and Permanent Representative of Brazil to the GATT shortly before the completion of the Uruguay Round. I was struck by the extent to which the WTO had evolved beyond the GATT, and in particular by the new and intensified challenges, complexities, and opportunities facing developing countries in the multilateral trading system. One manifestation of this evolution was the adoption of the Information Technology Product Agreement and the rapid completion of the negotiations on financial services and basic telecommunications. Together these were seen, particularly by developed countries, as enhancing the legal foundation of the globalization process, which was presented as bringing benefits to all. The developing countries, by contrast, had not formulated initiatives to obtain action in their favour, nor had they fully recognized the extent to which the WTO had become a forum for a continuous negotiating process.

After my participation in the Singapore Conference, and drawing upon my experiences from the Uruguay Round negotiations, I came to the conclusion that developing countries needed to draw up a

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“positive agenda” in which they would systematically identify their interests and set realistic objectives with respect to all issues, not only those where they were *demandeurs*, and would pursue these objectives by formulating explicit and technically sound proposals in alliance with other like-minded countries. This would be a concrete way of both strengthening the multilateral trading system and enhancing the participation of developing countries in the decision-making process. It has also been my experience that negotiating proposals carry much more “weight” when they are in consonance with the culture of an organization founded on the belief that free trade should be pursued as far as possible.⁴ On the basis of a fresh and ambitious mandate that UNCTAD had just received at its Ninth Conference, in South Africa (1996), I decided to launch the “positive agenda” programme within UNCTAD, with a view to assisting developing countries in building their capacity to identify their interests, formulate trade objectives, and pursue those objectives in international trade negotiations.

In the light of the results of the second WTO Ministerial Conference in 1998—on the occasion of the fiftieth anniversary of the GATT system—it was considered likely that the third Conference would launch a major trade initiative. The second Conference established a preparatory process for the third Conference, where it was evident that a decision on future negotiations would have to be taken because of the time limits set in the WTO multilateral trade agreements (MTAs) themselves, both for the review of certain agreements and for the initiation of negotiations on agriculture and services. Pressure was also mounting for a much more comprehensive “Millennium Round” (a term coined by Sir Leon Brittan). This preparatory process would be “proposal driven,” thus placing every WTO member under pressure to submit proposals to ensure that trade issues of specific interest to each of them would not be omitted in future negotiations. This impetus quickened the pace and sense of urgency of UNCTAD’s work on the “positive agenda.”

Almost 250 proposals were submitted to the WTO General Council in the preparatory process for the Seattle Conference. Developing countries assumed an active role by submitting over half of these proposals. They concentrated largely on two aspects: (a) how

to ensure that the built-in agenda for negotiations on services and agriculture would focus on their particular interests, and (b) specific actions related to the MTAs, including the mandated reviews, grouped together under the broad title of “implementation.” Within the category of implementation issues, proposals addressed the question of special and differential treatment for developing countries (S&D) with the objective of elaborating more contractual language for undertakings of the “best endeavour” type. Implementation proposals were also aimed at agreed interpretations of the MTAs to deal with specific problems that had arisen in practice, particularly those that did not take account of the special characteristics of developing country economies, administrations, and enterprises (e.g. high interest rates and difficulties in identifying inputs). The obstacles they faced in meeting the administrative and procedural obligations were also the subject of proposals, especially for the extension of the transitional periods for the agreements on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Trade-Related Investment Measures (TRIMs), and Customs Valuation. An important element in the proposals was the concept of “imbalance” in rights and obligations. The TRIPS Agreement was the object of particular attention by a number of developing countries, partly in response to the pressure to forgo the flexibility and transitional provisions that had been built into the Agreement. Some developing countries raised specific issues concerning the transfer of technology in connection with several MTAs.

