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# **The WTO Agenda and the Developing Countries**

by

Sam Laird

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# **The WTO Agenda and the Developing Countries**

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**Sam Laird**

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## **Abstract**

In the aftermath of the failed Third Ministerial Session of the WTO in Seattle, the WTO is trying to rebuild the agenda for a new round of multilateral trade negotiations. There are already mandated negotiations in agriculture and services (the so-called "built-in agenda") as well as mandated reviews of the operation of all WTO agreements ("implementation" issues). Going beyond the built-in agenda, negotiations in industrial products would increase the scope for cross-sectoral trade-offs. But there are also proposals to extend the scope of the WTO and these are more contentious. The paper argues that, in the light of reforms since the mid-1980s, the developing countries have an interest in a relatively broad-based agenda. On the one hand, this would improve the extent and security of market access in foreign markets. On the other hand, signing on to WTO rules by the developing countries is related to governance and the credibility of their own policies, which are necessary to attract foreign investment to lift productivity and export competitiveness.

## **Outline**

1. Introduction
2. The Interests of the Developing Countries
3. Implementation of the Results of the Uruguay Round
4. The Built-in Agenda
5. Beyond the Built-in Agenda
6. Special and Differential Treatment
7. Conclusions



## **I. INTRODUCTION**

In the wake of the failure of the Third Ministerial Meeting in Seattle in late 1999, members of the World Trade Organization (WTO) are now focussing how to get the WTO agenda back on track. Given the important changes that have taken place in trade and related policies in developing countries in the last 10-15 years, it is argued that developing countries have a strong interest in a relatively broad-based agenda.

## **II. THE INTERESTS OF THE DEVELOPING COUNTRIES**

Trade policy in the developing countries has changed in a major way since the mid-1980s. Under various lending programmes of the World Bank and the International Monetary Fund, comprehensive macroeconomic and structural reform programmes were introduced across the developing world (Drabek and Laird, 1998). Trade policy reforms were a critical component in the reform packages, with many non-tariff barriers being swept away, tariffs being rationalized and reduced to averages which, with some important exceptions, are generally in the range of 10-20 per cent, and measures being introduced to facilitate trade. There is still more to be done: tariff peaks and escalation, anti-dumping procedures, licensing systems, local content plans and technical barriers are being used to protect certain sectors at the expense of other parts of the host economies. Nevertheless, the policy changes have made developing countries more stable and secure trading partners, stimulating new investment which has helped to achieve productivity gains and enhance international competitiveness. Prior to the crises, the results were evident in a number of Asian and Latin American countries with falling levels of inflation and solid growth in the 1990s.

The Mexican financial crisis of December 1994, and the Asian, Russian and Brazilian crises put the reform programmes to the test. However, it seems certain that where reforms were introduced at the time of the Mexican crisis – for example, Argentina's strengthened supervision of the banking sector – these helped to offset the worst effects of the more recent crises. There have been a few examples of trade policy reversals, notably through the imposition of temporary tariffs, increased vigilance on anti-dumping and special safeguards in the textiles and clothing sector (WTO, 1998a). But these are generally within WTO commitments and have to be seen against the backdrop of



continuing implementation of new liberalization commitments made in the Uruguay Round. Indeed, it is fair to say that these commitments have helped governments resist pressures for protectionist measures. In addition, the restructuring under the reform programmes has facilitated the recovery.

One reaction to the crises has been to stress the need for greater caution about "globalization", and the IMF has been widely criticized for its caution. However, in terms of trade policy, reduced levels of sector-specific protection, which was a characteristic of earlier, import-substitution policies, has helped to correct an anti-agricultural, anti-export bias associated with earlier import-substitution policies. It is also becoming evident that countries which had undertaken reforms are recovering relatively rapidly from the crises. It is also clear that, while there may be room to discuss the level of restraint, fiscal responsibility needs to be a crucial element of the reform agendas. Any expansion to offset the contraction associated with falling import demand has to be consistent with the need to stop inflation running out of control.

However, additional efforts may be needed to ensure that political and legal systems send the right signals of credibility and enforceability to the business community at home and abroad (Stiglitz, 1998). Anti-trust laws may need to be re-inforced to ensure that open competition can prevail and the benefits of the reforms are passed on to consumers. The functioning of the judicial system in the area of commercial law might also usefully be examined for possible improvements. Support for the programmes among the general public can also be built through greater attention to the social agenda, strengthening social programmes to alleviate the more difficult phases of adaptation to more open economies, and to education programmes - the most important investment in the region's own future. The Chilean experience of the 1990s also shows that this switch in emphasis need not mean foregoing rapid growth.

Overall, there has been a profound change in developing country thinking about trade policy. Macroeconomic policy, rather than trade policy, is being used more effectively to address macroeconomic imbalances, including in the current account. Trade policy is now more open and neutral as between sectors. It is also perceived that, in order to

attract foreign direct investment to achieve productivity gains, there is a need to demonstrate greater stability and credibility in trade regimes, which can be done by locking in the reforms through multilateral commitments: governance is a key idea in the WTO system of rights and obligations. This change in thinking means that many developing countries have a greater interest in applying and being seen to apply a wider range of disciplines in trade and related policies, consistent with the notion of improved governance that is part of the new development paradigm (Stiglitz, *op. cit.*).

On the other hand, it would be wrong to suppose that there are no dissenting views, and, even where there is agreement about the broad approach, some countries consider that a more measured pace of reform can avoid political problems that might arise in the case of more rapid change. In addition, a number of developing countries are unwilling to take on new WTO commitments before developed countries have met their commitments to liberalize trade in areas of special interest to the developing countries. These include the application of special and differential treatment for developing countries, technical assistance to help developing countries implement the WTO agreements and to be able to take advantage of the new dispute settlement mechanism, implementation of the WTO Agreement on Textiles and clothing, the application of anti-dumping and safeguard measures, and problems of the least-developed countries. They have emphasised the need for a development dimension to future negotiations, and in this they have also found support from a number of European countries.

It is important to draw a distinction between the negotiating position of the developing countries and their more fundamental economic interests. Clearly, it is to their advantage if their trading partners open their markets for developing country exports. It is therefore normal for negotiators to take a hard line, saying that they will not make liberalization commitment unless new concessions and full implementation of earlier commitments are forthcoming from their trading partners. If this does not occur, the developing countries may still choose to liberalize, but not to bind such commitments in the WTO. The dilemma is that such binding is also seen as providing security for foreign investors and the full benefits of the liberalization may not be achieved without such binding.

