

**A BIRDS-EYE VIEW OF THE AGENDA: THE  
DEVELOPING COUNTRIES AND THE  
MILLENNIUM ROUND\***

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### **Abstract**

Developing countries have a considerable stake in supporting a comprehensive new round of multilateral trade negotiations within the World Trade Organization (WTO) in order to achieve further trade liberalization and benefit from intersectorial trade-off. For their constructive participation in the preparation of the agenda and in negotiation, however, the costs and benefits of the various issues must be carefully assessed. In the present paper, we attempt to analyze these issues starting from the traditional trade barriers to first and second generation new trade issues. In the latter case, international negotiation runs into more difficulties, since domestic policy choices and approaches are involved. The paper argues that the central challenge is how to reconcile further promotion of an open multilateral system featuring contestable markets with the needs of developing countries to follow independent strategies characterized by various forms of policy intervention.

## **Introduction**

Fundamental change has been occurring in the world economy in the last two decades. Globalization is the term most commonly used to synthesize and link these sweeping changes, dramatically increasing the degree of interdependence among countries. The world trading environment has also experienced parallel fundamental changes. Trade in manufactured goods has outpaced trade in primary commodities; global integration in many services sectors has increased substantially raising the share of services in total trade; foreign direct investment (FDI) and trade have become increasingly complementary.

These recent changes in the world trading environment are important in understanding the new challenges facing the global trading system today. Globalization has induced major pressures towards a much deeper form of international integration as can be seen in the efforts of the World Trade Organization (WTO) to broaden their goal and to reconcile divergent national policies and practices. These pressures emerged in the international arena as countries discussed the agenda of a new round of multilateral trade negotiations, for the year 2000 – dubbed the “Millennium Round”. The central challenge of the Millennium Round will be how best to promote and secure internationally contestable markets. This includes both the desirability and the feasibility of integrating different domestic policies and practices within the evolving architecture of the multilateral trading system.

In recent years the path of further liberalization of trade and investment has been reinforced at various levels: (i) by many unilateral initiatives especially of developing countries in East Asia and Latin America; (ii) by new sectoral agreements, like the Information Technology Agreement (ITA) and those in telecommunications and financial services; (iii) by various expansion of the scope and coverage of regional trade agreements. At the same time new threats have arisen to the multilateral trading system in many countries, particularly in the most advanced areas, with increased resorting to anti-dumping measures and other forms of implicit protection. In the United States (US), for example, trade liberalization has increasingly come to be identified with falling compensation for the low skill and low wage earners. In Europe too, liberalization is associated with persistently high unemployment. So there is considerable risk that the multilateral open trading system could be severely weakened.

According to many, a new round of multilateral trade negotiations could be the best way both to arrest these negative trends and assure the continuation of the multilateral trade liberalization (Bergsten, 1999; Krueger, 1998). To accomplish this task the new round should address a broader range of topics including the new challenges to trade multilateral systems.

Much remains to be done in terms of addressing the traditional issues so as to further eliminate all remaining tariff and non-tariff border barriers. The Uruguay Round in this regard represented a major advance by converting agricultural quotas into tariffs, removing quota protection from textiles and apparel, and obtaining bindings of most duties.

Alongside the further elimination of the more traditional barriers there are negotiations on the new trade items – the so-called new trade agenda – and on ways of removing those obstacles stemming from domestic rules and policies which impede the access of many products and services to markets of various countries. The items on the agenda should include some of the new trade issues of the Uruguay Round - trade in services and intellectual property rights – up for revision and new topics and further liberalizations, which we will call respectively the first and second generation of new trade issues. The latter comprise competition policies, the rules on FDI and labor and environmental standards. There are also some hybrid issues between sectors, such as e-commerce. International negotiation runs into more difficulties here, since domestic policy choices and approaches are involved.

The progress of negotiations on all the new trade issues varies considerably, and as we shall see not all the issues are likely to be included in the new Millennium Round. In this context the developing countries and, specifically the countries of the MENA (Middle East and North Africa) area, have specific interests at stake in every negotiating framework.

Unlike the past, developing countries are participating actively and have a very strong interest in the current evolution of trade and investment international regimes today. It is well known that for many years developing countries have claimed and received exemptions from the rules of General Agreement on Tariff and Trade (GATT), as in General System of Preferences (GSP) arrangements where they were granted access, even though limited, without having to assume reciprocal obligations. In recent years this has changed. For various reasons

reform programs have made trade liberalization and openness an essential component of the development strategies and policies. The liberalization of global markets has undoubtedly benefited the developing countries, making possible several successful stories based on outward-orientation and export-led growth. With the Uruguay Round, developing countries became full-scale participants in multilateral trade negotiations, by adhering to the same rules as developed countries, only having more time to make adjustments.

There is a strong interest in further integrating developing countries into the multilateral trading system and the WTO. In this regard the central challenge is that of reconciling the further promotion of an open multilateral systems towards contestable markets with the needs of developing countries to follow independent strategies, also characterized by various forms of policy interventions. It is a fact that individual countries developed their own ways of exploiting the potential benefits of the global economy.

In this paper we attempt to analyze the various developing countries' issues pertinent to the new millennium's agenda starting from the traditional trade barriers to the first and second generation of new trade issues, and the prospects for success in further market liberalization in the new round.

The paper is divided as follows: the next section describes the broad changes that have occurred in the global trading environment and how the different groups of developing countries have taken advantages in different ways of these changes. The third section deals with traditional trade barriers and considers the further progress to be achieved in this area. The fourth section examines the first generation of the new trade issues such as trade in services and intellectual property rights, together with some new areas such as e-commerce. The fifth section assess the second generation of new trade issues showing the opportunities and also the risks for developing countries. We then analyze a few issues directly related to the WTO and its organization, and in the final section we summarize the main findings and make some overall suggestions.

## **2. The Changing World Trading Environment and the Developing Area**

### ***2.1 The New Trading Environment***

Globalization has exerted a significant influence on the evolution of world trading relations, with relevant implications for international competition at country and firm level. In this respect, three facts could be stressed: (i) the simultaneous rise in foreign direct investment and trade; (ii) the increasing role of trade in services; (ii) the changing composition of the world trade.

At the level of international markets, a first important trend is the extraordinary rise in capital mobility, and especially of foreign direct investment. In 1997 FDI amounted to more than 450 billion dollars (UNCTAD, 1998) and last year it increased even further to more than 640 billion dollars (UNCTAD, 1999). Developing countries as a whole received more than 30 percent of all FDI in the period 1995-97, but this FDI was concentrated in few countries in Asia and to some degree Latin America, while inflows to other areas especially the least developed countries remain at extremely low levels (UNCTAD, 1999).

The surge of FDI has been an important device for organizing production and distribution at the international level and has been accompanied by new linkages with trade flows. Traditional theory has viewed trade and FDI as substitutes, but increasingly FDI and trade are becoming interrelated and to a certain extent they complement each other. On the other hand the rise of FDI and transnational enterprises has meant that a large share of world trade is accounted for by the exchange of goods and services within a single firm and/or a corporate network based in different countries. Thus a significant proportion of world trade is conducted on the basis of corporate strategies that interact with complementary suppliers and with customers across many countries and areas.

The rise in trade in service is another fundamental trend that has accompanied the globalization of economic activity and has significantly influenced world trading relations in recent times. Information technologies especially, have increased global integration in many services sectors that were in the past isolated. Moreover, in many developed economies trends towards financial liberalization, privatization and deregulation has created investment opportunities in sectors such as banking, telecommunications and utilities.. The increasing role of services is confirmed by the higher growth of trade in services than trade in goods during the

1980s and large part of the 1990s: in 1990 services already covered 20 percent of all trade and given the fact that balance of payment data only partially register exchanges of services through firm networks, that share is certainly underestimated (B. Hoekman, Primo Braga, 1997).

The third important factor has been the change in world trade composition, together with the increase in the share of trade in world output (WTO, 1998)<sup>1</sup>. As already noted, the share of manufactured products has increased over the past decade now representing more than 73 percent of world trade. In contrast, there was a corresponding drop in the share of primary products, both agricultural products and raw materials (Table 1). The growth of trade in manufactured exports is the result of several factors, such as recent trade liberalization trends and the opening up to trade and investment in many countries and regions, as in the case of the newly industrialized countries (NICs) in Asia and Latin America. Recently, among manufactured exports there was a slight increase in the share of traditional labor-intensive industries (such as garments, furniture, shoes, etc.). However, the share of the most sophisticated products, with a high technological content (science based goods), has increased even more rapidly, more than doubling in the period from the early 1980s to the mid-1990s (Table 1). Trade in this type of goods takes place very often along intra-industry lines with countries simultaneously exporting and importing the same kind of products (Scherer, 1994). As many theoretical contributions explain, these trade patterns can be understood once scale economies, product differentiation and technological change are taken into account (Grossman and Helpman, 1991).

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<sup>1</sup> To take it into account, a specific sectoral taxonomy is used here, following the works of the Organization for Economic Cooperation and Development (OECD, 1992), Pavitt (1988), and Guerrieri (1992; 1997). Five type of industries are identified, primarily through a combination of technology sources, technology user requirements and means of technology appropriation: natural resource-intensive, supplier-dominated or traditional sectors, science based, scale-intensive and specialized supplier. Whereas in the first two categories (natural resource-intensive, supplier-dominated or traditional sectors), factor endowments have a major influence on the generation of comparative advantage, since technology is easily accessible and firms' competitiveness is notably sensitive to price factors; in the last three categories of products (science based, scale-intensive, specialized suppliers) comparative and absolute advantages are dominated by technological change and capability. All other non-industrial goods are grouped into three remaining categories (agricultural products; fuels; other raw materials)

There are various implications deriving from these changes in the world trading system. To compete effectively in sophisticated technological products and sectors, firms need to have a significant presence in order to produce, sell and market internationally. Furthermore, competition in many service sectors also require a presence in many domestic markets, making differences among domestic regulatory structures increasingly relevant. In addition transnational firms that make FDI and plan to source in one country and sell in others, are seeking internationally compatible secure and transparent operating rules for their networks. This has all led to a change in economic incentives and to greater emphasis on increased market access for firms as well as products. The importance of access, in turn, leads to potential confrontations resulting from differing systems of domestic rules and policies. Even when border barriers are removed, differing corporate governance rules, competition policies, FDI policies and regulatory policies could limit 'de facto' the new entries. The emphasis has thus naturally shifted from traditional trade barriers to the first and second generation of new trade issues (intellectual property rights, technical standards, investment policies, competition policies, labor and environmental standards).

With regard to the agenda of the next Round a first important question is what new topics and policy issues will be the most important for improving trade and investment liberalization and the contestability of markets. A second question is what type of cooperation and/or international agreement with regard to these topics of deep integration will be necessary for achieving greater access to markets, ranging from coordinated application of national policies to the harmonization of rules and norms. As we will demonstrate, it is possible to conceive of very different agreements for the various issues and the details are very important in predicting their impact.

As a general prescription one could point out that, given that economic conditions and preferences vary significantly across countries, to harmonize rules and policies is not necessary, and wherever possible national diversity should be permitted and guaranteed. This is true especially in the case of developing countries.

## ***2.2. The Different Strategies and Performances of Developing Countries***

In the last two decades most developing countries adopted structural adjustment programs based on domestic market liberalization and outward-oriented growth to

rapidly integrate their economies into the world trading system, thus reversing the bilateral and inward-oriented policies followed during the post-war years, at least up to the early 1980s. The liberalization of global markets and the new trading environment has therefore undoubtedly benefited the developing countries.

Regarding the impact of openness to economic performances there are, however, significant differences between growth experiences according to the different strategies and policy interventions that were adopted. Individual countries have been able to exploit to a different extent the potential benefits of the global economy.

Table 2 provides detailed figures on trade specializations<sup>2</sup> of individual developing countries grouped around large geo-economic areas in Latin America, East Asia, Mediterranean and Arab regions. Although very different one to another, they have all been characterized by trade liberalization processes over the past two decades. Let's try to depict some stylized facts derived from the patterns observed for these different groups of developing countries.