The preparatory exercise in the WTO was led by the Chairman of the General Council, Ambassador Ali Mchumo of Tanzania, who had assumed an inordinate burden owing to the prolonged vacancy of the post of WTO Director-General. Mr. Mike Moore took office only on 1 September 1999, and it was almost another two months before the Deputy Directors-General assumed their posts. The drafting process got off to a bad start: a text circulated on 6 October had to be quickly withdrawn because it was seen as omitting the majority of proposals submitted by the developing countries, and the hastily assembled 8 October text simply annexed the missing proposals. A comprehensive draft was circulated on 19 October that incorporated all the proposals into a structured comprehensive text,

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but without any further drafting. Only on 17 November was the Chairman in a position to circulate, under his own responsibility, a partial text, which reflected a certain degree of agreement (albeit with square brackets) and alternative wordings; however, it omitted the key issues of agriculture and implementation. Thus, the major players clearly demonstrated their unwillingness to compromise on what they considered to be politically sensitive issues before the Ministerial Conference.

The fact that ministers arrived in Seattle to face an incoherent text laden with square brackets might seem to have doomed the third Ministerial Conference right from the start. The situation was reminiscent of the ill-fated 1990 Brussels Ministerial Conference, with one major difference: the Brussels Conference was intended to conclude a negotiation with the acceptance of a series of binding agreements; the Seattle Conference, in contrast, was only attempting to agree on an agenda to commence negotiations, including the “built-in” agenda where no formal decision was required. It should have been feasible to arrive at a compromise that would have (a) satisfied the immediate political objectives of the major players; (b) left open the possibility of entering into the comprehensive negotiations sought by the European Union at a future date, i.e. at the fourth Ministerial Conference; and (c) assured developing countries that all their proposals would be addressed in the negotiations. The reason this did not happen is another story. It can be told only by those who were in the “Green Room” in Seattle (a process in which a group of up to 40 member countries, including many developing countries, tries to reach preliminary agreements on matters under negotiation, and then present them to the rest of the delegations). However, the collapse did come as something of a surprise. A non-paper dated 3 December and issued at 5.00 a.m. seemed to have incorporated most of the interests of developing countries, and it was understood that a compromise had been reached on agriculture. Obviously, these did not “fly” in the Green Room, where it was reported that one major delegation had been unable to take any decision and time had simply run out because the conference facilities were no longer available.

The healing process: The Bangkok Conference

The tenth session of UNCTAD (UNCTAD X) took place shortly after the Seattle Conference, in February 2000. It was, as I have previously stated on several occasions, the first major economic conference of the new millennium. Owing to a combination of factors, some of them unforeseen, the conference proved to be unique, in that it did not resemble previous UNCTAD conferences. It provided, among other things, an opportunity to initiate a “healing process” after Seattle and give the multilateral trading system a new impetus.

UNCTAD X constituted a major effort at international consensus-building. The traditional negotiation of a consensus text, the “Plan of Action,”⁵ took place in parallel with a series of debates involving the major actors in the world “political economy.” These included the Secretary-General of the United Nations, heads of state and government, ministers and senior officials from the member states, leaders of international financial institutions, representatives of parliament and of non-governmental organizations, entrepreneurs from small and medium enterprises (SMEs) and transnational corporations (TNCs), heads of agencies and regional commissions of the United Nations system, the Director-General of the WTO, and academic experts. Their dialogue focused on the options for a new development paradigm compatible with the rapidly evolving global system. The general consensus was that a new inclusive global order to correct the effects of market failures and minimize the dangers of marginalization was required to manage globalization better in the future. Consensus on the way in which the global system should function could be reached only by balancing competing interests, not by imposing an ideological agenda.

UNCTAD’s new Plan of Action was drawn up against the background of these discussions and the overall “ambience” they provided to the Bangkok Conference. The Plan urges UNCTAD to continue with the “positive agenda” work, improve the developing countries’ understanding of the multilateral trading system, and support them so that they progressively become effective players in

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the system. It reflects the perception that the system is not providing equitable shares of the benefits among countries and between various groups within countries. One achievement of UNCTAD X was to reach a consensus that the international community should address the current imbalances and asymmetries, including those caused by human, institutional, and financial constraints.

In outlining the measures to integrate developing countries successfully into the world economy, the Plan of Action highlighted the range of measures affecting their trade that should be addressed, and agreed that the conditions necessary for the effective implementation of the WTO agreements had not always been met. Any new agreement should contain adequate provisions for assistance to developing countries to enable them to establish the infrastructure and other conditions necessary for the effective implementation of the agreements and to ensure that these countries benefit from the opportunities offered by them. The Bangkok Plan of Action essentially set out the core elements of an agenda for the “development round,” which I discuss below.