### **III. IMPLEMENTATION OF THE RESULTS OF THE URUGUAY ROUND**

The first WTO Ministerial Meeting in Singapore in December 1996 agreed on reviews and other work on almost the entire range of WTO Agreements. In this respect, some of the more important and sensitive issues of particular interest to the developing countries include the operation of WTO agreements in the areas of textiles and clothing, dispute settlement, anti-dumping, government procurement, regional trade agreements and technical barriers to trade, which are discussed further in this section. On the whole, the position of developing countries has been that, while developed countries may not have not broken any legal commitments, backloading and the use of other measures have offset the liberalization commitment and have gone against the spirit of the agreements. On the other hand, a number of developing countries have also been asking for more time or technical assistance to allow them to meet their own commitments.

In looking at the implementation of the results of the Uruguay Round, one question that is frequently posed by developing countries is "Where is the cheque?" This refers to estimates at the end of the Uruguay Round that the implementation would yield global welfare gains variously estimated to range between \$212 billion and \$510 billion, while the estimated gains for developing countries range between \$86 billion and \$122 billion.<sup>1</sup> Since these estimates were cumulative over the implementation period, the gains for any individual developing country in one year could be quite modest. Moreover, as noted in Safadi and Laird (1996), the welfare gains are largely proportionate to each country's own liberalization efforts. Thus, in the round, many developing countries lowered their bound MFN tariffs and increased the binding coverage, but in many cases their applied rates were already lower than the new, bound levels, so that little tariff liberalization took place in a number of these countries and they should expect few direct gains as a result. There was also a backloading of liberalization in the textiles and clothing sector, so that the main export gains for many developing countries are expected from liberalization that has yet to take place. On the other hand, the calculations do not capture the positive contribution to trade liberalization made by the increasing application of multilateral

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<sup>1</sup> For a review of these estimates, see Safadi and Laird (1996).

disciplines by the developing countries or by their unilateral liberalization in the context of accession to the GATT/WTO. Thus, while the results of the models show substantial gains in welfare, they take little account of the importance of systemic issues

Regarding *textiles and clothing*, in the WTO Textiles Monitoring Body, developing countries have been raised concerns about the back-loading of the integration process, the large number of safeguard measures in use, more restrictive use of rules of origin, tariff increases, the introduction of specific rates, minimum import pricing regimes, labelling and certification requirements, the maintenance of balance of payments provisions affecting textiles and clothing, export visa requirements, as well as the double jeopardy arising from the application of anti-dumping measures to products covered by the agreement. However, despite these concerns, the process of integration of the sector into the GATT 1994 is generally continuing as scheduled. In principle, any further negotiations in this sector would be covered by the general approach to market access negotiations in manufactures, as discussed in Section IV.

The WTO *Dispute Settlement Mechanism* (DSM), unifying the sometimes parallel processes in various GATT Committees and strengthening the legal rigour of the system, is one of the main features which distinguished the WTO from the GATT, in particular through the new rule that a consensus is required to reject the findings of a panel, whereas previously a party to a dispute could block the adoption of a panel report which went against it.<sup>2</sup> there has been an large increase in the number of disputes being referred to panels and a large share of such cases also find their way to the new Appellate Body. Hudec (1999) argues that the increase can be mainly attributed to the increased scope of WTO obligations, rather than increased confidence in the new system. In effect, the DSM is being used to clarify WTO rules in a way which would otherwise be difficult in the negotiating process. While developing countries are now major users of the DSM, Hudec also shows that their increased used of dispute settlement started prior to the WTO in the early 1990s, but since the WTO there has been a very substantial increase in cases against developing countries, many by other developing countries. However, they have also won some important cases against developed countries.

A key problem for developing countries is finding the expertise and resources to pursue a dispute settlement case. To address the problem, a number of developed and developing countries have announced the establishment of an Advisory Centre on WTO Law to provide advice developing countries in relation to dispute settlement cases. Although complaints have been made by NGOs about certain findings, this is less a criticism of the DSM than the fundamental WTO rules on environment and competition policy. On the other hand, one concern that has emerged from the bananas cases is the use of the existing process to delay implementation of panel findings, for example, by changing practices through minor modifications which again have to be challenged, offering compensation or allowing the withdrawal of "equivalent" concessions, thereby delaying implementation of panel findings. Ways of further streamlining the DSM to accelerate the procedures and enforce results, as well as U.S. proposals to increase the transparency of panel proceedings, are under consideration.

There is no explicit provision for a review of the operation of the WTO rules on *anti-dumping* although the Agreement on Implementation of Article VI of the GATT 1994 was one of the most contested areas in the Uruguay Round, and an attempt to provide for a review in the Seattle draft Ministerial Declaration was resisted by the United States. However, an examination may be expected in the context of the general review of implementation of WTO agreements. The Agreement sought to clarify provisions on the computation of dumping margins, injury determination, the definition of domestic industry, investigation procedures, standards of evidence, and *de minimis* provisions for the termination of cases where the margin of dumping is less than two per cent or the market share of particular exporters lies below three per cent (or, cumulatively, seven per cent among exporters supplying less than a three per cent share). It also required greater transparency in relation to the conduct of anti-dumping procedures. Anti-dumping duties must be terminated after five years unless a new review demonstrates that the removal of duty would likely lead to continuation of dumping and injury. The Agreement did not include any provisions for anti-circumvention measures, but a Ministerial Declaration on Anti-Circumvention and also recognised the need to develop appropriate rules in this

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2 For a review of the new WTO DSM, see, Hudec (1999).

area. Developing countries were to be given special consideration, although there is little indication of such treatment. Indeed, Miranda, Torres and Ruiz (1998) indicate that developing countries are more targeted by developed countries than other countries; moreover, they are often the target of such actions by other developing countries (Table 1). Miranda, Torres and Ruiz (*op. cit.*) also show a resurgence in anti-dumping actions after 1995, particularly among developing countries as users of anti-dumping procedures, but they argue that the problems relate to the lack of appropriate implementation rather than to the Agreement itself, and suggest the problems may be corrected by dispute settlement panels. However, this increase in the number of cases underlines the risk that gains achieved through unilateral negotiations and in the market access negotiations may be subverted by anti-dumping actions. Thus, it is to be expected that countries affected will seek a strengthening of the rules to prevent abuse, while users will try to tighten the anti-circumvention rules.