*South-east Asian NICS* had very successful growth and trade performances up to the first half of the 1990s combined with changing and upgrading of their trade composition towards higher value-added and higher technology intensity goods and sectors. After a short experience of import substitution in the 1950s, all countries in this group shifted towards trade openness accompanied by various industrial and technological policies. Within this common context, however, there

was different trade specialization patterns for each Asian NICS (Table 2) and the recent crisis also affected each of them very differently. As a result, each economy had an individual pattern of export growth, industrialization, technological progress, reliance on FDI and policy interventions.

*Latin American NICS (Brazil, Argentina and Mexico)* have performed very differently from the Asian group, particularly in relation to structural change and technological upgrading of their production structure. Their trade specialization is at present still based on relatively abundant natural resources, such as exports of raw materials and resource intensive goods (Table 2). Latin American NICS, however, had very different patterns one to another. In more recent years they had better trade performances, especially in the case of Mexico, where more trade openness has been accompanied by progress in medium-high technology intensive exports and higher intra-industry trade.

*Mediterranean NICS such as Tunisia*, experienced significant changes in terms of trade specialization in the course of the 1980s. Their trade specialization has shifted from raw materials and agricultural products towards industrial products, 'traditional' labor-intensive exports, mostly textile-apparel (Table 2). These structural changes have been favored by a process of trade liberalization implemented gradually. Trade liberalization, however, was combined, in the same period, with very intense policy intervention to support export activities. In more recent years Mediterranean NICS trade performance, however, was much less positive and their trade specialization remained locked into less dynamic medium-low technology intensive products.

*Arab NICS (Egypt, Jordan)* trade specialization pattern has maintained rather primitive features, largely based on natural resource-intensive and low-valued added products (Table 2). Over the past decade the trade performance of the Middle-east countries was also very poor. There is a broad consensus that in order to have long term economic growth, export-led strategy should be adopted. In the light of the past experience, however, this goal seems very hard to achieve. The main obstacle is how to increase Middle Eastern countries' production capability by significantly upgrading their production and trade patterns.

Although the evidence is sketchy it seems to show that wide differences have characterized the various groups of countries in their ability to grow and integrate into the global economy. Structural adjustment programs have been implemented,

<sup>2</sup> The indicators of trade specialization are calculated for a given number of product groups comprised in the taxonomy that we provided and discussed in other works (Guerrieri, 1994; Guerrieri 1993). To this end all industrial products are classified into nine categories, as already explained in the text. For the calculation we use an original database (SIE-World Trade Database), that includes data for trade flows from 1970 on related to OECD and non-OECD countries (Guerrieri, 1994). As to the indicator of contribution to trade balance used here to measure trade specialization the formula for a country (j) with respect to a given group of products (i) is the following:

$$ICTBi = \left[ \frac{(X_i - M_i)}{(X + M)} - \frac{(X - M)}{2(X + M)} \right] \times 100$$

$X_i$  = total exports of country (j) in the product group (i)  $M_i$  = total imports of country (j) in the product group (i)  $X$  = total exports of country (j)  $M$  = total imports of country (j) The sum of the indicators with respect to the various product groups (i) in which the total trade of a country is disaggregated, equals to zero.

but leading to very different results in term of growth and trade performances. Significant divergences have arisen within the developing area, greatly enhancing its heterogeneity so that the label of Developing Countries (DCs) has become rather vague and to a certain extent useless term of reference.

Certainly there are many reasons behind this increasing divergence. There is no doubt that different degree of openness and macroeconomic policies were very important. Structural factors and policies, however, related to the challenges and opportunities stemming from the 'new global economy' have also played an important role.

As well known, there are different views on the impact of economic openness, and its costs and benefits (Edwards, 1998; Rodrik, 1999). Recently the economic literature on the influence of trade openness and liberalization on the industrialization and development process has been enriched by many contributions. Significant relationship between key variables, such as trade performance, international specialization and long-run growth, has been defined and/or re-defined and new policy implications have also been offered (Dowrick, 1997). To sum up the broad conclusions that emerge from these theoretical and empirical contributions is that it is not realistic to expect that national development efforts will converge on a single optimal model, nor it is desirable that they do so. The countries that have been successful in these decades have all succeeded through their own particular set of strategies and policies (Rodrik, 1999). So developing countries need a sustainable approach to their development that will be able to accommodate the growing heterogeneity in the South.

What does this imply for the participation of developing countries to the new multilateral trade Round? One major implication is that the major challenge in the future of the open trading system will be reconciling the increased requirements of deeper integration in the new trade agreements with the needs of developing countries to follow independent development strategies which might involve different policies and government intervention. In this case there is the danger of moving towards zero-sum games, such as in some new trade issues of the first and second generation. But even in these cases different devices could be used to maintain the trade liberalization momentum from the linkages across issues to the side-payments, to mutual recognition approach. In this regard it is important to recognize that there are also many common identifiable interests of developing

countries in strengthening the multilateral trading system We have tried to assess them below.

### **3. The Traditional Challenges**

The agenda of the Millennium Round should certainly include a relevant chapter on the elimination of remaining tariff and non-tariff border barriers. All are topics where positive-sum games are predominant. Insofar they can influence the Agenda, developing countries have a considerable stake in further progress in this area, such as in the elimination of the very high tariffs on agricultural imports and many apparel and textile exports, even more so in the light of the significant weight of these sectors in production and trade of many developing economies.

#### **3.1 Agricultural Barriers**

The goal of the Uruguay Round was to dismantle a strong protectionist regime in the agricultural sector. The commitment to shift to "tariffication" of protection was highly significant, but the Agreement has actually led to agriculture under WTO rules rather than to real liberalization. The majority of developed countries have not modified the regimes of their heavily protected products, such as sugar and dairy goods (Ingco, 1995). During the entire negotiating process the European Union (EU) and European Free Trade Agreement (EFTA) countries successfully maintained a defensive position (Croome, 1998). In short, the Marrakech Agreement has had positive aspects but much remains to be done. On the basis of Article XX of the Agriculture Agreement, negotiations were to begin by 31 December 1999.

The goal of the new Round will be first to deal with tariffs: the reduction of the very high tariffs on agricultural imports in many industrialized countries; the reduction of the tariff peaks and of the high tariff bindings; and the increase in tariff quotas.

Second, almost all countries have an interest in negotiating a further reduction in export subsidies.

Third there are market access rules and the role of state-trading agencies, especially of monopolistic importing agencies, which can actually regulate the flow of goods on the domestic market and which are subject to non-discriminatory

treatment in accordance with commercial practices (Article. 17, GATT, which has not been respected).

Fourth, the elimination of aggregate measures of support (AMS) and the blue box, strongly championed by the United States and which may be subject to revision, is opposed by the EU. These two issues were the subject of a showdown between the US and the EU and risked compromising the entire agreement. The US concessions were made with a view to the next round of negotiations (Croome, 1998).

During the new negotiations the aspects of agricultural trade linked to safeguarding citizens and health arising out of scientific progress in agriculture will emerge, especially in the field of genetically engineered crops. These aspects have already generated serious tensions in European-US relations - the dispute in the WTO over bovine meat treated with growth hormones - and risk inducing new waves of protectionism. This matter will be discussed further below.

Other issues of pertinence to the developing countries will also be relevant. These include: (i) the introduction of greater flexibility for developing countries in the framework of import restrictions and domestic support measures, since the production structure of many developing countries is still tied to small family farms with subsistence production (Lal Das, 1998); (ii) the exclusion of subsidies that developing countries establish for the purchase of food to create reserves and for public distribution from the AMS.

Reviewing the positions of the individual countries, there is no reason to believe that governments want to modify the approach adopted during past negotiations (Croome, 1998). So the antagonism between the USA and the EU are likely to be the main issue of the entire negotiation process. The US will push for further liberalization, while Europe, caught between the need to reform Common Agricultural Policy (CAP) because of budget problems and future enlargement, will have a defensive position. The EU will presumably find allies in the countries candidates for membership in the coming enlargement, which will be future beneficiaries of CAP, and among the developing countries, which fear losing their preferential access to the Community market, and among the EFTA countries. The Cairns Group (Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Uruguay and Venezuela) will side with the United States, adopting the same inflexible position

maintained during the Uruguay Round. Their goal remains the total elimination and prohibition of every obstacle to complete liberalization of agricultural trade. The Cairns Group has also espoused the principle of special and differential treatment for developing countries. Japan and Korea are likely to be affected by the end of the transitory period in which they benefited from special treatment for rice imports and they will seek to maintain it, requiring them to make concessions in other areas.

Although the developing countries are attempting to find common positions on the key questions, they will probably take sides with one coalition of countries or the other depending on the issues of negotiations, as occurred in the Uruguay Round. The division between net food importers and net food exporters is likely to persist. The former, fearing an increase in prices, are less concerned about further cuts in export subsidies. The latter are more inclined to ask for enhanced market access for specific products. The exporting developing countries which are not highly competitive are likely to channel their efforts on maintaining preferential access to the markets of industrialized countries (Croome, 1998). The domestic support measures are of less concern to the developing countries. For various reasons, especially because of budget restrictions, the developing countries rarely resort to these measures, as many AMS near or equal to zero, confirm.

As for the developing countries as a whole, the issue of agricultural barriers is also crucial to the MENA countries. In the MENA area the agricultural population is still between 40 percent and 60 percent of the total. Three quarters of the region's entire production is concentrated in two categories of products: cereals (38 percent) and fruit and vegetables (38 percent) (De Rosa, 1997). Agricultural production composition varies significantly from country to country in the area because of climatic and geographical factors.

There is a wide range of positions in the area regarding the opening of markets. The countries most receptive to the international market are Kuwait and Saudi Arabia, with average tariffs equal to 10 percent and non-tariff barriers (NTBs) equal to five percent. Most of the other MENA countries apply tariffs equal to 20 percent and NTBs equal to 30 percent (De Rosa, 1997). In the last decade Algeria and Tunisia have significantly reformed their trade regime, opening it to the world market. In the past, in order to achieve food self-sufficiency many MENA countries adopted a high level of protection, while it is evident they could benefit



more by expanding their key sectors, not only the agricultural sector, rather than by protecting largely inefficient forms of production (Ingco, 1997).

Only Cyprus, Egypt, Israel, Kuwait, Mauritania, Morocco and Tunisia are members of the WTO (De Rosa, 1997); Algeria, Iran, Saudi Arabia, Lebanon, Jordan and Syria have applied for membership. The MENA country members identify with the positions of the net food exporters, since with few exceptions they are important exporters of agricultural commodities (De Rosa, 1997). The aspiring WTO members are interested in swift admission to benefit from the liberalization process and, in other cases, to take advantage, as Algeria and Saudi Arabia have been doing in recent years, of the unilateral policy of openness they have both undertaken.

### **3.2 Product Barriers**

Although no built-in agenda in the trade of goods is foreseen, the new Round will probably enact new tariff reductions, since tariff barriers are still important, especially for developing countries. The final declaration of the 1996 Singapore Ministerial Conference reiterated the commitment for a progressive liberalization and elimination of tariff and non-tariff barriers in the trade of goods.

In general, the tariff reductions on industrial products established in the Uruguay Round were applied in five successive annual stages, the last of which expired on January 1, 1999 (Croome, 1998). The intensity of the cuts varied widely from sector to sector. For most products the cuts were over 40 percent, but they were much less drastic in the textile-clothing and leather goods. It can be said that the high-tariff sectors, most of which are of great concern to developing countries, are those which were subject to the lowest cuts.

Differential reductions in tariff barriers were also made between developed and developing countries. Developed countries consolidated all tariffs at the levels applied (on average particularly low), while developing countries, although have diminished their tariffs over the years, still maintain high consolidated tariff levels (Croome, 1998).

In the years following the Uruguay Round important sectoral negotiations took place on the global level. For example, in December 1996 the ITA was signed with the scope of diminishing tariffs of important categories of Information

technology (IT) products by 1 January 2000. On the regional level the voluntary liberalization of various sectors within the Asia-Pacific Economic Cooperation has taken place, including tariff reductions for countries expected to join the EU and openness within Mercosur (Mercado del Cono Sur) and ASEAN (Association of Southeast Asian Nations). This highly fragmented picture of sectoral negotiations underway is preferential and ensures that the initial phase of a new multilateral Round will be arduous.

In this regard, analysis of the results achieved in the Uruguay Round allows us to identify the issues on which the next Millennium Round will inevitably focus.