Although the potential impact in the WTO of the deliberations at Bangkok should not be overstated, the outcome of UNCTAD X will undoubtedly be seen as exerting a favourable influence on the current efforts to build new confidence in the multilateral trading system.

The way forward: Closing the “legitimacy gap”

Is there a “legitimacy gap”? Since the collapse of the Seattle Conference, there has been much debate over the “crisis” in the multilateral trading system. A wide spectrum of views has emerged. At one end are those who would give the impression that the system is on its last legs. These include the most militant NGOs, which have taken credit for blocking the launching of a new round of multilateral trade negotiations, thereby, in their view, protecting the world from the evils of globalization. On the same side of this spectrum, one finds many members of the academic community who are

analysing the “crisis” in the system, which is now the subject of a large number of seminars in North America and Europe. At the other end of the spectrum lie the practitioners—those most involved in trade matters in general and in the daily work of the WTO in particular, who avoid being drawn into discussing any “crisis” and assure us that it is business as usual.

As noted above, the multilateral trading system has experienced crisis and difficulties in the past. They are not new. At the same time, the system has continued to grow and will probably experience new difficulties in the light of the complexity of the issues at hand. In my view, the task ahead is to find ways to realize the commitment to the multilateral trading system made at UNCTAD X. One task consists of closing what I have termed the “legitimacy gap.” What needs to be done, and the role of UNCTAD, are discussed below.

Membership and accession mechanisms

Over 40 countries have been in the process of accession since 1997, ranging from the fifth-largest trading entity—China—to tiny island countries. Technical assistance to the majority of these countries has become an important activity for UNCTAD, and one in which we receive considerable support from developed country donors. It is becoming more evident that the process of accession to the multilateral trading system is cumbersome and painful. Ten countries have acceded to the WTO, six of which fall into the category of economies in transition (including four ex-Soviet republics). One of the major complaints has been that acceding countries are being obliged to accept higher levels of obligation than the present WTO members, and that developing countries are not being permitted to enjoy the S&D treatment incorporated in the MTAs. Many of the countries in transition to a market economy are not adequately prepared to negotiate commitments on trade measures that affect the operation of market mechanisms.

The agreement between China and the United States, followed by that with the European Union, set the stage for the accession of China to the WTO after 14 years of negotiation. China’s member-

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ship will greatly strengthen the organization and change the traditional debate. However, certain aspects of the agreements enable countries to continue to maintain discriminatory measures against China for an extended but fixed period, and could be the source of tensions in the future if restraint is not exercised by China's trading partners.

The least developed countries (LDCs) face special difficulties. Of the 19 LDCs that are not yet members of the WTO, 10 are in the process of accession, but Vanuatu is the only one at an advanced stage. One country, however, which has virtually no trade interests with Vanuatu (its bilateral trade is valued at less than US\$1 million, while Vanuatu has reportedly spent around US\$400,000 in the process of accession), has blocked Vanuatu's accession, insisting that it make much more drastic tariff concessions. Vanuatu is considering its future course of action, which includes the possibility of withdrawing its application.⁶ A proposal by the European Union for the "fast-track" accession of LDCs could be a useful step towards simplifying and speeding up the process for them. In the same context, it seems difficult on any grounds to deny to the acceding LDCs the S&D treatment accorded to those LDCs that are already signatories of the MTAs.

The integration of the LDCs into the multilateral trading system requires much more than their accepting the WTO obligations; it also calls for actions by their trading partners. But their limited supply capacity, poor infrastructure, and low level of skills pose a major challenge. Enhancing that supply capacity and ensuring that their export bases not only grow and diversify to include higher-value products, but also achieve sustainable development, will require specific international support measures, including the granting of duty-free access for all LDC exports. More generally, an enormous capacity-building effort has to be initiated to provide LDCs with the institutional and educational tools needed to evaluate the impact of trade policies and to put into place the corresponding measures to meet social demands. The support of the international community in this process is essential. It is for this purpose that in May 2001 the third United Nations conference on the LDCs will take place in Brussels, hosted by the European Union. We have to make sure that

this time the opportunity is not missed and that the initiative culminates in a practical, results-oriented conference.