Evidently, anti-dumping procedures have become a general form of contingency protection as evidence by their increased use when economic conditions are difficult or imports increase following exchange rate appreciations, and some form of legalized backsliding may well be necessary in the WTO system. The revised safeguards provisions, intended to facilitate adjustment to import surges, (and countervailing measures) are little used, but there is some sign of resurgent voluntary export restraints in automobiles, aluminium, etc., albeit under other guises. Although it has been suggested that anti-dumping be replaced with rules on competition (as within the European Communities, in the European Economic Area, in the Canada-Chile FTA and ANZCERTA), the United States would likely find this approach unacceptable. Any re-examination of anti-dumping by itself could well be a sterile replay of the Uruguay Round negotiations, and it may be useful to re-examine the whole area of anti-dumping, countervailing and safeguards, including special safeguards under the Agreement on Textiles and Clothing and the Agreement on Agriculture as a single package.

The *Government Procurement Agreement* (GPA) is one of the two plurilateral agreements that are not covered by the Single Undertaking of the Uruguay Round, and most developing countries have chosen not to become members (other than those who

have been obliged to accede in the accession process).<sup>3</sup> Under the GATT and the GATS purchases by government are excluded from the national treatment rules; instead, these fall within the scope of the GPA, which covers MFN treatment, and national treatment in goods and services. It is essentially concerned with procedures for the conduct of government procurement. Goods, other than those for defence contracting, are covered by negative lists specific to each country, while defence items and entities procuring services are specifically identified on a positive list. The agreement does not reduce market access restrictions, but national treatment applies in the areas which are covered. A number of provisions are intended to foster transparency (Article IX) and to ensure that technical specifications do not create unnecessary obstacles to trade (Article VI).

Hoekman and Mavroidis (1997) suggest several reasons why developing countries have not acceded to the GPA. One such reason is to avoid the costs of information and contract compliance associated with international tendering procedures under the GPA. Again, large foreign companies may be able to use their market power to drive out local firms before hiking their prices, similar to predatory dumping. Domestic firms may also be urging their governments not to adhere (and corrupt officials may fear losses under more transparent international tendering).<sup>4</sup> There may also be little pressure on some countries to adhere to the GPA because their markets are of minor importance and contracts are often tied to foreign aid. On the other hand, developing countries may believe that they have little chance of winning export contracts for which they would be able to tender if they were members of the agreement.

Overall, developing countries have a vested interest in obtaining goods and services at the best prices for fiscal reasons, and signing on to the GPA could help them resist pressures to pay for higher-priced local goods and services. However, it is not clear whether a new negotiation would go beyond an agreement on increased transparency in national legislation as well as procurement procedures, opportunities, tendering and qualification,

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<sup>3</sup> The other plurilateral agreement is that on civil aircraft. The agreements on dairy products and meat have been terminated.

etc., which many developing countries could likely support. In this regard, considerable preparatory work has been undertaken in the WTO Working Group on Transparency in Government Procurement.

Some countries are seeking clarification of WTO rules on *regional trade agreements* (RTAs), which have been spreading rapidly in the 1990s. Although the process of examination of RTAs has been streamlined since the creation of the WTO, the examination process is effectively bogged down over certain systemic issues, namely, the meaning of key terms in the WTO provisions, such as the requirement that RTAs covers "substantially all the trade" (goods) or "substantial sectoral coverage" (services), and that "other restrictive regulations of commerce" be eliminated on trade between RTA members, while "other regulations of commerce" not be increased against third countries (and how rules of origin are to be considered in this schema). Any clarification of these terms would have an effect on the examination of specific agreements, so participants in existing RTAs seem unlikely to accept clarifications that would require modifications to their agreements, unless these were "grandfathered", but such a solution is unlikely to be acceptable to third countries. It is not clear how this impasse will be resolved, unless perhaps through a shift in the emphasis towards periodic examinations to monitor developments in RTAs (similar to the Trade Policies Review Mechanism) (Laird, 1999a). Any review might usefully look at clarifying preferential rules of origin, which is not covered by existing WTO work programmes.

The areas *technical barriers to trade* and *sanitary and phytosanitary measures* have become the focus of a considerable number of trade disputes in the post-Uruguay Round era. While the WTO Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures (SPS) recognize that countries have the right to introduce measures necessary to protect human, animal and plant life, these measures are not to be applied "in a manner which would constitute a means of arbitrary or unjustifiable discrimination between WTO Members where the same conditions prevail

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4 The GPA prohibits preferences in favour of domestic suppliers. However, a preferential margin of 15 per cent for domestic suppliers is allowed under UNDP and World Bank lending operations which entail purchasing contracts.



or as a disguised restriction on trade". Both agreements promote the use of international standards, such as those of the ISO and the Codex Alimentarius Commission, and are intended to ensure that measures in these areas do not replace tariffs and other barriers reduced or eliminated in market access negotiations. Measures are to be based on scientific principles and evidence.

The second review of the TBT Agreement, due in 2000, is to be based on a work programme agreed at the first review in 1997. The first review of the SPS Agreement began in 1998 and could well lead to further negotiations linked to the negotiations in agriculture. Among the issues that have arisen in these areas are the use of growth hormones for beef cattle, genetically modified corn and soya beans, packaging and labelling requirements, requirements that fishing methods do not harm dolphins or sea turtles, and regulations that limit the use of tropical timbers (Croome, 1998). Another concern is that the use of mutual recognition agreements between developed countries could effectively increase barriers to imports from third countries, mainly in the developing world.

The developing countries have diverse interests in any revision of these agreements, but most are concerned about their lack of technical capacity in this area. This affects their ability to participate effectively in negotiations on standards, to meet notification requirements and to discern and meet standards for exports. While many are concerned that standards are being used for the protection of affected industries rather than health and safety reasons, other countries are concerned that disciplines should not be relaxed on the basis of non-scientific arguments (Croome, 1998)

#### **IV. THE BUILT-IN AGENDA**

The built-in agenda may be considered to include negotiations in agriculture, services and certain aspects of intellectual property, where negotiations were already foreshadowed by the WTO Agreements of 1995. These negotiations may now be considered to be underway, although at the time of writing no specific negotiating framework had been agreed, and no timetable exists for the conclusion of such negotiations.