As we mentioned above, there is a significant difference between developed and developing countries regarding consolidation of applied tariffs. This situation leaves room for negotiating maneuvers. On one hand, the tariff consolidation of the developing countries could be adjusted to lower levels effectively applied, giving these countries considerable bargaining power at the negotiating table at a minimum cost. On the other, the industrialized countries could reduce their tariff peaks, especially on products of interest to the developing countries. The most relevant problems will arise for the developed countries. For certain industrial products some tariffs are higher than average and in developing countries export sectors reduction of these tariffs will inevitably be opposed by domestic interest groups in developed areas.

As we have already pointed out, the Uruguay Round determined moderate cuts for the high-tariff sectors. Many of these sectors have tariff peaks the elimination of which constitutes the first commitment of the imminent new Round. The EU has proposed reviewing all tariffs and guaranteeing at the end of the Round duty-free access to the products of the less developed countries (LDCs) on the markets of the industrialized countries (Brittan, 1999). A second issue involves tariff escalation, an old problem, which entails an increase of the tariff applied to a given sector depending on the phase of production. This nullifies the advantages in terms of opening the market by cutting tariffs and discourages the developing countries from increasing their production capacity through investing. (Grimwade, 1996). Examining the sectors on an individual basis, much remains to be done in textiles and clothing, as well as in transport equipment, the tanning industry and footwear (De Paiva Abreu, 1996).

Two key aspects concern market access agreements - safeguard and antidumping agreements. The former still sanctions quantitative restrictions for individual exporters, although limited in time and only after presenting proof of injury. This risks becoming a protection tool, even though recourse to antidumping measures is easier. Antidumping measures remain a thorn in the side of international trade. Despite more restrictive provisions, this is the greatest shortcut for importers wishing to protect their industries. Currently WTO regulations governing antidumping are very weak. Furthermore, more stringent investigation procedures entail a heavy cost in human resources, making them far more difficult for developing than for developed countries (Finger, 1996).

In this regard technical assistance is another key point for the developing countries in the Millennium Round. In facing greater openness, the developing countries will have to sustain high adjustment costs. In addition, the new regulations call for application of high technical standards. In this case, the developing countries could form a united front to strengthen their request of technical and financial assistance measures.

The position of the MENA countries regarding the new Round generally coincides with the one expressed by developing countries. The Uruguay Round modified the tariff barriers for MENA exports, with a reduction ranging between 2.4 percent and four percent. Greater progress was made in the removal of NTBs, especially in textiles and clothing, through the progressive elimination of the Multifibre Agreement (MFA). However, the region still is characterized by important tariff and non-tariff barriers, with the exception of oil.

The MENA countries are directly interested in the liberalization of key sectors such as textiles and clothing, for which they will request full implementation of the Agreement on Textile and Clothing (ATC), but also in the sectors of machinery, transport equipment and metals through the elimination of tariff peaks and escalations on which the Uruguay Round had little impact. These are, of course, particularly sensitive sectors in which negotiations will be more difficult, as was the case in the Uruguay Round. Precisely for this reason MENA countries should favor a single round of negotiation, to overcome, through reciprocal concessions, obstacles to higher openness especially for those high tariff sectors where in the past have been very difficult to achieve significant results (Croome, 1998).

### ***3.3 Implementing the Agreement on Textiles and Clothing***

Confrontation will be especially fierce in the textile and clothing sector because of the “transitional” nature of the 1994 Agreement (ATC), whose major achievement was to bring these industries back into GATT/WTO rules. Their full integration will only become effective after completion of the third phase of liberalization from quantitative restrictions - as of January 2005.

Four phases are foreseen. Phase 1 ended January 1995, and members had to integrate into GATT 1994 products corresponding to not less than 16 percent of the total volume of their 1990 imports disciplined by the MFA. In phase 2 (January 1998) member countries had to integrate an additional 17 percent (in volume) of their total imports on the basis of 1990 data. In phase 3, by 1 January 2002, another 18 percent will have to be integrated. In phase 4, by 1 January 2005, the entire sector will have to be integrated into GATT 1994. The opportunities for market access are destined to increase considerably following the progressive abolition of the MFA quotas. Effective improvements will not be detected until 2002, when the third phase begins. In fact, the products involved in the first two phases are considered non-sensitive (De Paiva Abreu, 1996). The large exporting countries will make greatest use of the third phase, including Brazil, Hong Kong, India, Thailand, and Malaysia. The small exporters will have to await the end of the ten-year transition period (UNCTAD, 1996a).

The results achieved so far cannot be deemed encouraging (Croome, 1998). The advanced countries have been accused of substituting quantitative restrictions with new protectionism by abusing antidumping actions and applying restrictive rules of origin. On their side, the developing countries have maintained high tariffs and non-tariff restrictions. In fact, the principles of minimum liberalization in the sector have not been respected. On the other hand as with the agriculture, a great deal in terms of lowering the level of protection was achieved relative to the past and to what might otherwise have been the case.

A further source of concern is the fact that a major part of the integration process will take place in the final phase of the transition period. This “end-loading process” has raised doubts on the credibility of the entire liberalization process and raises questions about the political likelihood of commitments being less than fully implemented (UNCTAD, 1996a).

The transitional safeguard measures are another key concern, since they entail determination of the “serious injury” guidelines (including the level of wages and of domestic prices) never before utilized. The increase in the parameters may facilitate their adoption, and this will damage the major exporters, in other words, mainly the developing countries. The possibility of adopting safeguard measures, applicable simultaneously, to numerous countries is considered by many a negative aspect. The US has invoked these measures against imports of cotton and handmade goods from eight countries, basing their claims on the concept of “cumulative damage” deriving from the concurrent inflow of products from the countries in question.

The textile-clothing sector is one of the few in which the developing countries have taken a strong common position. When the Uruguay Round was due to be launched, they made clear that their participation was conditioned to the high place to be given on the agenda for liberalization of textiles and clothing. Most of the developing countries, including the MENA countries, are contrary to any reformulation of the previous agreements. They fear that new negotiations would mean new concessions to be made five years before expiration of the agreement already signed, while they want to keep their negotiating power intact and benefit from the entire transition period available to them. So a new agreement designed to accelerate the process of openness is quite improbable and extensions of implementation times are also not foreseen (Croome, 1998).

### **3.4 Other Traditional Challenges**

#### *3.4.1. NTB and harmonization of standards*

Standards, technical regulations and conformity assessment are having a growing impact – in parallel with the elimination of traditional barriers – on global trade. The presence of “opaque standards” (to favour inefficient national producers) and the proliferation of costly and complex systems of conformity assessment are leading to lower efficiencies and act as barriers to trade (Wilson, 1996), above all towards developing countries (Stephenson, 1997). Conversely, the implementation of efficient international standards would make it possible to achieve important results, favoring for example, the spread of innovation and the achievement of economies of scale, better product quality and an increase in exports (Wilson, 1996).

There seems to be substantial consensus on this. Disagreement centers on the way to achieve it, either through harmonization of technical standards at the international level and/or mutual recognition at the level of regional bloc. Initial responses have come from the adoption of the Mutual Recognition Agreement (MRA) between the US and the EU as regards testing, product certification and laboratory accreditation and the multilateral agreement on Technical Barriers to Trade (TBT) signed during the Uruguay Round, which obliges governments to define product and process standards.

The most advanced agenda as regards regulatory reform and standards seems to be the one adopted at the regional level by Asia-Pacific Economic Cooperation (APEC). The objectives set in it for standard and conformity assessment are much more ambitious than those in the WTO-TBT Agreement, with respect to both selective harmonization of standard products and the mutual recognition of foreign standards on domestic markets.

This relative success of the regional initiatives can be explained by the fact that the number of countries that have to reach agreement is smaller than in the WTO with its 130 members. Financial support for technical assistance, including the training of personnel and the updating of laboratory infrastructure and testing facilities, is also easier at the regional than at the multilateral level (Stephenson, 1997).

For developing countries, recognition and adhesion to international standards and agreements still seems to be rather limited. At the domestic level, most currently lack the infrastructure and skills needed to operate and keep up laboratory testing facilities. At international level, although a number of developing countries are members of the International Organization for Standardisation (ISO) and the International Electrical Commission (IEC), their actual participation is still poor both in the working groups and in working out the standards accepted. The same considerations hold for the WTO and the TBT agreements.

Under these circumstances, the priorities of developing countries in terms of standards could be summed up in the following way (Stephenson, 1997): i) the adoption of preferably international standards, in particular, those established by the ISO and the IEC, and – lacking those – adopt those of their most advanced trade partners rather than formulate their own; ii) the achievement of more active participation in the working groups of international bodies in order to favour the

adoption of standards much closer to their requests; iii) the implementation of the rules contained in the WTO's TBT agreement, especially concerning notification of national practice.

#### *3.4.2. Trade facilitation*

There is unanimous agreement also on the positive impact and usefulness of trade facilitation (Croome, 1998). The task assigned to the WTO's Goods Council clearly identifies the objective of the negotiations on trade facilitations, defining it as "... the simplification of trade procedures in order to assess the scope for WTO rules in this area". In effect, the import and export procedures of many countries must be simplified, harmonized and made more automatic, so that documentation is reduced and transparency increased. These are provisions which would benefit all, especially smaller firms and developing countries, for which the costs involved in respecting the present procedures are relatively higher.

The EU has made a proposal based on a few major points: i) the principle of proportionality in order to eliminate superfluous procedures; ii) immediate checks rather than subsequent checks as is currently the case; iii) measures that favour the transparency of checks to avoid arbitrariness and abuses; iv) the gradual introduction of computerized systems based on cooperation between exporters and importers.

With respect to the last point, a World Bank study has defined the use of electronic data interchange (EDI) a "critical component of a trade facilitation strategy" (Schware and Kimberley, 1996). Cox and Ghoneim (1998) state, for example, that in the case of many developing countries the adoption of an EDI system could bring about efficiency advantages and an increase in trade equal to 350 million dollars. Substantial gains have already been achieved in Singapore with the implementation of trade facilitation measures (Schware and Kimberley, 1996).

Yet the EU proposal has not found many supporters; in particular, the US does not seem to be convinced that the WTO should be responsible for these measures. Nevertheless, there is strong pressure from private business for trade facilitation measures to be brought into the WTO sphere and the next Round of negotiation (Croome, 1998).

#### **3.5 Public Procurement Practices**

One of the working groups set up in Singapore is the group on transparency in public procurement. Indeed, a plurilateral agreement on public procurement (Government Procurement Agreement [GPA]) was signed in 1994 by 28 countries, among which were the 15 EU countries, the US and Japan. The agreement lays the foundation for real transparency in government procurements, but it has the limit of being binding only for the WTO members who signed it. Its weak point remains the limited number of adherents.

Furthermore, the General Agreement on trade and Services (GATS) contains specific rules on public procurements in services (Article XIII) which are among the GATS' "unfinished agenda" and are to be completed by a specific working group. The working group on GATS is still, however, in its preliminary stage, with respect to identifying both the key issues and for maneuvering room for such an agreement.

Three different levels of future goals of negotiations in this area can therefore be distinguished.

The first is linked to the transformation of the 1994 agreement from the plurilateral to the multilateral level overcoming the developing countries' opposition to granting national treatment to foreign enterprises and to giving up privileged access to national enterprises for development purposes. Some countries, while showing interest, have criticized its "complex, bureaucratic and costly structure" (Croome, 1998). In the coming years, more developing countries will adhere, above all because candidates for admission to the WTO are required to belong to the GPA. To encourage adhesion, many propose use of transitory price preferences, which would therefore gradually erode (Hoekman, Mavroidis, 1994).

The second level is connected to the setting up, as proposed by the QUAD countries, of a general transparency agreement in government procurement. Transparency is fundamental for attracting firms that intend to bid for government procurement and above all for avoiding corruption, a real scourge in developing countries. In consideration thereof, and although developing countries and above all ASEAN countries have strongly rejected all attempts to introduce anti-corruption regulations in the WTO, it is imperative that adequate provisions in this

respect be set up (Croome, 1998). Furthermore, it is also important to improve the currently easily circumvented procedures for enforcement and dispute settlement which often discourage firms from developed countries from bidding for government procurements in developing countries (Hoekman, Mavroidis, 1994).