Participatory and effective decision-making process

The challenge facing the international community in effectively integrating the LDCs into the multilateral trading system leads me to consideration of the second component of the “legitimacy gap” problem mentioned above, namely, participatory and effective decision-making. Much has been said of the inequity of the Green Room process. As Ambassador of Brazil, I was one of the “habitués” of the Green Room during the Uruguay Round. It should be admitted that for the sake of efficiency it is normal for small groups to gather to discuss specific, often very technical, issues. The problem arises when the deals made within such groups are imposed on those not present. It is no longer possible to assume that agreements can be negotiated among a small group of countries in a non-transparent manner and then imposed on the other members. This was clearly articulated in the strong statements circulated in Seattle by the Latin American and Caribbean and African groups, to the effect that they would not be able to join a consensus on agreements in whose negotiation they were not fully involved.

An important development in the new system, and one closely connected with the issue of effective participation, is that all countries have accepted roughly the same level of obligation. Unlike in the past, when countries could pick and choose at leisure which agreements to join after detailed examination in their capitals, the WTO is based on the notion of the single undertaking conceived during the Uruguay Round, which requires all countries to accept all agreements at the same time. Thus, delegations are aware that decisions arrived at informally in the WTO could eventually lead to the acceptance of new obligations, implying new legislation, expensive adjustments in administration, and greater competition. It is thus not acceptable for them to be left out of the decision-making process. No government can afford to have to explain to its legislature that its officials were not involved in the decisions that will

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have to be incorporated into national law. Moreover, the strengthening of accountability in developing countries has made them tougher trade negotiators, as they have different interest groups watching for any indication that governments have not adequately defended national interests. As the United States Trade Representative pointed out at the end of the Seattle Conference, more imaginative techniques of negotiation and decision-making have to be devised.

There is ample evidence that this sense of being excluded from the decision-making process is being felt very acutely. The idea of a limited ?consultative group? is, therefore, a non-starter. However, a number of developments under way could streamline the process. One is the strengthening of subregional integration among developing countries, which is leading to more intensive coordination and sharing of tasks and to the possibility that, although there may be a large number of delegates present, only a limited number will actually be taking part in the debate.

The Seattle process demonstrated the ability of developing countries to assume a proactive role in setting the agenda for future multilateral trade negotiations. UNCTAD made its contribution to their efforts in the context of its “positive agenda” exercise explained above, which provided them with the indispensable research, analytical, and conceptual inputs in the formulation of their negotiating positions in the light of their own trade interests. Following the new emphasis formulated at Bangkok, this assistance is also now focused at the subregional level, to assist developing countries in integrating their economies and coordinating their positions in order to interact better with their negotiating partners in multilateral negotiations. UNCTAD’s Commercial Diplomacy Programme aims at assisting developing country officials to acquire negotiating skills, and supports the efforts of institutions in developing countries to incorporate such training into their regular curricula.

However, all the efforts in developing negotiating skills and defining clear negotiating objectives cannot by themselves overcome large disparities in economic and political power. Coalition-building and subregional coordination could contribute to enhancing this power, but ultimately the main leverage available to countries

would be to deny legitimacy to agreements reached without their participation.

As Joseph Stiglitz pointed out in an article prepared just before the Seattle Conference, international organizations are directly accountable not to the citizenry but rather to national governments, and particularly to agencies within these governments. They lack the democratic legitimacy that derives from the electoral process and thus must derive legitimacy from the manner in which they conduct their business. He argues that “if policies are forged on the basis of widespread international discussions, a process of global consensus building, then their legitimacy is enhanced. If, by contrast, policies seem to reflect the power of a few large countries (the G-7, the G-3 or the G-1), then the legitimacy is reduced. If the policies seem to reflect special interests, legitimacy is reduced.”⁷ Viewed in this context, Seattle seems to have taken place at a time when just such unfavourable aspects prevailed.