*a. Agriculture*

The conclusion of the WTO Agreement on Agriculture was a major achievement of the Uruguay Round. Although some commentators, focusing on large volume, temperate zone commodities, have suggested that the tariffication process led to little increase in market access, it is also important to draw attention to the substantial tariff cuts for a wide variety of fruits, vegetable and tropical products. Moreover, the agreement brought the agricultural sector under more transparent rules. The agreement also set the stage for future, progressive liberalization of trade in the sector, and Article 20 of the Agreement already foreshadowed the start of new negotiations one year before the end of the current implementation period (six years from the start of the WTO in 1995), i.e., in the year 2000. Under Article 20, it was agreed to take account of (a) the experience to that date from implementing the reduction commitments; (b) the effects of the reduction commitments on world trade in agriculture; (c) non-trade concerns, special and differential treatment to developing country Members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this Agreement; and (d) what further commitments are necessary to achieve the long-term objective of "substantial progressive reductions in support and protection resulting in fundamental reform" (Article 20).

Overall, it has been estimated that a further 40 per cent reduction in tariff protection and reduction of subsidies (the difference between producer prices and domestic market prices) in agriculture would lead to an increase in global welfare of the order of \$70 billion by 2005 (Hertel, Anderson, Francois and Martin , 1999). The trade effects of the change involve substantial increases in imports by Western Europe, Japan, China, the Middle East, North Africa and India, while exports expand most in North and South America and Australia/New Zealand, but there are also increases in a number of other newly industrialising countries. Efficiency and income gains are widespread across the developing world, although it is estimated that there are net losers among the food importers, especially in North Africa. It also seems likely that there would be gains for the poorer, rural communities of the developing world. Thus, developing countries have a keen interest in the agriculture negotiations.

Experience with the implementation of the Uruguay Round commitments has also highlighted a number of technical issues to be taken up in new negotiations. These relate to aspects of market access, domestic supports and export subsidies, as well as the possible extension of the peace clause, state-trading, environment and sanitary phytosanitary controls.

In the area of *market access*, average developed country tariffs were to be reduced by an average of 36 per cent over 6 years from their 1986-88 base (24 per cent over ten years in the case of developing countries), but reductions could be less deep on more sensitive products, provided the reduction was a minimum of 15 per cent on each tariff item. There is also a lack of transparency in about 20 per cent of agricultural tariffs, resulting from the conversion of many non-tariff measures into specific rates, mixed or compound rates as well as the continued use of variable levies and similar measures.. Tariff quotas apply to some 1,370 sensitive products and their allocation is sometimes used to favour some trading partners; the method of allocation is likely to receive some attention, as is the use of special safeguards which are potentially much more restrictive and selective than GATT Article XIX safeguards. Apart from the depth of tariff cut, the problems of tariff peaks and the dispersion of protection could usefully be addressed establishing a general ceiling or even using a formula that would produce proportionately greater reductions of higher rates, as in the Swiss formula used for industrial products in the Tokyo Round (Laird, 1999b), although this might be hard for some importers to accept.

Commitments under the WTO Agreement on *domestic supports* appear to be working in concert with domestic budgetary limitations to have encouraged greater use of supports de-linked from production and set-aside programmes. It would appear reasonable to advance the process of reductions in the permitted levels of the aggregate measure of support. Limiting the AMS commitment to more narrowly defined sectors would also help to create a ratcheting down effect, reducing governmental support in areas where such support continues to be linked to production. Developing countries will want to be mindful of the scope they now have under the green box (permitted subsidies) in the use of certain measures to combat rural poverty, to promote alternatives to illicit crops, etc. Although the word "multifunctionality" disappeared from the final version of the Seattle

draft, the use of supports for non-economic purposes will be an issue in the new negotiations.

In the area of *export subsidies*, members of the Cairns Group of agricultural exporters are seeking the elimination of such subsidies, while the European Union is reluctant to go beyond some reduction commitment. Thus, one can envisage a repeat of the key elements of the Uruguay Round negotiations covering volume and budget commitments in this area. Immediately following the round, relatively high international prices for grains and oilseeds, and perhaps the implementation of set-aside policies, reduced the use of export subsidies, but the decline of such prices have seen a resurgence in their use and tensions are again high in this area.

At the end of the Uruguay Round, concerns were expressed that the removal of subsidies in agriculture would lead to higher food prices, and that in consequence food-importing countries would experience a deterioration in their terms of trade. There were commitments to maintain adequate levels of food aid and agricultural export credits. These are certain to be issues in the agricultural negotiations.

#### *b. Services*

The inclusion of services negotiations in the built-in agenda was envisaged by Article XIX of the General Agreement on Trade in Services (GATS). As in the case of agriculture, these new negotiations were scheduled to begin "not later than five years from the date of entry into force of the WTO Agreement...", that is, in the year 2000. The main area for negotiation will be the widening and deepening of specific commitments on market access and national treatment. Negotiations are also mandated in areas such as MFN exemptions, which were, in principle, to last no longer than ten years, maritime transport, air transport (potential extensions of GATS to areas not already covered). The absence of customs tariffs or easily quantifiable NTMs makes it difficult to negotiate on expanded market access through the progressive reduction of intervention in services trade by means of any general negotiating formulae or other model approaches which would promote broad-based liberalization across Members, sectors and modes of supply. This is why, beyond discussion of how GATT concepts of MFN and national treatment could be

applied to trade in services, the Uruguay Round and subsequent sectoral negotiations focused on intra-sectoral reciprocity (Hoekman and Kostecki, 1995).<sup>5</sup> Nevertheless, approaching the new negotiations, it would appear that, there is some interest in a formula approach which would allow for economies of scale, benchmarking and increased clarity of schedules, as well as a broader balance of concessions, although it is not yet clear how this would work. One possibility for advancing the negotiations would be to start with the generally more extensive commitments undertaken by countries that have acceded to the WTO since its establishment.