The third level involves the negotiations on the “unfinished ” GATS rules and envisages the inclusion in the GATS 2000 of matters of transparency, dispute settlement, market access and national treatment in government procurement of services. As regards this last point, the developing countries can negotiate exceptions to national treatment, even after the signing of the agreement. They therefore have a certain margin for manoeuvre to favour national companies. Nevertheless, the option is limited to certain public actors, products and services that are included in the lists of the signatory countries. In general, in any case, the principle of non-discrimination prevails. As is known, discrimination may, in certain cases, reduce costs (Hoekman, Mavroidis, 1994; Mattoo, 1996). But all studies agree when looking at the benefits of a discriminatory approach, that they are usually very meagre, since the profits of the national companies are mostly compensated by an increase in prices (Mattoo, 1996; Hoekman, Mavroidis, 1994). Furthermore, a discriminatory policy can only function if the preferential margin is allowed – that is, the competitive disadvantage of domestic companies in each sector – is known precisely. Even if that were possible, it would mean acquiring information, which is always costly. In light of these considerations, it can be concluded that, even for developing countries, the principle of non-discrimination responds more closely to their efficiency and transparency needs, as it limits all forms of discretionality as much as possible.

The MENA countries have the same needs as all developing countries, especially as concerns transparency and the introduction of measures aimed at safeguarding buyers of goods and services. Although government procurements are of considerable importance for many of them, given the abundant infrastructure works, only Israel belongs to the GPA (Turkey is an observer). The fact is that public procurement regulations in MENA countries are generally based on substantial discrimination in favor of national companies (ERF, 1998), thus making it difficult for these countries to adhere to the agreement, unless they are specifically requested to do so, for example because of membership in the WTO.

## **4. The First Generation of New Trade Issues**

### ***4.1 The Core Issues of Trade in Services***

Among the first generation of new trade issues, services play a fundamental role given its major impact upon countries’ economic development. The increasing tertiarization of the economy, as pointed out earlier, is general and can also be seen in developing countries, and in the MENA also (Francois and Reinert, 1996; Hoekman, Braga, 1997).

There are many policy measures in trade in services aimed at limiting market access in trade in goods, such as subsidies, tariffs, taxes, quotas and technical standards. Border measures are however difficult to monitor for services, and it is often regulatory regimes that create discriminations (Hoekman, Braga, 1997). Whereas the trade in goods barriers have a direct impact on commodities, the trade in services affects the providers (Mohieldin, 1996b). The issue thus lies in the use of distribution networks and in the effective possibility of tapping them.

There are various barriers to the trade in services. Snape (1998) proposed a tripartition into tariff and non-tariff at-the-border barriers, linked to the restriction on commercial presence, transit of people and transfer of funds; internal barriers, such as particular regulations and taxation imposed on foreign services and providers; and barriers which are applied indiscriminately on local and foreign providers, in the presence of anti-competitive regulations and monopolies.

There is no doubt that policies that reduce competition in services industries are very costly, since the restrictions on the global communication and transport networks have an immediate impact on the various sectors of production, even more so with the use of just in time production. CGM analyses have shown that the advantages of lowering industrial tariffs would have been three times as much if there had been a cut of at least 25 percent in services barriers (Hoekman, Braga, 1997).

Competition policies, contestability of markets and FDI are the key elements of trade in services (Hoekman, Braga, 1995); even more so since trade in services tends to be complementary to FDI. Regulatory regimes therefore play an essential role, and without domestic liberalization, privatization and protection of competition any regional and multilateral effort risks being frustrated.

In recent years there have been many developments in domestic regulatory systems and much deregulation in services, imputable to policy-driven, technology and industry driven developments and to new regulatory challenges (WTO, 1999a). Unilateral liberalization has occurred in many developing and developed countries (Sauve', 1997). Regional agreements have also been very diffused, since it is easier to harmonize procedures or apply mutual recognition of systems (Hoekman e Braga, 1995). So network externalities (telecoms and information services) and agglomeration externalities (banking and consultancy services) are increasing in Regional Investment Agreements (RIAs). At the same time, regional liberalization schemes seems to complement that of the multilateral ones, since RIAs appear to have been useful laboratories in which to experiment with ever more sophisticated services, investment and procurement rules and disciplines (Mohieldin, 1996b). In many cases (apart from the Single Market) liberalization has had an overlap between the GATS and "deeper integration" regional schemes (GATS equal and not GATS plus): in the case of the Euro-Mediterranean Countries (EMAs) there is an explicit link with the multilateral liberalization in the GATS. (Hoekman, Braga, 1997).

With regard to the MENA countries, no univocal interpretation of the level of tertiarization in the area is possible, since great differences exist between countries (Hoekman, Braga, 1995). There are also striking differences in the number of sectors, which the individual MENA countries have liberalized out of a total of 160 odd sectors. The importance of the network and service infrastructure for developing countries has been mentioned. It is of low quality in the MENA area because of state monopolies and state-owned enterprises protected by artificial barriers to trade and based on non-economic criteria such as national security and "strategic" interests. Lack of competition and contestability have resulted in poor quality and higher costs (Mohieldin, 1996a).

#### ***4.2 The Existing Multilateral Framework in Services***

The GATS is a major achievement in liberalizing for the first time a sector where considerations of national economic policy and development objectives continue to play a fundamental role. The core principle of the GATS is non-discrimination, both at home and abroad, as reflected in its most-favored-nation (MFN) and national treatment rules (Hoekman, Braga, 1997). But its impact is more limited than in the GATT: whereas the coverage of MFN for each GATS member is

subject to a negative list (to have negotiating pressure for obtaining sectoral reciprocity), coverage of national treatment is determined by a 'conditional' positive listing approach. In addition to the two central GATT principles, the GATS introduces a commitment not found in the GATT: a market access obligation, to be reached through a positive listing of sectors by each GATS member (Hoekman, Braga, 1997). In fact the GATS is an "hybrid of a positive and negative list approach" to scheduling specific commitments (Hoekman, Braga, 1995).

The system of positive commitments has meant that member states have locked in their market opening and national treatment on the basis of national development and economic policy objectives. In addition, the combination of positive listing in the specific commitments and negative listing in the MFN encourages a liberalization underpinned by sectoral or horizontal reciprocity on the individual modes of supply to the detriment of a global approach (Snape, 1998). The picture of the specific commitments in services is therefore decidedly incomplete.

This is why, at the end of the Uruguay Round, it was decided to continue negotiations in four key sectors: basic telecoms; financial services; maritime services; and movement of natural persons. For basic telecoms and financial services, the post-Uruguay Round negotiations have achieved positive results; for maritime services and the movement of natural persons the postponement does not necessarily mean the negotiations will be successful. In both cases, the matter of specific commitments will be taken up again during the next negotiation, expected to start in 2000 according to Article 19.

The liberalization obtained after the specific commitments is not very advanced. The developed countries have made commitments equaling 47.3 percent of the possible total, the developing countries 16.2 percent. The commitments are very heterogeneous among developing countries: over a quarter of them are committed in just three percent of the sectors; large developing countries (with GDP of \$40 billion or more) have achieved up to 38.6 percent of the possible maximum (WTO, 1999b). The greatest restrictions kept by developed countries are precisely in those sectors where developing countries have a comparative advantage, such as low and high skill labor-intensive activities that require either temporary entry or establishment work permits (Hoekman, Braga, 1997). The greatest restrictions to the presence of natural persons have also come from the developed countries.

The poor commitment on Mode has meant that an extension of negotiations has been requested, mostly by developing countries (WTO, 1999b).

#### *4.2.1 Service sectoral agreements: telecommunications and financial services*

The February 1997 agreement led to the liberalization of telecommunications in 89 WTO countries by the end of 1998. The level of liberalization varies considerably between developed and developing countries. The almost total liberalization of the European, US and Japanese markets contrasts with the limited and deferred openness in Asia and Africa. The WTO members have also agreed on a Reference Paper containing a series of competition safeguards compulsory for member states, to prevent anti-competitive practice among dominant operators, such as anti-competitive cross-subsidization and the use of technical and commercial information for anti-competitive aims (Gamberale, 1999). This creates an important precedent, because it anticipates the debate on competition policy in the WTO and will be an interesting model for other sectors, especially in those areas where the infrastructural component of services requires a national regulation of competition to implement the liberalization commitments made under the WTO.

Despite the commitments of some MENA countries, Alonso-Gamo (1997) has emphasized how much Arab countries are lagging behind in telecommunications and also the disadvantages for consumers in terms of higher tariffs and poorer services. The implementation of the agreement on telecoms by the MENA countries, its extension to countries which have not signed it and its negotiation for countries about to enter it, will be key elements for the modernization and expansion of the network in the area.

The negotiation on financial services were concluded with an agreement on 15 December 1997 and by the end of 1998 it had 104 adherents. The negotiation was delayed because of the conclusion of the reform process in the sector underway in many WTO countries. The commitments were undertaken through the four modes of supply in all the financial sectors, including insurance, banking and other financial instruments.

In the case of financial services however, the “right to regulation” of services, possessed by members states on the basis of Article 6, is broader than in the other

sectors. The annex to financial services allows a state to adopt “prudential measures” to protect consumers of financial services and to ensure the integrity and stability of the financial system. It is no coincidence that the worsening of the Asia financial crisis in 1997 did not affect the positive conclusion of the GATS negotiations on financial services in which various countries from that region took an active part (Gamberale, 1999).

Although there is no doubt that developed countries have a comparative advantage in many financial sectors, liberalization in this area is also in the interest of developing countries. Low cost and efficient financial services has a great impact on the competitive position of producers in developing area. As demonstrated by Mohieldin’s study (1996b), the liberalization of financial services in developing countries, and especially in the MENA ones, involves the reduction or elimination of the barriers to trade and requires detailed negotiations of within-the-border barriers such as laws and regulations. On the other hand, the commitments made to date show that MENA countries are not yet ready to tackle the challenge of international competition. Thus domestic reforms and new regulations are necessary to face a growing complexity, according to the sequence illustrated earlier. Multilateral liberalization must be accompanied by improvements in the regulating framework and by the internal reform of the domestic banking system, given the linkage between domestic regulations, FDI rules and the contestability of service markets. Through the EMA, specific arrangements can be negotiated with the EU for further liberalization of trade in services, reaching a GATS plus status (Mohieldin, 1996b).

#### **4.3 The Crucial Issues for GATS 2000**

After six years, the GATS’ institutional rules and structure need to be reformed and continually adjusted to face the challenges of the global economy (Sauvè, 1997). Proposals regard both its institutional packaging and mechanisms - increasing its transparency and providing greater clarity on its legal framework, as well as the horizontal rules (those on FDI) - and the negotiating procedures of the GATS 2000 and the specific commitments.

The core of the GATS 2000 will consist of a series of negotiating items. The built-in agenda of Article 19 provides for negotiations on specific commitments (market access, national treatment) in all sectors. Despite the recent sectorial agreements, there are still significant quantitative impediments in these sectors

which are discriminatory to international trade. The removal of these obstacles is a priority of the liberalization process, especially in sectors such as maritime services, other transport services, audiovisuals, and energy, where very little was obtained in the last Round. Liberalization of maritime services is of greater interest for some groups of developing countries, both for demand - lower costs of access to these services - and supply reasons, possible comparative advantage in maritime shipping. In some sectors, the issue of principles for encouraging competition will be tackled, as in the case of telecommunications. This applies particularly to energy and transport, where the behavior of the dominant operators and access to the networks are crucial for ensuring the contestability of markets.

Developing countries are paying particular attention to the negotiations on the movement of natural persons. Limitations to the movement of natural persons also limits the participation of developing countries in the GATS and the strengthening of these provisions would mean a greater involvement of developing and MENA countries. Greater symmetry in the treatment of the factors of production – capital and labor – in the WTO is important, since the liberalization of the movement of persons is undoubtedly lagging behind that of the circulation of capital. Some are suggesting a NAFTA type solution (Sauvè, 1997), by introducing the principle of equivalence between labor and capital, and horizontal rules for the temporary entry of foreign workers. The mobility of labor would thus become the object of a global WTO agreement, encompassing services and goods (Feketekuty, 1999).