In an interesting paper presented to a Harvard conference held in June 2000 in honour of the late Raymond Vernon, Professors Keohane and Nye note that the legitimacy of institutions flows not only from “inputs” in the form of procedures and accountability, but also from “outputs,” that is, their capacity to deliver results.⁸ They observe that the WTO has delivered on trade liberalization, which “may have conferred some legitimacy on the WTO even in the absence of procedures assuring transparency and participation.” It has thus satisfied one powerful constituency—“multinational corporations that seek to expand their own exports and investment abroad.” The analysis of Stiglitz in juxtaposition with that of Keohane and Nye points to the conclusion that, in the view of a number of observers, there is a “legitimacy gap” that needs to be addressed.

Fair sharing of the benefits

The third important component of the “legitimacy gap” problem is that of ensuring a fair sharing of the benefits of the system. The imbalances recognized at UNCTAD X consist of the imbalances in

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the WTO rules and obligations themselves, which particularly affect the developing countries, and imbalances in the ability of countries to derive economic benefits from these rules and obligations and from the trade liberalization achieved within the negotiating framework they provide.

Examples of the first set of imbalances have been clearly documented in various studies, including that by UNCTAD in the context of its positive agenda exercise.⁹ They have been reflected in the proposals submitted by developing countries in the process leading up to Seattle. A large number of those proposals are characterized by the sentiment that the results of the Uruguay Round were asymmetrical, tilting the balance of multilateral rights and obligations against them, and that the primary purpose of any new multilateral trade initiative should be to correct these imbalances. This is reflected in the position that implementation should take priority and that new initiatives should await the effective implementation of the commitments in favour of developing countries.

These commitments relate to such areas as agricultural subsidies, anti-dumping duties, tariff peaks directed to products exported by developing countries, the absence of meaningful commitments on the movement of natural persons, the slow removal of quotas on textiles and clothing, and the promotion of the transfer of technology. The commitments contrast sharply with the strict disciplines that the developing countries were required to accept in the Uruguay Round and the short transitional periods for their implementation. The developing countries also perceive an imbalance in their ability to assert their rights in the WTO, particularly in a context where the decisions of the Dispute Settlement Body and the Appellate Body appear to be in some contradiction with the exclusive authority of the Ministerial Conference and the General Council to adopt interpretations.

Developing countries frequently refer to their perception that it is the developed countries that actually benefit from special treatment, because they are permitted to use measures unavailable to developing countries for technical reasons, relating to notifications or situations extant at the establishment of the WTO, or measures unavailable for financial reasons. In their view, this is most flagrant in the

case of agriculture, where the major trading countries have reserved the right massively to subsidize exports, displacing the exports and domestic production of developing countries; to subsidize domestic production; to maintain tariffs at rates well exceeding 100 per cent; and to apply a special safeguard mechanism under which restrictions can be applied on the basis of international prices or import volumes with no injury criterion. Furthermore, the “peace clause” on agriculture does not expire until 2003 and could be extended, and the transition period for the phase-out of restrictions on textiles and clothing runs until the beginning of 2005, with little liberalization until the final deadline (to be contrasted with the shorter periods for TRIPS and TRIMs). In addition, anti-dumping duties enjoy partial protection from the dispute settlement mechanism. Finally, the post-Uruguay Round negotiations resulted in considerable liberalization of financial and telecommunications services and information technology products, but very little liberalization of goods or services of export interest to developing countries, such as the movement of persons.

In addition, developing countries find their obligations onerous. The transitional periods for developing countries to implement the agreements have proved to be insufficient in light of the inadequacy of their administrative resources and access to financing. I have pointed out in several statements that the major developed countries have enjoyed “transitional periods” approaching half a century to implement their GATT obligations in the agriculture and textiles sectors; by contrast, developing countries are being asked to implement the whole set of intellectual property instruments, on which many have no prior legislation, within a mere five years. The extension of transitional periods (particularly in the TRIPS, TRIMs, and Customs Valuation agreements) has become a central element in developing countries’ proposals. Developing countries have advocated a “peace clause,”² under which developed countries could exercise due restraint in invoking the dispute settlement mechanism against those developing countries that were not able to comply fully with their obligations before the expiry of the transitional periods, similar to the one that they have agreed to maintain until 2003 on agriculture. Unfortunately, some such disputes have already been initiated

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against developing countries' alleged non-compliance with the TRIPS and TRIMs agreements.