The sectoral approach to the negotiations would appear to have the advantage of encouraging WTO Members to make offers to liberalize in order to obtain at world prices services, including in the form of establishment, which are inputs to the production, transport and marketing of their goods exports. The disadvantage of the sectoral approach, which was used in the Uruguay Round, is the emphasis on reciprocal liberalization in key markets (comparable to the zero-for-zero negotiation in manufactures), and finding such a balance in narrowly defined sectoral negotiations in services proved difficult. Moreover, a number of developing countries, in particular, remained concerned about the perceived effects of opening up to foreign direct investment, the principal mode of supply for many services (Hoekman and Kostecki, 1995), and, initially, did not even want services to be included in the Uruguay Round. As a result, the specific commitments leave most trade in services unbound even where it is already liberalized, as discussed in Section II above.

Apart from the negotiations on market access and national treatment, another area for negotiation concerns the ongoing negotiations on GATS rules (e.g., safeguards, subsidies and government procurement), disciplines for domestic regulation and Article XXI procedures (modification of schedules). Some developing countries would like to see a general safeguard mechanism for services, without which their ability or willingness to make concessions would be limited. However, the inclusion of such a safeguard

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<sup>5</sup> If it were possible to compute a price wedge for specific services, then tariffication (or indirect taxation on foreign providers) could be an option, as in the Uruguay Round agricultural negotiations (Snape, 1994), but this does not appear to be under consideration by Members of the WTO.

mechanism could facilitate making commitments on Mode 4 (the presence of natural persons), not necessarily a result which they now envisage. A recent decision of the WTO Council for Trade in Services provides for the conclusion of these negotiations before the end of the year 2000 and their entry into force not later than the entry into force of commitments under a new round.

In the Uruguay Round, some developing countries were interested in obtaining commitments which would facilitate the presence of natural persons, but this mode of supply remained largely restricted, except for human-capital intensive segments and movements directly related to commercial presence. If no liberalization occurs in this sector, developing countries may use this as an excuse not to take on new commitments in the services negotiations, since Article XIX:2 of the GATS grants "appropriate flexibility for individual developing countries for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to it conditions aimed at achieving the objectives referred to in Article IV" (of increasing participation of the developing countries in world trade). Thus, despite the interest that developing countries have in gaining access to services at world prices, persuading them to lock in any commitments through binding offers will be difficult if they perceive that they are being offered little by way of improved market access for their exports of services, and they can use Article XIX:2 to limit their offers. Nevertheless, the experience of the Uruguay Round indicates that there will be pressure on the developing countries to participate with meaningful offers. In addition, making such a commitment gives additional security of access which helps attract foreign investors, so that even without achieving reciprocity in concessions, developing countries should still have an interest in making binding commitments for their own sake.

The failure of the Seattle meeting could run counter to these pressures for developing countries to make commitments in services. For example, it might have been expected that developing countries would have wished to make offers in services in order to obtain concessions in other areas, such as agriculture or industrial tariffs, especially on textiles

and clothing. The absence of a potential trade-off in industrial tariffs could well limit their interest in the services negotiations.

*c. Intellectual Property*

As noted earlier, the built-in agenda includes certain aspects of the WTO Agreement on *Trade-Related Aspects of Intellectual Property Rights* (TRIPS), which developed rules established minimum standards of protection in the areas of copyright, trademarks, geographical indications, industrial design, patents, lay-out designs of integrated circuits, and protection of undisclosed information. Specific points covered by the built-in agenda are noted in the 1996 Report of the Council for TRIPS (WTO document IP/C/8 of 6 November 1996). These relate to: geographical indications (Articles 23.4, 24.1 and 24.2 of the TRIPS Agreement); the question of certain exceptions to patentability (Article 27.3(b)); an examination of certain aspects of GATT 1994 provisions on dispute settlement (Article 64.3); and a review of the implementation of the Agreement (Article 71.1). Some of these elements had no specific time-frame for new negotiations, except that the review of the provision permitting exceptions in respect of plant and animal patentability was to begin in 1999 and the review of implementation was to begin after January 2000.

Article 24.1 refers to an agreement to enter negotiations aimed at increasing the protection of individual geographical indications under Article 23, of which Article 23.4 refers to negotiations intended to lead to the establishment of a multilateral system of notification and registration of geographical indications for wines. In this regard, it has become evident in WTO discussions that some developing countries have an interest in the protection of traditional names, such as *basmati* and *tequila* (Croome, 1998). The review of Article 27.3(b) of the Agreement concerns the patentability of plants, animals and biotechnological processes, but not in respect of micro-organisms, micro-biological processes and non-biological processes for the production of plants or animals. There is a requirement of some form of protection for plant varieties. These issues and the question of pharmaceutical patents are sensitive subjects in India and other developing countries.

Regarding the general review of the implementation of the TRIPS Agreement, developing country experience with the implementation of the TRIPS Agreement is still limited since they and certain economies in transition were given a five year transition period (except for the national treatment and MFN commitments), compared to one year for the developed countries, whose legislation has now been reviewed. Least-developed countries have a transition period of 11 years (and an even longer period may be allowed). The process of review of the developing countries' legislation is beginning in the WTO in 2000. Benefits through increased FDI and technology transfer were expected to accrue to developing countries that have already started to develop and export technology-intensive products and services. However, for developing countries that have less scope for attracting technology-intensive investments or exporting technology-intensive products and services, or whose market size precludes such benefits from protection of intellectual property, there could be increased prices for products with a significant intellectual property component (Safadi and Laird, 1996). On the other hand, in the sensitive pharmaceuticals area, only about 9 per cent of drugs is under patent protection and hardly any essential drugs. Any question of making the TRIPS Agreement more development-friendly is unlikely to strike a cord in the United States or other developed countries before the provisions of the Agreement are even subject to implementation of the commitments made in the Uruguay Round, but such a position could be used in any wider negotiations to allow cross-sectoral trade-offs.

## **V. BEYOND THE BUILT-IN AGENDA**

### *a. Manufactures*

There is a widespread impression that industrial tariffs are now modest and that there is little to be gained from further tariff cuts. This is based on the fact that the trade weighted average tariffs on industrial goods in the developed countries will be of the order of 3.5 per cent at the end of the implementation of the Uruguay Round results. However, this does not take account of the fact that these low averages conceal high tariff peaks and escalation with stages of processing (Laird, 1999b). Moreover, these high rates, in both developed and developing country markets, are often concentrated in products of export interest to the developing countries.