The revision of the GATS also includes that of the MFN exemption lists. The MFN exemptions are a temporary instrument, for not more than 10 years, to achieve the target of the general application of MFN for 2005. This revision will serve to see if the conditions for granting each exemption still exist and to determine the date of the next revision.

The revision of the annex on air transport can take as a model the approach of the telecoms agreement on access to the market in the presence of networks, given the infrastructural component in the trade of transport services (Sauvè, 1997). The annex excludes services directly connected to the exercise of traffic rights (passenger transport, slots attribution, ground services) from the application of the GATS and includes the repair and sale of planes and sale and booking of tickets. It is unlikely that this revision will lead to including traffic rights services within the GATS framework, but it can clarify whether or not the GATS covers

important economic activities linked to the exercise of traffic rights, including ground services.

The unfinished agenda of GATS rules (safeguards, domestic rules, subsidies, government procurement) means they will inevitably be included on the agenda of the 2000 Round. An agreement on issues such as domestic regulations, subsidies and public supplies would have a great influence on the liberalization of services, in quantitative terms no less than the work on specific commitments. As said earlier, a protection mechanism would be a useful tool for tackling certain emergency situations and could convince many developing countries to further liberalize; the problems are linked to the definition of injury in trade in services. The increase which can be estimated in cross-border trade due to electronic commerce makes the adoption of safeguards even more timely. For domestic regulations, objectives of economic and social policy could be pinpointed to justify the regulation (not quantitative and not discriminatory) of the sector, especially for developing countries. For improving Article 6 some proposals are linked to (Feketekuty, 1999): transparency of regulatory objectives, to clarify the social objectives of domestic regulations; appropriate use of market mechanisms, sets of economic incentives or disincentives to achieve the social objectives; minimizing the scope of regulations and the use of international regulatory standards. Government procurement remains a key issue and it is to be hoped that this agreement can become multilateral, as well as coordinated with government procurement forecasts in the GATS and on the transparency of government procurement in general (Sauve', 1997).

Also awaited are additional commitments on competition and domestic rules similar to those made with the Reference Paper, especially where the level of access to markets and to national treatment is already relatively high and the obstacles are represented by non-quantitative and non-discriminatory measures and anti-competitive practices. The introduction of regulatory regimes on the model of the Reference Paper could be very important, especially in sectors with still many monopolistic conditions, such as distribution, energy and electronic commerce. One problem is how to transfer rules laid down in the telecom's Reference Paper into the wider framework of services. Some interim results could be reached in the Working Group on GATS rules for a competition-oriented approach to service subsidies. Cooperation between authorities must also be



fostered, so that safeguards for consumers and the welfare of the state do not restrict competition in a discriminatory manner.

In general developing countries have a strong interest in international access to low price and high quality services in support of their domestic producers. In this respect it is important to assess how to foster exports in the sectors of interest for developing countries ex Article 4, by increasing commitments in these sectors and those under Mode 4 (movement of natural persons). There is no doubt that construction services and worker mobility is an area of great interest to the developing countries. The latter can thus be offered greater possibilities by eliminating the barrier created by information asymmetries and the requisite qualifications: in many services the problem does not lie so much in access to the network as in the real possibility of exploiting the distribution channels. This is often due to a lack of transparency and information: in this sense it is important to strengthen paragraph 4 of Article 3 of the GATS, requiring developed countries to provide more detailed enquiry points.

A bargain between developed and developing countries could consist of developing countries having access to the established information networks and distribution channels and in return they could offer market access in information-related industries such as telecoms (Chan, 1996). This would also foster technological trade with developing countries, not only in basic infrastructure (telecoms, IT, energy, transport) but also in soft infrastructure, such as education, financial services, human capital (Chan, 1996). Since barriers for operators of developing countries are often more of a practical than regulatory nature, involving the search for business opportunities rather than access to the market, the creation of trade facilitation agencies to guarantee an effective business opportunity access could be fostered (Chan, 1996).

For the MENA region, it is important to pinpoint service sectors in which there could be competitive advantages, even if one shares the cross-sectoral view approach rather than that of single sectors, given the linkages between sectors (Chan, 1996). The major export earnings come from tourism and labor services (nationals working abroad, remittances of workers abroad). The tourism sectors, where the greatest openness has taken place by developing countries, is an important resource for the MENA area, but obstacles to its growth concern the possibility of access to, and use of, the global networks of advertising and

marketing and the lack of technological means, such as computer reservation systems (CRS). The construction sector is also important, but here the problems are linked to the temporary nature of the work and the restrictions to movement of natural persons.

#### ***4.4 Intellectual Property Rights (IPRs)***

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), during the Uruguay Round was one of the new trade issues, with GATS and Trade-related Investment Measures (TRIMs). It was prompted by the consideration that know-how and new ideas increasingly underpin the value added in tradable goods and services (WTO, 1999a). The first part of the TRIPS sets forth some general principles, such as national treatment, MFN and transparency. The second part establishes the minimum standards to apply in regulating the IPRs: copyright and related rights, trademarks, geographical indications, industrial design, patents, layout design of integrated circuits, undisclosed information (trade secrets) and anti-competitive practices in contractual licenses.

Many developing countries opposed the preparatory negotiations and the agreement was a symbol of the North-South confrontation. There is undoubtedly a very strong relationship between per capita income and index of protection of intellectual property rights: the greater the former, the greater the protection; economies become more innovative as income levels rise and with the increase in innovative capacity the request for protection increases. The greatest differences between North and South are therefore the fact that the North generally offers high levels of protection and the South either decidedly inadequate, especially with regards to trademarks, copyrights and trade secrets, or none at all, as in the case of patents for new plant varieties.

It was long thought that a very partial protection of IPRs would benefit developing countries, thanks to the effects linked to counterfeiting and to prices of developed countries' products, forced to compete with local imitations. However, more recent analyses of the relation between IPRs, trade, FDI and transfer of technologies demonstrate that it is not necessarily true (Maskus, 1997a). A greater protection of trademarks from counterfeits could lead to an increase in trade, especially in developing countries with great innovation imitative capability, thanks to the prevailing market-expansion effect (Maskus, 1997a). However, it is possible that a substitution effect can occur, for which the granting of licenses

could limit the influx of investments, especially in difficult-to-imitate high technology sectors.

The TRIPS agreement has certainly increased the level of protection of Intellectual Property Rights, leading to a greater harmonization among the various national regimes. For developing countries there is a transition period of five years, except for national treatment and MFN measures. For patents with a high technological content, there is an even longer transition period of 10 years. Article 71 establishes a built-in agenda authorizing the TRIPS Council to examine the agreement execution process every two years, starting from 1st January 2000; and to acquire greater levels of protection through new multilateral negotiations.

The issue of the effective implementation of the TRIPS is destined to become one of the greatest causes of conflict between the member countries (Primo Braga, 1996; Lal Das, 1998; Maskus 1997). The fact that many developing countries will not have adjusted to the provisions by the deadline might affect the validity and credibility of the agreement. The inclusion of the IPRs in the agenda of the Millennium Round must not call into question the effective application of the provisions laid down by the Uruguay Round. In view of the new negotiations it is therefore fundamental to provide financial and technological support by enhancing technical assistance under Part VI of the agreement, without which the agreement might well not be implemented at the end of the transition period; some industrial groups of developed countries have also stated they are willing to contribute to technical assistance (UNICE, 1999).

Moreover, some developing countries could reap benefits from an interest in protecting traditional products (Croome, 1998). Also to be tackled is the issue of the notification and registration of geographical provenance for wines and spirits, categories not contemplated by the TRIPS. A review of Article 27 on biotechnological products, an issue of considerable sensitiveness in world public opinion, could help the developing countries bargain for compensation in sectors such as that of geographical indications (Croome, 1998).

#### ***4.5 The New Frontier of Electronic Commerce: Between Old and New Trade Issues***

Recent advances in three areas - computer technology, telecommunications technology, and software and information technology - are changing trade and

investment relations under many aspects. The Internet, for example, will extend the range of what is tradable. In the past, many services were considered non-tradable, but through Internet-based electronic commerce many medical, legal, architectural, travel, accounting, education and other services have become tradable (ESN, 1999).

Electronic commerce as an instrument for multilateral trade started catching on after the end of the Uruguay Round. The Declaration on Global Electronic Commerce adopted at the May 1998 WTO Ministerial Conference established a working program to analyze trade-related issues relating to e-commerce, and to make recommendations for action at Seattle; a moratorium has also been fixed on customs duties and free trade on e-commerce up to 2000 (Gamberale, 1999).

The recent explosion of the electronic commerce called into question even recent reforms in many other sectors. It is possible to identify two categories of economic activity in electronic commerce: the distribution of services and goods with normal physical consignment to the purchaser, and the electronic supply of services and goods. In the first case, the electronic aspect is only that of the distribution, since the goods purchased, like all other goods, can then be subject to customs duty when they physically cross a border. In the second case, almost all economic activities that take place via the Internet are services, and as such subject to the GATS rules on multilateral trade. This is the case, for example, of financial and professional services, telecommunications (Internet telephony), distribution and audiovisuals. The only part of electronic commerce on which there are doubts about the applicability of the WTO agreements is that of virtual goods, that is those products which if provided in an electronic manner constitute commodities subject to GATT regulations, including books and audiovisuals which need not be incorporated in audio and video cassettes.

The central aspect of the applicability of the GATS to e-commerce is that of technological neutrality. Article 1 of the GATS affirms that it is applicable to government measures affecting trade in services in one of the four supply modes, without distinguishing between the technological means used for supplying a service. This means that the same banking service supplied via post, telephone or the Internet from one country to another is considered equal from a GATS point of view.

The regulation of electronic commerce can thus be imposed within the framework of the GATS as a negotiating area in itself; because of the greater clarity of the “services” aspect in e-commerce, it is probable that the conclusions of the working program will influence the negotiations of the Round on GATS 2000 (Gamberale, 1999). In the case of an agreement on e-commerce within the framework of the GATS, the two modes of delivery most relevant to the electronic supply will be: i) cross-border supply; ii) consumption abroad (ESN, 1999; Sauve, 1997). However, others claim that the advent of the new technologies and e-commerce will make it even more difficult to distinguish between at-the-border and behind-the-border barriers and between the same modes of delivery (Feketekuty, 1999). The current four modes of supply do not seem to best solve the problem of e-commerce, an alternative approach may be to create a fifth mode for the sale of services through the Internet, i.e. negotiating a common regulatory framework for such transactions (Feketekuty, 1999). Finally, one asks what regulatory jurisdiction can be applied to the Internet and to e-commerce.

Also important is the applicability or not of the emergency safeguard measures to e-commerce; this element will be all-important for encouraging developing countries to make more liberalization commitments (ESN, 1999). On the other hand the enhancing of the participation of developing countries in electronic commerce and the use of information technology in the integration of developing countries into the multilateral trading system will be a key issue in the new trade agenda. It cannot be denied that electronic commerce and the Internet added a new technological means of facilitating trade, but it is equally true that in the lack of adequate and effective measures it can further marginalize developing countries.

## **5. The Second Generation of New Trade Issues**

### ***5.1 Implementation of Competition Law and Policy***

There are two key aspects of the current debate on “trade and competition”. First, the need for a discipline regulating the anti-competitive practices of transnational corporations (TNCs), through a multilateral antitrust and “international trust busting” agreement (Holmes, 1999). Secondly, the preparation of rules on a national level which do not impede market access and the full contestability of

markets (Low, Subramanian, 1996). The current debate seems to be concentrated on the “competition law versus market access” paradox. The main interest for developing countries is towards antitrust policies, unlike the agenda of the developed countries on competition policy, dominated by market-access and export-driven impulses (UNCTAD, 1997). The second issue was based on the “evolutionary” path of the European experience; the Treaties of Rome did not expect member states to prevent anti-competitive practices tout court: they were only forbidden when they provoked distortions in trade between member states. Later on, a common antitrust policy was developed with articles 85 and 86 of the EEC Treaty. According to some (Holmes, 1999) this European “evolutionist” path could be the reference model for the future global agreement, since the competition policy triggered off by market access concerns has shown itself to be an “integrating force”.

Another important distinction is that between competition law and competition policy. Competition law (antitrust) defines a set of rules for anti-competitive behavior of firms and dominant position abuse, since its scope is efficient resource allocation and the maximization of national welfare by eliminating distortions. Competition policy indicates the extensive set of rules determining the conditions of competition on the market, to which antitrust practices also belong. Privatization, subsidy policies and deregulation are also part of competition policies, covering both the actions of private firms and government operations (Hoekman, Holmes, 1999).