The cost of implementation has been amply studied and documented. As early as 1994, UNCTAD estimated that the first year of implementation of the TRIPS Agreement could cost a least developed country almost US\$20 million.¹⁰ More recent studies by the World Bank have produced much more dramatic figures, estimating that the implementation costs of three MTAs (i.e. those on Sanitary and Phytosanitary Regulations, TRIPS, and Customs Valuation) could equal a year's development assistance for a developing country.¹¹

An additional cause of frustration has been the fact that, in many agreements, S&D provisions have been phrased in terms of best-endeavour clauses, and it is difficult to establish whether they have been effectively implemented. In these cases, calls have been made for "concretizing" the provisions in such key areas as anti-dumping, sanitary and phytosanitary regulations, and TRIPS, all of crucial interest to developing countries. In this context, there has been a "resurrection" of the principle of differential and more favourable treatment for developing countries. Developing countries no longer equate S&D with general exceptions to the rules, but seek to interpret the rules so that they take account of the real problems they face in the administration of the agreements, and which their exporters face as a result of the implementation of the MTAs by their trading partners. The proposals relating to anti-dumping and subsidies and countervailing measures are intended to introduce provisions that would reflect the realities of the situation faced by developing countries in competing for world trade in a globalizing world.

The second type of imbalance mentioned above concerns the inability of developing countries to extract benefits from the system. To exercise their rights in ensuring that their more powerful trading partners respect the rules requires considerable training and strengthening of the capacity of their administrations to engage effectively in the daily debate in the WTO on issues of vital interest to their countries. In order to take advantage of the market access opportunities offered, most developing countries will have to overcome a supply constraint and will need to broaden and diversify their productive base through investment, technology, and managerial skills.

An important number of developing countries have encountered difficulties in attracting foreign direct investment and obtaining access to technology to build up a competitive supply capacity. The creation of a favourable investment climate in developing countries is essential, but aspects of this “supply-side” problem can also be addressed within the system. Secure access to markets is crucial to attract export-oriented investment. This is why UNCTAD has stressed the need for the preservation of the Generalized System of Preferences and other preferential arrangements for developing countries, for tighter rules on anti-dumping and countervailing measures, and most importantly, as stated above, for ensuring that any arrangement to provide duty-free access in favour of the least developed countries is “bound.”

Developing countries cannot create a more competitive supply capacity without greater access to technology. What is worrisome is that, as technology advances, the gap between developed and developing countries is widening rather than narrowing, as had been envisaged some decades ago. At the June 2000 Harvard University conference mentioned above, Jeffrey Sachs presented a map of the world that identified the 23 countries that provided most of the world’s technological innovations (defined as producing at least 10 US patents per million citizens) in 1997. Whereas some countries are capable of incorporating new technologies into their production and consumption structures, others are “technologically disconnected.”¹²

Article 7 of the TRIPS Agreement states that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology. In UNCTAD’s first assessment of the Uruguay Round results, it was considered that, although the TRIPS Agreement would lead to higher prices for imported technologies for developing countries, stronger protection of intellectual property could lead to greater opportunities for the transfer of technology, particularly new technologies. The former would seem to have materialized, but the latter continues to be no more than an aspiration for many developing countries.¹³ Furthermore, Article IV of the General Agreement on Trade in Services (GATS) provides for the nego-

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tiation of specific commitments by developing countries relating to their “access to technology on a commercial basis.”

What is at stake is the distribution of the benefits of globalization. The rules set during the Uruguay Round have provided what is becoming an effective legal framework to enable those possessing the technology and the capital—the TNCs—to exploit their potential. In fact, “the WTO has been described as a constitution for a single global economy.”¹⁴ This was inevitable: the multilateral trading system would have become irrelevant had it not adapted to the trade and investment opportunities presented by the new technologies. However, adequate rules and “safety nets” have not been provided to protect and further the interests of those as yet unable to benefit from, or even to avoid being harmed by, globalization. In this perspective, the system provides a “fast lane” that enables some to move ahead more quickly, leaving the others behind. Thus, rebuilding confidence in the system and closing the “legitimacy gap” demand some type of “affirmative action” programme to provide those unable to compete with special opportunities to assist them to produce and trade competitively. One concrete action relates to the “development round.”