It is important to note that developing countries tariffs affecting imports of manufactures are substantially higher than such tariffs applied in the developed countries. Table 2 shows that, on average, developing countries ("All Low and Middle-income Countries") bound MFN tariff on industrial products will be some 20 per cent after the implementation of the Uruguay Round Results, compared with 3.5 per cent in industrial country ("High-income countries") markets. Moreover, there is a substantial margin between their bound and applied rates. In practice, applied rates may be somewhat lower in practice because of preferences, but there is clearly scope for further liberalization of trade by developing countries in areas of export interest to each other.

It is clear from these data that developing countries have much to gain from the inclusion of manufactures in a new round of negotiations, both in terms of gaining improved access and security of access to each other's (and developed country) markets and in terms of the welfare gains from their own liberalization. Overall, it has been estimated that a 40 per cent reduction in industrial tariffs would lead to a global welfare gain of some \$70 billion, almost identical to that from a similar reduction in agriculture, (Hertel, Anderson, Francois and Martin, 1999). Of this, about half of the gains from liberalization of trade in manufactures would accrue to the developing countries from global liberalization in the sector, mostly from their own liberalization (Hertel and Martin, 1999).

One issue of concern to developing countries is the possible erosion of tariff preferences such as those granted under the GSP. On the basis of partial equilibrium, comparative static analysis, it is possible to compute putative, small, net negative effects for FTA members, ACP countries and least-developed countries (Safadi and Laird, 1996). This can lead beneficiaries of preferences, including under regional trade agreements to oppose any reduction in MFN rates. However, this has to be compared with the overall dynamic effects on the world economy through the implementation of the results of a multilateral negotiations and which are likely to benefit all countries. In such a negotiations, developing countries may also be expected to gain from the erosion in intra-industrial country preferences, e.g. intra-EU trade, EU-EFTA, Canada-US trade, etc.

A number of complex technical questions to be resolved in relation to tariff negotiations are reviewed in Laird (1999b).

*b. Investment*

The issue of the treatment of foreign direct investment (commercial presence) is much less emotive than some years ago, with many developing countries now actively promoting foreign direct investment to capture associated technology gains and market access, and thus accelerate their own development and integration into the world economy. However, a number of countries, developed and developing, still place great emphasis on being able to impose conditions on inward foreign direct investment and the provision of support for investment by domestic firms. This attitude continues to block efforts to adopt a comprehensive framework for international investment, such as the Multilateral Agreement for Investment (MAI). While the issue is being studied in the WTO Working Group on Trade and Investment, established at the first WTO Ministerial Meeting in Singapore in December 1996. However, it is not evident that the issue is ripe for any negotiation that would be the equivalent of bringing the MAI into the WTO. Nevertheless, it is inevitable that this issue will feature somewhere on the WTO agenda, including in the context of the negotiations trade in services where investment (commercial presence) is one of the main modes of supply. It also lies behind developing countries interests, especially their automotive parts industries, in obtaining an extension of the time-period for implementing the Agreement on Trade Related Investment Measures (TRIMS), which was scheduled to expire at the end of 1999.

*c. Competition Policy*

The issue of competition policy is being studied in the WTO Working Group on the Interaction between Trade and Competition Policy, which was also established by the Singapore Ministerial Meeting of the WTO. The Working Group has been receiving submissions from governments and other organizations. It has also been working closely with other organizations on the subject, particularly UNCTAD and the World Bank with which it organized two special symposia on the subject.

However, despite the large amount of work carried out so far, it is not clear that this issue is yet ripe for negotiation. The idea of an international framework of competition rules has been pressed by the European Communities (WTO document WT/WGTCP/W/1) and is supported by a number of Latin American countries, which would tend to see a multilateral agreement as strengthening the domestic constituency for reform. The United States (WTO document WT/WGTCP/W/6) and a number of developing countries would support the study programme but have expressed some reservations about where this might lead. This was recognized by the Working Group which in its 1998 report recommended that the group continue the educative work that it has been undertaking pursuant to the Singapore Ministerial Declaration.

Some countries have highlighted the linkage between competition policy and WTO rules on anti-dumping. For example, Hong Kong, China made a written contribution (WTO document WT/WGTCP/W/50) to the Working Group for such a discussion of the link between WTO provisions for trade remedies, and competition and the liberalization of trade. However, the United States takes a negative view of this proposal. Korea, supporting Hong Kong, China, noted that the WTO Anti-Dumping Agreement did not make any distinction between monopolistic and non-monopolistic price discrimination; the latter could be of benefit to consumers.

Overall, research suggests that open and functioning competitive markets are the most conducive to economic development (WTO, 1997), and therefore developing countries should be supportive of work which would facilitate the functioning of markets. However, different market structures may require different competition or regulatory approaches. Thus, the precise regulatory framework needs to be tailored to each country's institutional capability. For example, if the market appears to be working then a hands-off approach is indicated: competition, transparency and public pressures avoid the need for rules-based solutions. If formal rules are thought necessary to correct market failure, then there needs to be the political will and judicial institutions to enforce the rules in a transparent and stable manner. In this regard, any eventual agreement on a multilateral framework for competition policy could perhaps take the form of a code of conduct, as for other WTO Agreements, or agreement on a set of core principles that

would not require any complex institutional structure where markets are seen to be working.

*d. Environment*

The WTO Committee on Trade and Environment (CTE) was established in January 1995 with a mandate and terms of reference from the Marrakesh Ministerial Decision on Trade and Environment of 15 April 1994. In brief, these are to identify the relationship between trade measures and environmental measures, in order to promote sustainable development. The Committee is also to make appropriate recommendations on the need for: (i) rules to enhance positive interaction between trade and environmental measures, for the promotion of sustainable development, with special consideration to the needs of developing countries, in particular those of the least developed among them; (ii) actions to avoid protectionist trade measures to ensure adherence to effective multilateral disciplines to ensure responsiveness of the multilateral trading system to environmental objectives set out in Agenda 21 and the Rio Declaration, in particular Principle 12; and (iii) surveillance of trade measures used for environmental purposes, of trade-related aspects of environmental measures which have significant trade effects, and of effective implementation of the multilateral disciplines governing those measures.