The limit of the WTO as a possible forum for global agreement lies in its own mercantilist nature and its tendency to solve the problem from a point of view of free trade, export promotion and market access rather than that of antitrust and welfare enhancing practices (Hoekman, Holmes, 1999). The regulatory framework for competition is complicated by numerous bilateral and unilateral initiatives. On a national level, regulatory reforms have been launched more or less everywhere, underpinned by competition principles, but profoundly different even if one considers only the adoption of one or the other aspect of competition. Developing countries often have the most problems in implementing antitrust practices, given the lack or weakness of independent authorities. On a multilateral level there are already agreements which concern the trade and competition linkage to a greater or lesser extent.

However, there is no single agreement that disciplines the practices of across-the-board competition, which the WTO's Working Group is attempting to achieve. In article 46, the Havana Charter envisaged states' commitment to cooperate to prevent restraints to competition and limits to market access; the fact that it has not entered into force and the failure of the International Trade Organization (ITO) have meant these provisions have not been adopted. In the TRIPS, the competition policy measures in the case of abuse of IPRs are explicitly authorized (Hoekman, Holmes, 1999, Cottier, Meitinger, 1998). Other important references are GATS Articles 8 and 9 and, above all, the Reference Paper of the agreement on telecommunications, noted earlier. The GATT, Article 23, refers to distortional trade practices imputable to states and not to the market structure. Antidumping provisions are aimed at impeding unfair exports towards another country thanks to an asymmetrical advantage in the country of origin.

The cases of the TRIPS and antidumping are emblematic of the paradoxes of the linkage between trade and competition. Antidumping comes from an indirect form of competition policy but, given its application, ends up by favoring domestic firms and damaging the competition. Also, from a certain point of view, antidumping goes against "market" behavior prompted by international competition. There is then the problem of predatory behavior, and a predatory intention cannot be proved just by selling below costs (Lawrence, 1996). In some cases it has been proposed to replace antidumping with competition policies, but even in the case of the Europe Agreements with the CEECs it was decided to wait and see if competition policies were actually effective before eliminating antidumping. This exchange was also suggested in the case of the EMAs, but the backwardness of the MENA area's competition policy makes this hypothesis very improbable for the moment (UNCTAD, 1998). In the Mediterranean Association's agreements the antidumping measures are even stricter than the WTO's, since they do not apply the "special regard" for the "special situation of developing countries" laid down in article 15 of the antidumping agreement (UNCTAD, 1998).

There is much to say for supporting a single multilateral agreement, including: i) the inadequacy of national concepts of competition in a context of increasing globalization and internationalization; ii) the importance of barriers behind the border due to actions of private operators; iii) the risk of conflict between authorities; iv) the risks connected to the growth of mergers and global

acquisitions and the need for some form of global surveillance; v) risks caused by a mere summation of sectoral approaches to competition (Marsden, 1998); vi) the favorable impact of a supranational commitment to domestic protectionist impulses (Hoekman, Holmes, 1999); vi) fixing standards so that competition policies would be more uniform and thus easier to coordinate and harmonize (Lawrence, 1996). Other like Scherer (1994) suggest a very ambitious approach and the creation of an international competition policy office (ICPO) to collect information and to investigate anti-competitive policies; the focus would be on cartels and mergers to stimulate national authorities and convince international panels. For Hoekman, (1997), a Trade Related Antitrust Policy (TRAP) could do away with price-fixing and market sharing practices and export cartels and lead to replacing antidumping with the enforcement of competition laws. But it should be immediately added that the antitrust agreement seems more difficult to achieve than the competition policy one.

However there are many skeptics who point out how difficult it is to find mechanisms that would constrain the effective enforcement by states, and suggest intermediate or alternative solutions in terms of a greater voluntary cooperation between states and private operators, for a greater access to the market. It is also hard to pinpoint restrictive business practices of a transnational scope and impact. And even when these are pinpointed they could be better regulated on a national and macro-regional level than on a multilateral one. The cultural homogeneity of the macro-regions makes it easier to find consensus on the new obstacles to trade caused by domestic policies, as demonstrated by the EU. Even the simple exchange of information on anti-competitive behavior raises several problems. One could instead pinpoint the best practices, and then immediately extend them to the greatest number of countries through bilateral cooperation networks. Finally, many stress that, despite the importance of competition policy, any agreement on international competition policy that goes beyond general procedural cooperation and the introduction of transparency mechanisms is likely to have to be plurilateral, at least initially, since it would require substantial cross-issue linkages.

To sum up, there is no doubt that there are unresolved anti-competitive practices behavior that cause trade distortions. On a multilateral level, this need has already been incorporated, as demonstrated by the first steps taken within the GATT, GATS and Reference Paper on the telecommunications agreement of 1997. As

stressed earlier, developing countries are mainly interested in antitrust policies, unlike the developed countries' agenda on competition policy which is dominated by market-access and export-driven interests.

Although very important, it seems difficult at the moment to reach a single, international antitrust agreement, and perhaps it is easier to guarantee greater access to the market through specific provisions on competition in the various agreements (Hoekman, Holmes, 1999). A possible solution to give competition regulations a multilateral status is to establish minimum standards on an international level, leaving their enforcement on a national level (Low, Subramanian, 1996). A key role would thus be played by the domestic competition authorities in strengthening antitrust practices and, where this is lacking, technical and financial assistance should be provided. Competition policy, insofar as it seeks to prevent monopolization of markets and predatory pricing, is clearly in the interest of developing countries. So, some suggest that the developing countries should unilaterally ensure that competition policies are implemented that foster a liberal trade and investment regime (Hoekman, Holmes, 1999).

Finally, the distortions to trade caused by anti-competitive practices are particularly evident in the services sector. It is thus particularly important to lock in the principle of competition in the general services framework represented by GATS 2000, introducing similar provisions to those of the Reference Paper for the networks, but bearing in mind the risks of fragmenting competition rules through a merely sectoral approach. The European position in the Millennium Round will probably be mainly that of having all WTO members adopt some form of competition law. This could be a good moment to activate *quid pro quo*, wherein developing countries, could ask developed countries for technical assistance and give their support to antidumping amendments and commitment.

### **5.2 The FDI Policy Rules**

A key issue for both developed and developing countries has become how to attract the most productive investments and how to guarantee their proper regulation. (Aitken, Hanson, Harrison, 1997). Developing countries are also tending to recognize the positive effects of the spillover of FDI on the rest of the economy, with direct consequences on their international trade (Blomstrom, Kokko 1994, Blomstrom, Person, 1983).

Although increasingly advanced forms of liberalization and regulation have been provided for foreign trade, there is no equally systematic and multilateral set of rules in the investment field. The issue of investment rules is extremely complex, given the proliferation of unilateral (national investment policies) and bilateral initiatives (Bilateral Investment Treaties), regional international agreements (RIA) and plurilateral agreements. In various regional areas, such as the EU and NAFTA, the development of rules within the RIAs has fostered intra-area investments. The Mercosur and APEC agreements also stress the need to promote and protect investments that help to stimulate economic initiative and development.

On a WTO multilateral level there are two agreements signed in Marrakech in the "GATT 1994" context: one on 'Subsidies and Countervailing Measures', (SCMs); the other on TRIMs. Whereas the agreement on SCMs essentially defines the concepts of subsidies and tax and loan incentives that provoke trade distortions, including those on investments, the TRIMs go further detailing FDI-related measures considered incompatible with GATT Articles 3 (national treatment) and 11 (quantitative restrictions). So the results of the two 1994 agreements most directly connected to investments seem of modest impact, since they are limited to the goods sector and to only some aspects of the liberalization of FDI.

Other agreements were also made in Marrakech that indirectly treat the FDI issue, but from special angles: the TRIPS prescribes standards and forms of intellectual property protection, understood as a form of investment; the plurilateral agreement on Public Tenders fully covers investment issues; the GATS expressly contemplates the strong link between trade, investment and services in Mode 3, commercial presence, and in Article XVI bans some types of restriction directly referring to investment operations.

At multilateral level, the Multi-Lateral Agreement on Investments (MAI) in the OECD area failed after two years of negotiation. The opposition came from many sources: European governments (France), EC institutions (European Parliament), non-governmental organizations and the academic world; highlighting the new role of civil society in trade negotiations. The reasons are mainly (i) the lack of clauses protecting development; (ii) environmental standards; (iii) the objections of the cultural industry. The basic problem remains the difficulty in sanctioning a

regime which, according to some, directly impact upon states' sovereignty (Johnston, 1998).

One lesson from this is connected to the centrality of the consensus of the "civil society" on these new issues. The MAI-OECD, although a plurilateral agreement, represented a test bench for the same multilateral negotiations, and has highlighted how, from a technical-negotiating angle, a "negative" list approach to scheduling commitments is not necessarily a better way of dealing with complex barriers to competition (Hoekman, Messerlin, 1999).

The main negotiating impediments to a possible multilateral agreement can be summarized as: i) the prior definition-delimitation of the concept of foreign direct investment; ii) the commitment to the right of establishment, free of any performance requirement; iii) national treatment, with the various restrictions ensuing from the protection of national security; iv) the MFN principle, whose full application is impeded by regional agreements; v) the transferability of funds, which can come up against balance of payments constraints and the problem of international laundering; vi) the protection of investments from actions such as discriminatory expropriation without adequate compensation; vii) the commitment to eliminate trade distortions caused by incentives used in favor of national firms or to attract foreign investors (Messing, 1997; Graham, 1996, UNCTAD 1996b); viii) the choice of the positive and negative listing approach with all its implications.

Opinions on the MAI are, however, complex and in a certain sense remain conflicting (Drabek, 1998). A key issue which puts developed against developing countries, but also developed countries against each other, as occurred in the MAI-OECD case, is linked to national security and sovereignty. The fear of losing control, because of globalization, of the right to impose taxes and promote economic activities are big impediments to the MAI. According to some, (Hoekman, Saggi, 1999 ) a MAI would mark the end of the FDI's destructive attraction policies, but to obtain this, a whole series of complex issues have to be taken into consideration: incentives, taxation, performance requirements, discrimination by the RIAs. Since it currently seems difficult to obtain consensus on all these issues, it is suggested locking the policies already launched on a multilateral level, such as those on services (GATS, given that opening the trade in services means opening FDI) and the TRIMS, and to pursue an agreement on

competition. The claim that developing countries can obtain the same results with unilateral policies makes all the more reason for doing so.

Although the issue of the multilateral regulation of the FDI is one of the most complex, it is likely to be included in the negotiating agenda. The Working Group set up in Singapore will present its conclusions in Seattle, and in a certain sense can learn something from the unsuccessful OECD experience. The European Union has not failed to support a multilateral agreement on investments, out of the conviction that the political context and the certainty of rules have a profound influence on private choices on FDI and that the WTO represents the most suitable forum for a "predictable framework of investment rules" (Brittan, 1998).

Passive and active internationalization is currently a structural weakness of many developing countries. They need a FDI scheme which both protects, by creating a stable investment environment, and promotes investments. In this perspective, developing countries can give an important contribution in the new Round to the key issues of relations between trade, investment and development. The problem lies in reconciling in a single agreement, the needs of a multilateral framework for investment within the WTO with respect for the vulnerability of developing countries in their competitive position with the advanced countries, through a gradual liberalization and strengthening of domestic policies.

In the case of MENA countries, the flow of FDI has been rather limited in recent years with an uneven distribution at both local and sectoral levels (UNCTAD, 1998). The MENA region's case shows how a unilateral policy of incentives, aimed at influencing investment decisions in similar areas, is not enough to convince firms to locate in areas which do not satisfy certain essential requisites. What counts more is a generally favorable environment for investments in terms of macroeconomic stability, structural reforms, improvement of social conditions and strengthening of institutions. Accordingly, in recent years many MENA countries have launched reforms and restructuring measures (El-Erian, El-Gamal, 1997). In addition to national policies, there are the bilateral ones pursued through Bilateral Investment Treaties, for the reciprocal protection and promotion of investments and against double taxation (ERF, 1998). Some Mediterranean countries are negotiating Association Agreements with the EU and it is widely agreed that a free-trade area between the EU and Algeria, Egypt, Morocco and Tunisia could significantly promote trade and investment flows, especially export-

oriented FDI. In this perspective, regionalism would be seen as a stepping stone to global liberalization (ERF, 1998).