Towards a “development round”

The current phase of “confidence-building” in the WTO has included a decision on initiating a process to address implementation-related issues. It establishes a mechanism for reviewing the outstanding implementation issues and concerns, particularly those raised during the preparations for the third Ministerial Conference, including by a number of developing countries. Particularly noteworthy is its specific reference to paragraphs 21 and 22 of the draft Ministerial Text of 19 October 1999, which reflects the proposals of developing countries submitted during the preparatory process for Seattle. The General Council, meeting in special sessions that started on 22 June 2000, will address these issues; the process should be completed no later than the fourth session of the Ministerial Conference, but some concrete results could be achieved as early as October 2000. This

work could constitute at least a first step towards a “development round.” The negotiations under the built-in agenda on agriculture and services provide the core of such a development round, because they offer a framework within which to address particularly glaring imbalances in the rules and benefits of the existing multilateral trading system. In fact, if not *de jure*, the new round has already started.

Calling a multilateral negotiation a “development round” will not make it one. In my statement to the third Ministerial Meeting in Seattle on 30 November 1999, I emphasized the need to convert rhetoric into action, to close the “legitimacy gap” by demonstrating the ability to deliver fair benefits to all members. The fact that the Millennium Round was not launched at Seattle should not be a deterrent to continued pursuit of the objectives, and in so doing enhancing and strengthening the system. It is the results that count, not the name. A “development round” would have to produce certain minimum results, which could include:

- *On agriculture*: a dramatic reduction in the massive export subsidies provided by developed countries, with a programme for their total elimination; a significant increase in tariff quotas, combined with improvements in their administration; a framework for effectively negotiating reductions in domestic subsidies; greater assistance to developing countries to enable them to comply with sanitary and phytosanitary regulations; and translating the needs of the net food importing developing countries and the LDCs into meaningful provisions that extend beyond food aid. Additional provisions for inclusion in a “development box” treatment should take account of the needs of developing countries with large populations of primarily subsistence farmers employed in the agricultural sector, and those of small, vulnerable island economies.
- *On services*: improvement of the commitments relating to the movement of natural persons, including measures to reduce the scope and improve the transparency and predictability of economic needs tests and to promote the recognition of professional qualifications; addressing anti-competitive practices where they particularly disadvantage developing countries, such as in the

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tourism sector. This could be complemented by arrangements to make Article IV of GATS more operational, particularly its provisions on access to technology and information networks.

- *On implementation issues:* a “peace clause” to give developing countries more time to implement the obligations of key agreements; further interpretations of the MTAs to deal with aspects that frustrate developing countries’ access to markets, most specifically in the agreements on anti-dumping, subsidies, and countervailing measures; acceleration of the phase-out of textile quotas; and conversion into binding obligations of the best-endeavour provisions to provide special and differential treatment.
- *On TRIPS:* the creation of confidence among all members by finding ways effectively to promote the transfer of technology and to provide financial and other incentives to enhance the flexible implementation of the agreement.
- *On tariff negotiations:* a reduction in tariff peaks and tariff escalation, and a standstill on (or “grandfathering” of) GSP preferences to enable developing countries to retain their current conditions for access to markets.
- *On accession to the WTO:* facilitation through more streamlined arrangements, particularly for LDCs, and arrangements to ensure that all acceding developing countries, including LDCs, benefit from the relevant S&D provisions of the MTAs.
- *On measures in favour of LDCs:* conversion of existing measures into a single coherent system to provide duty-free and quota-free treatment to their exports, which would be “bound” in the sense that any imposition of such measures would be subject to the general disciplines of the WTO, such as the Agreement on Safeguards and the Understanding on Dispute Settlement.