Work in the Committee helped to improve the understanding of the issues and may in so doing have helped to lower the temperature of the debate between governments and between NGOs and the WTO (Croome, 1998). However, there is as yet no agreement on how to proceed on trade and environment issues. Thus, it seems likely that, even if trade and environment were to become part of the agenda for the new round, this may be more of a continuation of the open-ended study programme which could potentially lead to some clarifications of WTO rules. Although some kind of inter-governmental agreement may be desirable, it is not clear whether this should be in the specialized Multilateral Environment Agreements or in the WTO, which is becoming increasingly charged with new issues beyond its traditional competence. A negotiation could legitimize the use of trade measures applied for environmental reasons, but set constraints on their use (as in the case of standards). Otherwise, the DSM may be used to clarify

WTO rules, e.g. the scope of Article XX of GATT 1994, but this would not necessarily tackle the more fundamental problems, especially in relation to production processes.

*e. Trade Facilitation*

The notion of establishing some form of legal obligations around a core of simplified trade procedures has been proposed by the European Communities. This would essentially take the form of giving some teeth to the Kyoto Convention, administered by the World Customs Organization. It is aimed at cutting red tape and bureaucratic formalities, thus reducing delays and the costs of doing business. A number of countries have introduced simplified clearance systems for exports, e.g. one-stop shops or single windows for documentation, but less effort has been made on the import side despite the fact that imports are often inputs into exports and lower cost imports can improve the real income of consumers.

The proposal has attracted some support in the business community, but it is not clear at this stage what form any agreement would take. There has already been some work on the subject at the WTO, mainly based on assessing the very extensive work undertaken in other international organizations, such as UNCTAD, the Economic Commission for Europe and the International Chamber of Commerce. This is presumably an area where any agreement would most likely also require technical assistance to the developing countries in relation to implementation.

*f. Electronic Commerce*

The subject of electronic commerce is relatively new to the WTO, being first raised by the United States at the General Council in February and then in the Second Ministerial Meeting of the WTO in Geneva in May 1998. The rapid growth of such trade is essentially taking place outside the traditional framework of rules, and United States is proposing that this trade continue with taxation or regulation. As a result, at the Second Ministerial Meeting, Ministers agreed that the WTO study all trade-related issues relating to global commerce, taking account of the economic financial and development need of the developing countries, and make recommendations to the next Ministerial Meeting in

Seattle.<sup>6</sup> In the meantime, Ministers agreed on a standstill on the imposition of any duties on electronic transmissions.

The focus of WTO discussion is the General Council, which has mandated other bodies to look more closely at the issue. For example, the issue is currently being studied in the WTO Council for Trade in Services, as the electronic delivery of services falls within the scope of the GATS. However, intellectual property aspects are being examined in the TRIPS Council, and the Committee for Trade and Development is looking at developing countries' interests. A number of developing countries do not wish to foreclose the option of imposing duties on this kind of commerce whether for revenue or other reasons.<sup>7</sup> Although it was thought by observers that some decision on e-commerce might have been made by Ministers in Seattle, this too fell by the wayside. However, it is possible that this will be picked up in an ongoing WTO work programme outside of any formal negotiations.

*g. Labour Standards*

The issue of any linkage between trade and core labour standards has been raised by the United States and a number of European countries, and the highlighting of the issue in Seattle by President Clinton was of concern to many developing country governments, which regard the establishment of any such linkage as intended to restrict imports from low-labour cost sources.<sup>8</sup>

At the Singapore Ministerial Meeting of the WTO in December 1996, WTO Trade Ministers recognized that the International Labour Organization (ILO) was the competent body to set and deal with internationally recognized core labour standards. The Ministers noted that "economic growth and development [were] fostered by increased trade and further trade liberalization contribute[d] to the promotion of these standards" and rejected

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<sup>6</sup> Declaration on Electronic Global Commerce, WTO document WT/MIN(98)/DEC/2 of 26 May 1998.

<sup>7</sup> An introduction to the topic by the WTO Secretariat has been issued as WTO (1998b). See also <http://www.wto.org/wto/ecom/ecom.htm> for further information.

the use of labour standards for protectionist purposes. They agreed that "the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question". In addition, at the Singapore Meeting an agreed Interpretative Note stated that the issue of labour standards was not on the WTO's agenda, that no new work had been organized on the subject in the WTO and that the WTO had no competence in the matter.

The exploitation of developing countries' comparative advantage and hence their development prospects depends on their being able to export products which make relatively intensive use of low-wage, unskilled labour. The shift to higher wages and better working conditions will come as they move through the development process. If there is insistence on higher wages and better working conditions in the short term, this could lead to lower levels of employment and a lower growth rate in the developing countries. Thus, the genuine humanitarian concerns regarding working conditions in the developing countries need to be balanced against the need to maintain employment levels and support effort to lift longer-term growth rates. Since longer-term growth in developing countries will in turn increase demand for imports from the industrial countries, short-term protectionism in the industrial countries can therefore also have long-term negative effects in those countries.

## **VI. SPECIAL AND DIFFERENTIAL TREATMENT**

Special and differential treatment for developing countries in the GATT/WTO system has been provided in two distinct ways. First, developed countries are exhorted in the GATT 1947 to increase trade opportunities in products of export interest to developing countries (WTO, 1999), and the GSP is the main way in which this has been granted. Second, there is provision in various WTO rules for the developing countries to take on less onerous obligations than other WTO Members.

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<sup>8</sup> However, at least some trade unions in developing countries would welcome this linkage which they believe would help strengthen workers' rights.

Under these provisions, in the past, the developing countries made few tariff concessions or bindings, and acceded to few of the GATT plurilateral agreements. The situation changed radically in the Uruguay Round, largely as a result of the changes in thinking about trade liberalization, as noted in Section II. Developing countries also came to the view that the absence of commitments on their part had given them little leverage in seeking liberalization by the developed countries on products in which they had an export interest. However, in the Uruguay Round the developing countries made a major break with the past in undertaking extensive bindings and reductions of bound (but not applied) rates, as well as acceding to the full range of WTO multilateral agreements.