### **5.3 Design and Enforcement of Labor and Environmental Standards**

#### *5.3.1. Labor standards*

The issue of the linkage between labor standards and international trade or “the social dimension of international trade” has recently taken on great importance in international debate. The rapid growth of NICs in Southeast Asia and Latin American has increased competition and led to the belief that the “low labor standards” of those countries are an “unfair competitive advantage” (Maskus, 1997). The more advanced countries are thus exerting increasing pressure to set “fair trade” rules. Hence the “social clauses” inserted in a number of trade agreements (among them NAFTA) containing provisions for imposing trade sanctions on countries that do not respect certain labor standards.

The interest in the subject, however, is dual. On the one hand there are undoubtedly “protectionist” motivations behind requests to link trade and labor standards, given the increasing competition among developing countries in labor-intensive products. On the other hand, it cannot be denied that there is a growing awareness of trade union rights and of the iniquity of forced and child labor, as shown by the requests of many labor organizations in advanced countries.

The topic of labor standards is not on the WTO agenda at the moment, even though its inclusion is urged by many developed countries (Croome, 1998). An attempt was made in December 1996 by the US and France, with Norwegian support, to have a commitment to core labor standards included in the Singapore ministerial declaration. But it met with strong opposition from developing countries, especially Malaysia, India, Pakistan and Egypt. The resulting compromise expressed the need for “internationally recognized core labor standards”, and identified the ILO as the only competent institution.

The approach of the ILO, however, is determined by the voluntary adhesion of member countries and, consequently, the limited participation of developing countries. Enforcement is also inadequate, as no sanctions are in place, to the point that many developed countries have criticized the inefficacy of the Conventions’ provisions, systematically violated by many member developing countries (Croome, 1998).

More recently, with the start of the WTO, there has been suggestion of linking membership in the latter to ratification of the ILO Conventions and the possibility of applying trade sanctions if provisions are not respected. It has also been proposed that products are in violation of labor standards be labeled accordingly. However, there are a number of doubts concerning product labeling (Anderson, 1996).

Before advancing measures like those mentioned above, the rights of workers for whom minimum labor standards are to be established must be defined. In that regard, Markus makes reference to a list drawn up by the OECD (1995): i) prohibition of slavery and forced labor, such as bonded labor; ii) no discrimination between sexes, ethnic groups, etc.; iii) prohibition of exploitation of child labor; iv) freedom of association and collective bargaining.

The real contrast arises, however, when the question of how these rights are to be safeguarded comes up. The strong hostility on the part of the developing countries is based on a number of arguments (Anderson, 1996): i) the question of labor standards is not linked in any way to the liberalization of international trade and is strictly a matter of domestic competence, in which each country exercises its national sovereignty; ii) the differences between standards constitute a legitimate source of comparative advantage, reflecting existing cultural and economic differences; iii) the labor standards of a country are linked to its level of affluence and growth of per capita income; iv) there is no empirical evidence that not defining core labor standards will drag the developed countries into a “race to the bottom”; v) the request for minimum labor standards conceals protectionist intentions.

The last suspicion is, in fact, supported in the recent literature (Anderson, 1996; Grimwade 1996; Maskus, 1997). On the other hand, experience concerning the abuse of the safeguard clause is a clear warning in this regard. Much of the literature also agrees that the level of protection of workers’ rights is also closely linked to the country’s development stage and is destined to grow in parallel to its well being.

In light of these considerations, some mediating proposals have been put forward (Anderson, 1996; Grimwade 1996; Maskus, 1997). They can be summarized as follows: (i) the adoption of higher labor standards by developing countries in exchange for greater access for their products to the markets of developed

countries as compensation for losing part of their comparative advantage; (ii) the adoption of a financial assistance program allowing for the application of such labor standards (iii) the strengthening of institutional mechanisms creating an effective system of enforcement to guarantee developed countries that the standards established are actually being applied.

For the moment, the developing countries do not seem to support these kinds of solutions (Grimwade, 1996). Indeed, given the foregoing, it is unlikely that the Millennium Round will be able to take up the question of labor standards. Yet, although all signs point in that direction, the matter is “very much in the minds of the organization’s member governments” (Croome, 1998) and constitutes a negotiating card which the developed countries are not about to give up, especially considering the pressure put on them by producers and workers’ organizations. It could, therefore, be in the interests of the developing countries to not close themselves completely to the issue, and to seek a sort of multilateral solution before unilateral solutions begin to be adopted.

### *5.3.2 Food and environmental standards*

The interaction between trade and environment is one of the new areas in which WTO members have to find formulas for reconciling trade liberalization with the protection of the environment and promotion of sustainable development. The business lobbies, on one side, complain about the growing use of environmental regulations with a protectionist aim; while on the other side, the environmental groups accuse the WTO of not recognizing the legitimate role of national and international environmental standards and to deliberate always in favor of free trade against the protection of the environment.

Undoubtedly the imposition of environmental standards can sometimes have negative impacts on international trade, by also involving higher costs, for both domestic and foreign manufacturers, to the extent in which environmental standards between trading partners differ (San Martín, 1997).

The issue of the linkage between environment and international trade is faced for the first time in the context of a multilateral trade system. The first paragraph to the preamble to the WTO agreement refers to the objective of sustainable economic development and the need to protect and conserve the environment. In Marrakech, the Committee on Trade and Environment was set up, with the double

mandate of identifying the relation between trade and environmental measures for sustainable development and making recommendations on amendments to the multilateral trade system.

Multilateral environmental protection measures, which restrict international trade can waive GATT principles in some specific circumstances. Article 20 of the GATT allows governments to waive its general principles under specific conditions by adopting environmental measures that imply trade restrictions. Article 14 of the GATS copies Articles 20 and 20b of the GATT, covering the services sector (WTO, 1999c). In the agreement on Technical Barriers to Trade, (TBT), which regulates the adoption of technical requisites for products, member states are permitted to take the necessary measures for protecting public health and the environment and every state has the right to decide on the level of national protection it considers most appropriate. However, governments have to establish technical regulations and standards that do not create impediments to trade. They also have to provide a high degree of transparency by means of notifications and allow sufficient time for domestic and foreign economic operators to adapt to the new requisites.

The Sanitary and Phytosanitary (SPS) agreement enables states to adopt sanitary and plant protection measures to ensure against excessive quantities of additives, contaminating substances, toxins, and pesticides present in products and to prevent the spread of diseases to plants and animals. These measures must be applied both to national products and those imported from third countries; they must neither be discriminatory nor create unnecessary barriers to trade, and they must harmonize as much as possible with international standards. Countries adopting these measures have the duty to notify third countries and to provide all information requested.

Article 27.2 of TRIPS Agreement specifically refers to the protection of the environment, forbidding states to patent inventions which could lead to commercial exploitation of the life and health of humans, animals and plants.

On an international level there are numerous conventions protecting the environment. Developing countries especially have expressed anxiety about the possible negative impact of about 20 of the 200 Multilateral Environment Agreements (MEAs) containing restrictive measures for trade. These measures are aimed at achieving environmental objectives more effectively through bans,



quotas and notifications (Zarrilli, 1997). However, the relation between MEA and WTO regulations is still unresolved. (Croome, 1998). The issue of the environment is also tied up with other negotiating items, such as the FDI. The discipline of expropriations ends up limiting all the regulations and reduces the profitability of an investment, including those connected with environmental conservation.

Looking at the new Round, the definition of a multilateral agreement on the environment with implications on the various aspects of trade seems extremely unlikely. But the strategy by developing countries to resist WTO involvement in these issues, is highly risky since it could lead to aggressive unilateral use of trade measures by advanced economies. More feasible is the promotion of environmental sustainability in a series of agreements currently being negotiated, such as that on FDI. At the same time, when environmental measures legitimately adopted by the various national governments have an impact on international trade, it should be checked that they meet the requisites of Article XX, GATT. Instruments could also be found, even within the WTO, to limit the negative impact of these measures on developing countries. In this regard one could think of items such as: greater technical assistance and dissemination of information; technological transfer to developing countries to foster innovation and higher quality products; the promotion of active participation of developing countries in International Standards Bodies, and MEAs and regional economic integration schemes that include compensatory mechanisms (EU-NAFTA) One could, finally, think of effective mechanisms for resolving disputes generated by the conflict between MEA norms and WTO principles. In this regard the European Union has presented a systematic proposal on trade and environmental standards aiming both at the application of already existing rules and the promotion of new ones.

## **6. Opportunities to Further Strengthen The WTO**

The WTO grew out of the GATT and is a negotiating forum in which governments attempt to reach agreement on specific issues. The success of the WTO is reflected in the increasing number of member countries - 135 - while over 30 countries are currently seeking membership. Membership entails the automatic acceptance of a "single package" (Jackson, 1998) and enjoyment of the benefits of liberalization on condition that specific and binding commitments are taken, thus preventing any kind of free riding.

It is in the interests of both individual countries and the multilateral system itself to act on two levels. The first by strengthening the commitments of the current members and the second by enlarging participation in the WTO to new countries. A relevant issue is the length of the accession process, on average about four to five years. This is a very complex procedure, with various phases in which each country has to specify exceptions and commitments and remove any internal regulations that could constitute an impediment. The EU is promoting the WTO Accessions Initiative, which aims to admit the greatest possible number of countries within the year by streamlining procedures. This is because of the conviction that, after Seattle, the focus will be on the new Round and many countries could remain excluded from the negotiations.

As the member states increase, the problem arises of developing and transition countries' participation in the decision-making mechanisms. The poor participation of the developing countries will become a serious problem for the WTO. As a recent study (Michaelopoulos, 1998) demonstrates, over half of the developing countries belonging to the WTO have serious difficulties in just taking part in the meetings or presenting their negotiating positions. This is partly because of domestic problems of an institutional and capacity building nature – lack of experts at home and even in missions to Geneva – and impediments linked to the complexity of issues, to information flows and transparency and to irrational mechanisms. Trade strategies have to be elaborated by collecting information, activating concerted domestic actions, pinpointing priorities, analyzing costs and benefits and monitoring the effects of commitments. But this is very costly, both in economic terms and for the human resources involved.

If there is to be full participation of all the members countries, alternative solutions are needed. These include a) the activation of technical support mechanisms during both the accession and participation phases (but the assistance-driven reforms have to be internalized and owned by the recipient countries (Michaelopoulos, 1998); b) cooperation with the other international development assistance agencies (UNCTAD, World Bank); c) support for initiatives fostering a kind of common "representation" among like-minded countries or groups (Michaelopoulos, 1998). The business groups and associations of the industrialized countries can also support this rapprochement and involvement of developing countries in the WTO through technical assistance in determinant sectors.

One of the major changes of the Uruguay Round is the establishment of the dispute-settlement mechanism. This made the system more “rule-oriented” and also more attractive to developing countries because of mechanisms made automatic by eliminating the “blocking” of a panel report and the adoption of a unified procedure (Jackson, 1998). Some “birth defects” still hinder developing countries’ participation, such as the provision that delegations of countries presenting cases before the dispute- settlement body should only be government employees (Michaelopoulos, 1998). This rule can be changed so that private attorneys might participate in the courtroom. The “judicialization” of the WTO and its dispute procedures is very costly and requires additional resources and full-time staff. One suggestion could be to have a unit able to provide support and advice at a minimal cost for the small and poorest developing countries.. Finally, it should be pointed out that the anti-dumping agreement severely limits the mechanisms of the panel (Lal Das, 1998). So strengthening the WTO system through making the dispute-settlement mechanism more efficient could be of great value to developing countries.

Another key issue is the increasingly new role of “civil society” and non-state actors in the multilateral trade negotiations. The growing globalization of the economy and its impact on society means that the activities and decisions made in multilateral organizations have become more significant, highlighting a serious lack of information. The MAI-OECD negotiations and the second WTO Ministerial Conference prove that international negotiations are no longer matters reserved for a few adepts. Decision-making mechanisms can no longer be limited to government representatives and there is the need for a growing involvement of “non-state actors”: industrial and sectoral associations, trade-unions and lobbies, but also non-governmental organizations. These are all bodies concerned with market access, the issues of environmental sustainability, the labor standards and the development of the LDCs.