In order to progress in this direction, the multilateral trading system will have to become less impermeable to the emerging consensus in the international community, as reflected in the ideas expressed at UNCTAD X and the prevailing spirit there. In my closing statement of 19 February 2000 to that conference, I stressed that it would be overly adventurous to announce that we now have a “Bangkok” consensus to replace the “Washington” consensus of

the 1980s.¹⁵ What we did achieve was to capture the dynamic currents arising from opposite ends and gradually draw them towards some common ground. I also expressed the view that the building of an international community should rest on the fundamental idea of generalized reciprocity. However, the reciprocity of international economic relations must be real. It cannot be merely conventional; it cannot be founded on only a nominal equality of countries that is belied in all the practices of negotiation, decision-making, and dispute settlement. Precisely because, thus far, global integration has affected only a dozen developing countries, the economic world is still divided. In such a world, real reciprocity means taking account of the underlying asymmetry of economic structures. Real reciprocity has still to be constructed.

Closing the “legitimacy gap” will require serious efforts to build real reciprocity and create the conditions for a new “development round.” These are important components of renewed impetus and commitment to the multilateral trading system.

Notes

1. UNCTAD, tenth session, Bangkok, 12–19 February 2000, *Plan of Action*, Doc. TD/386; online at http://www.unctad-10.ch/pdfs/ux_td386.en.pdf.
2. Reproduced in UNCTAD, *A Positive Agenda for Developing Countries: Issues for Future Trade Negotiations*, UNCTAD/ITCD/TSB/10, Geneva and New York, 2000.
3. See Rubens Ricupero, “Los países en desarrollo y la Ronda Uruguay: desencuentros de un amor no correspondido?” in Patricio Leiva, ed., *La Ronda Uruguay y el Desarrollo de América Latina*, Santiago, Chile: Clepi, 1994.
4. Rubens Ricupero, “Integration of Developing Countries into the Multilateral Trading System,” in J. Bhagwati and M. Hirsch, eds., *The Uruguay Round and Beyond: Essays in Honour of Arthur Dunkel*, Berlin: Springer, 1998.
5. UNCTAD X, *Plan of Action*.
6. Roman Greenberg, “The Pacific Island States and the WTO: Towards a Post-Seattle Agenda for the Small, Vulnerable States,” Suva, 2000 (mimeo).
7. Joseph Stiglitz, “The Trading System at the Millennium,” in Roger B. Porter and Pierre Sauvé, eds., *The WTO and the Future of the Multilateral Trading System*, Cambridge, MA: Harvard University Press, 2000, pp. 38–39.
8. Robert O. Keohane and Joseph S. Nye, Jr., “The Club Model of Multilateral Cooperation and the World Trade Organization: Problems of Democratic Legitimacy,” paper presented to a conference entitled “Efficiency, Equity

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and Legitimacy: The Multilateral Trading System at the Millennium," 1–2 June 2000, Cambridge, MA.

9. UNCTAD, *A Positive Agenda for Developing Countries*.

10. See UNCTAD/TDR/14 (Supplement), Geneva, August 1994, p. 202. See also UNCTAD, *The TRIPS Agreement and Developing Countries* (commissioned by the World Intellectual Property Organization), UNCTAD/ITE/1, 1 March 1997.

11. J. M. Finger and P. Schuler, "Implementation of the Uruguay Round Commitments: The Development Challenge," paper presented to the Conference on the WTO Negotiations, Geneva, September 1999.

12. Jeffrey D. Sachs, "A New Framework for Globalization," paper presented to a conference entitled "Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium," 1–2 June 2000, Cambridge, MA.

13. See Carlos Correa, "Technology Transfer in the WTO Agreements," in UNCTAD, *A Positive Agenda for Developing Countries*.

14. Statement by Renato Ruggiero at the Trade and Development Board of UNCTAD, 8 October 1996.

15. Closing Statement by Rubens Ricupero, Secretary-General of UNCTAD, at UNCTAD X, Bangkok, 19 February 2000, "From the Washington Consensus to the Spirit of Bangkok: Is There a Bangkok Consensus or a Bangkok Convergence?"; online at http://www.unctad-10.ch/index_en.htm.