Nevertheless, WTO (1999) shows that there are still a number of areas where the WTO Agreements allow for special and differential treatment. In particular, the provisions aimed at increasing trade opportunities are those under the Article XXXVII of the GATT 1994 Enabling Clause for goods, to which are added corresponding provisions in Article IV of the GATS. WTO Members are also required to safeguard the interests of developing countries when they are applying technical barriers, including SPS measures, anti-dumping, countervailing or safeguards measures. On the other hand, developing countries also have flexibility in applying rules and disciplines governing the use of trade measures, for example, lesser commitments in tariff commitments, in reducing the aggregate measure of support (AMS) in agriculture, greater scope for the use of subsidies (including export subsidies), and lesser liberalization of services. In addition, developing countries benefit from longer transitional periods than developed countries in applying many WTO agreements. Finally, there are a number of provisions for technical assistance to the developing countries. However, there is a limited WTO regular budget for such purposes, and putting technical assistance on a more secure footing was a proposal in the draft Ministerial Declaration for Seattle, which like all other elements of the package has fallen by the wayside.

There are also a number of provisions in favour of the least developed countries. In the Singapore Ministerial Meeting, Ministers adopted an Action Plan for least-developed countries. Under the plan, in October 1997, the WTO, in close collaboration with the IMF, ITC, UNCTAD, UNDP and the World Bank, organized a High Level Meeting on



Integrated Initiatives for Least-Developed Countries' Trade and Development. The High Level Meeting endorsed an integrated framework for trade-related technical assistance to improve their trade opportunities. As a result, many least-developed countries have made a needs assessment including in a wide range of WTO rules and obligations as well as supply-side constraints. In the current stage, the least-developed countries are organizing trade-related donor meetings, to which they will invite the development partners of their own choice to review and endorse a multi-year programme covering a portfolio of technical assistance projects. However, at present the response by donors has been disappointing.

At the High Level Meeting, a number of developed and developing country WTO Members indicated a number of steps to enhance market access opportunities for the least-developed countries. In this regard, Mike Moore, the Director-General of the WTO, has pushed hard for duty-free access for a range of products from the least-developed countries. However, the failure of the Seattle meeting meant that these proposals also fell by the wayside, unless picked up by individual importers, and it is understood that the European Commission and some other developed countries are considering such an effort.

## **VII. CONCLUSIONS**

It is clear from the analysis, that the developing countries have an interest in a WTO agenda that goes beyond the built-in agenda for new negotiations, and the failure of the Seattle meeting puts that at risk unless the wider agenda can be put back on track. In particular, the developing countries also have much to gain from further liberalization in manufactures, the inclusion of which would also permit cross-sectoral bargaining, but this advantage would be defeated if certain sectors such as textiles and clothing were excluded. Such a broader agenda would also enhance the stake that export-oriented sectors have in pressing for liberalization, changing the political-economy dynamics within countries. For example, expanded opportunities for the export of manufactures may encourage developing countries to liberalize further their services sectors, producing benefits to user industries and consumers. Moreover, negotiated reductions of trade

barriers on a broader scale can help avoid increasing inter-sectoral distortions which have negative effects on welfare.

The importance of a broad agenda for the developing countries is that the prize in terms of efficiency and welfare is greater than what they can achieve by unilateral reforms or in regional agreements. The multilateral system can deliver a higher degree of commitment and security of market access than more limited agreements, and this is what investors need. There are many areas of common interest to developed and developing countries, all the more so as a result of the important changes in trade policy and, perhaps more importantly the thinking about trade policy, that we have seen in developing countries in the last ten years. Policy makers in groups of countries can build on these changes, on this new vision, and bring their experiences to help develop the multilateral system for the next millennium.

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**Table 1: Anti-dumping investigations by groups of reporting countries and countries investigated, 1987-97**

Reporting country group	Affected country group			Total
	Developed	Developing	Economies in Transition	
Developed	570	591	340	1,501
Developing	249	216	205	670
Economies in Transition	24	0	1	25
Total	843	807	546	2,196

Source: Miranda, Torres and Ruiz (1998).

**Table 2: Trade weighted industrial tariffs in the post Uruguay Round period**

Region	MFN Bound	MFN Applied	MFN Applied weighted by imports from Low & Middle income Countries
High-income economies	3.5	2.5	4.4
All Low & Middle-income Countries	20.0	13.3	13.3
East Asia & Pacific	15.8	12.3	13.6
Eastern Europe	9.5	6.4	6.3
Latin America	31.1	11.7	10.4
North Africa	38.4	26.4	19.7
South Asia	33.7	28.6	38.9
Sub-Saharan Africa	15.8	8.0	7.4

Source: Finger, Ingco and Reincke (1996).





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- 00/2 **Spiros Bougheas, Panicos O. Demetrides and Edgar L.W. Morgenroth**, “International Aspects of Public Infrastructure Investment”
- 00/3 **Michael Bleaney**, “Inflation as Taxation: Theory and Evidence”

## Members of the Centre

### Director

**Oliver Morrissey** - aid policy, trade and agriculture

### Research Fellows (Internal)

**Adam Blake** - CGE models of low-income countries

**Mike Bleaney** - growth, international macroeconomics

**Indraneel Dasgupta** - development theory

**Norman Gemmill** - growth and public sector issues

**Ken Ingersent** - agricultural trade

**Tim Lloyd** - agricultural commodity markets

**Andrew McKay** - poverty, peasant households, agriculture

**Chris Milner** - trade and development

**Wyn Morgan** - futures markets, commodity markets

**Christophe Muller** - poverty, household panel econometrics

**Tony Rayner** - agricultural policy and trade

### Research Fellows (External)

**V.N. Balasubramanyam** (*University of Lancaster*) - foreign direct investment and multinationals

**David Fielding** (*Leicester University*) - investment, monetary and fiscal policy

**Göte Hansson** (*Lund University*) - trade, Ethiopian development

**Robert Lensink** (*University of Groningen*) - aid, investment, macroeconomics

**Scott McDonald** (*Sheffield University*) - CGE modelling, agriculture

**Mark McGillivray** (*RMIT University*) - aid allocation, human development

**Jay Menon** (*ADB, Manila*) - trade and exchange rates

**Doug Nelson** (*Tulane University*) - political economy of trade

**David Sapsford** (*University of Lancaster*) - commodity prices

**Finn Tarp** (*University of Copenhagen*) - aid, CGE modelling

**Howard White** (*IDS*) - aid, poverty