Two trends can be distinguished: firstly, the involvement of the “civil society” in a strict sense, initiated in Marrakech with informal dialogues. This was later institutionalized by the participation of non-governmental organizations (NGOs) in the Singapore Ministerial Conference of 1996, and the recent innovations of the General Council of 1998, launching an information and transparency policy. Secondly, it is undeniable that some sectoral lobbies can have a great influence on decision-making processes, as in the case of the “banana war” and that of

hormone enhanced food products between the US and the EU, which generates further imbalances. The problems are thus how to fill the information gap and foster participation in “civil society”, and how to strengthen institutional action on a national level.

In this regard there is a more general problem of transparency of mechanisms and the accessibility of information. Many of the secretariat’s documents, although they do not contain restricted information, are not available to the general public.. Many proposals have been made on this matter, including the European one, based on a wider circulation of de-restrictable documents and regular information innovations under way. There should also be news published about the organization of symposia and dialogue with WTO representatives, the creation of a consultation body with civil society and the institution of an information ombudsman for cases lacking in transparency.

Furthermore, a very important issue is how to use regionalism to foster multilateral integration. Regionalism can act as a strength in developing countries’ bargaining processes. The importance of the new regionalism in the new multilateralism is already recognized in the GATT and GATS, where exceptions are allowed to the general principle of non- discrimination towards other countries (MFN) for RIAs. However, the agreements leave some issues unresolved, such as the “substantially all trade” clause, not respected by some FTAs which explicitly exclude or do not contemplate the liberalization of certain sectors. The APEC, presented as a reference model of open regionalism (Bergsten, 1997), pursues a sectoral liberalization approach (Aggarwal, 1999). Further disagreements are linked to the use of the enabling clause, allowing developing countries engaging in FTAs to waive the principle of non-discrimination, choosing a sectoral approach. The creation of MERCOSUR was achieved under the enabling clause, with the consequent opposition of developed countries. While the Enabling Clause shows that a greater flexibility has also been envisaged for developing countries in the RIAs; the GATS goes further with Article 5 and its flexibility formulas for developing countries belonging to a RIA (Jachia, 1999).

The multilateral regulation of the RIAs thus has conflicting aspects, as do the interpretations of the compatibility of the RIAs with the multilateral context, in terms of the dichotomy between building blocs or stumbling blocs. However, we have seen in many cases that regional and multilateral agreements display a fairly

strong degree of complementarity, being RIA “laboratories” in which to experiment with ever more sophisticated services, investment and procurement rules and disciplines; a further factor is linked to the integration experimented within countries with different levels of development. There are thus innumerable benefits from cross-fertilization between the regional agreements and the multilateral trading system, as long as the basic rules of general non-discrimination and flexibility are updated and respected for developing countries, through longer times and exceptions in cases of safeguards.

Finally, a last institutional note linked to the need for coordination between WTO secretariats, activities and regimes and the other institutions of multilateral economic governance. One significant example is that of the social dimension of international trade: in the Final Communication of Singapore it is specified that labor standards are the domain of the ILO. Should an agreement not be reached in Seattle on this issue and the respect of core standards is not linked to the WTO’s “bound” levels, formulas will have to be found to “institutionalize” the cooperation between the WTO and the ILO, as the latter has no enforcement powers. A recent study has also analyzed the possible synergy between the WTO, the IMF (International Monetary Fund) and the World Bank. The possible benefits of a greater coordination are stressed, especially since the WTO is moving from its institutional mandate to eliminate tariff barriers to more effective rule making and intervention in domestic regulatory regimes. Given the WTO’s limited resources and size, a linkage is suggested with the research and policy advice structures of the World Bank (Vines, 1998).

## **7. Concluding Remarks**

The present paper clearly shows that developing countries have a considerable stake in supporting a new comprehensive round of multilateral trade negotiations (‘Millennium Round’) in order to achieve further trade liberalization across the board. For their constructive participation in the preparation of the agenda and in the negotiation, however, one should assess carefully the costs and benefits of the various issues starting from the traditional trade barriers to the ‘first’ and ‘second generation’ of new trade issues, since they differ significantly in terms both of prospects for success in further liberalization and specific interests of developing countries.

A first distinction one could introduce is between topics offering opportunities for positive-sum games and other issues where zero-sum games could also be contemplated. In the former category many traditional issues, such as agricultural and industrial tariffs, and non-tariff barriers are included. Insofar as they can influence the agenda, developing countries could gain significantly by the elimination of the very high tariffs on agricultural imports in many industrialized countries and future reduction in agricultural subsidies; the elimination of tariff escalation and peak tariffs together with the remaining high tariffs on many apparel and textile exports after the phase-out of quotas under the MFA could also be of great interest to developing countries. Moreover, implementing Uruguay Round Agreements (especially with respect to agriculture and the MFA) is vital for the developing area, and it is clearly in their interest to insist upon it.

Among the first generation of new trade issues in services, the adherence to GATS and its sectoral agreements is not sufficient to guarantee efficiency and contestable markets. The commitment to revise domestic regulatory reforms unilaterally can be strengthened by a multilateral locking in; this is also essential for the success of the multilateral system. Nevertheless, the liberalization scheme that the GATS 2000 will have to tackle will be extremely complex. After six years, the GATS’ institutional rules and framework need to be reformed and continually adjusted to the new challenges of the global economy. The many proposals consider both its institutional packaging and mechanisms - increasing its transparency and providing greater clarity on its legal framework, as well as the horizontal rules (those on FDI) - and its negotiating procedures together with specific commitments. Of particular relevance for a greater involvement of developing countries is the success of the negotiation on Mode 4, with regard to the movement of natural persons.

The TRIPS is part of the built-in agenda and the success of its re-negotiation is linked to the effective implementation of the TRIPS 1994. This is because many developing countries did not amend their provisions within the deadline and this risks affecting the validity and credibility of the agreement. In view of the new negotiations it is therefore fundamental to provide financial and technological support by enhancing technical assistance, without which the agreement might well not be implemented at the end of the transition period.

It is also very important to reach a consensus on electronic commerce for the developing countries, whether an agreement is achieved within the GATS on the basis of the “technological neutrality” principle, or outside it. The enhancing of the participation of developing countries in electronic commerce and the use of information technology for the integration of developing countries in the multilateral trading system will be a key issue in the new trade agenda. It cannot be denied that electronic commerce and the Internet added a new technological means of facilitating trade, but it is equally true there are risks of further marginalization of developing countries.

The central challenge of the Millennium Round is that of reconciling the further promotion of open multilateral systems towards contestable markets, with the needs of developing countries for independent growth strategies characterized by various forms of policy interventions. It is an extremely complex task, especially with regard to the second generation of new trade issues.

Among them, competition policy could be included on the Agenda of the new round, but it seems difficult at the moment to reach a single, multilateral antitrust agreement. The limit of the WTO as a possible forum for global agreement lies in its own mercantilist nature and its tendency to solve the problem from a point of view of free trade, export promotion and market access rather than that of antitrust and welfare-enhancing practices. Perhaps it is easier to guarantee greater access to the market through specific provisions on competition in the various agreements. So one could lock the principle of competition in the general services framework represented by GATS 2000, introducing similar provisions to those of the Reference Paper for the networks, while bearing in mind the risks of fragmenting competition rules through a merely sectoral approach.

The multilateral regulation of the FDI is also a very complex issue, but is likely to be included in the negotiating agenda. Both passive and active internationalization is currently a structural weakness of the developing countries because of a problem of “credibility”. These countries need a FDI scheme which both protects - to help create a stable investment environment - and promotes investments. In the perspective of the new Round, the developing countries can make an important contribution to the key issues of relations between trade, investment and development.

The linkage between labor standards and international trade, on the one hand, and between trade and environment, on the other, are very significant issues for the developed countries and risk generating a head-on battle with developing countries. An agreement should clarify the relations for a sustainable development between commercial and social and environmental measures so as to recommend possible amendments to the multilateral trading system. In both cases, there is disagreement about who should implement these rules and on enforcement mechanisms for the already existing conventions. However a first step, such as cooperation among the different international agencies and the ILO and WTO on the matter of social standards, should certainly be supported. In terms of the Millennium Round we believe that labor and environmental standards should not be negotiated in the WTO. Instead the standards should be designed and adopted by other international fora, including ad hoc groups. In other terms, trade sanctions should remain a last resort, employing first other devices such as labeling requirements, supplier certification and civil damages. Anyway it is in the interests of the developing countries to not close themselves completely to both issues, and to seek a sort of multilateral solution before unilateral solutions begin to be adopted.

In the case of the second generation of trade issues there is considerable resistance, in general, to the introduction of multilateral agreement, in both developed and developing countries. Some of them are typical issues of the zero-sum game types. It is doubtful therefore whether the new Millennium Round will provide a major forum for negotiating such measures of deep integration. It is also probable that some of these issues will be dealt with at bilateral and regional arrangements at least for some significant period of time. From this point of view, regional integration could have positive effects on the global trading system, provided the emerging regional integrated areas are ‘open’ systems. In the terminology coined by Bhagwati in these cases regional groups more often act as building blocks than stumbling blocks. There are thus innumerable benefits from the cross-fertilization between the regional agreements and the multilateral trading system, as long as the basic rules of general non-discrimination and flexibility are updated and respected for developed and developing countries.

A very important issue, therefore, is how to use regionalism to foster multilateral integration. All that refers to a set of measures, discussed in the last part of the paper, to reinforce the WTO as an international institution. First, it is necessary to

extend the global trading system to the greatest number of countries and to foster the accession of big countries. Second, as the number of countries increases, mechanisms are needed to reinforce the participation of everyone into the decision-making processes. The Millennium Round will be complex and will embrace such different sectors and policies that the need for extensive preparation is very clear. Third, the “rule-oriented” system of the WTO could be improved through a strengthening of the dispute-settlement mechanism and an increased involvement of developing countries.

Finally, there is the need for coordination among multilateral economic governance institutions. Even more so since with the start of the Millennium Round it is very likely that trade negotiations will continue to be pursued through a complex mixture of bilateral, regional and multilateral measures and agreements. How to reconcile these different levels is a major task ahead. In this regard a new round of multilateral trade negotiations will provide a unique opportunity for providing effective international rules and devices.

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**Table 1: Weights of the Sectoral Groups in the World Exports**  
(average value in each subperiod %)

	1970	1973	1979	1985	1988	1991	1993	1995	1970-95
Food Items	9.8	10.5	8.0	6.6	6.2	5.2	4.6	4.6	-5.30
Fuels	6.5	7.8	14.8	13.1	5.8	6.8	6.0	4.7	-1.73
Other Raw Materials	2.9	2.0	1.8	1.5	1.1	1.0	0.8	0.9	-2.01
Food Industries	7.2	7.6	6.2	5.4	5.8	5.7	5.6	5.5	-1.70
Resource Intensive	10.1	8.6	9.2	9.4	7.8	7.2	6.4	6.6	-3.48
<b>Agricultural Prod. &amp; Raw Materials</b>	<b>36.5</b>	<b>36.5</b>	<b>40.0</b>	<b>36.0</b>	<b>26.6</b>	<b>25.8</b>	<b>23.4</b>	<b>22.2</b>	<b>-14.22</b>
Traditional	14.9	16.0	14.5	14.0	16.5	16.9	17.4	16.8	1.89
Scale Intensive	24.7	24.9	23.0	24.6	26.2	25.2	25.0	25.0	0.35
Specialized Suppliers	10.9	10.2	9.2	8.6	10.0	10.4	10.1	10.5	-0.43
Science based	9.5	9.4	10.9	14.4	17.5	18.9	19.9	21.5	12.07
<b>Manufactures</b>	<b>60.0</b>	<b>60.5</b>	<b>57.6</b>	<b>61.6</b>	<b>70.1</b>	<b>71.4</b>	<b>72.4</b>	<b>73.8</b>	<b>13.88</b>
<b>Others</b>	3.6	3.0	2.4	2.4	3.2	2.8	4.1	3.7	0.09

Source: Elaboration from OECD and UN Trade Data, SIE-World Trade Data Base