



Initiative for Policy Dialogue Working Paper Series

September 2005

Institutional Reforms
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Trade

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Institutional Reforms



Procedures

There is widespread dissatisfaction with the way that trade agreements are made, partly stemming from a belief that current procedures put developing countries at a marked disadvantage. This is particularly important, given the increasing role that such trade agreements play in our societies. They define a broad set of rights and obligations, yet they are arrived at in a manner that is distinctly different from the way that other kinds of legislation are adopted. The terms are often negotiated behind closed doors, with little public debate about specific provisions. The legislative process is often truncated. The result is agreements, like Chapter 11 of the NAFTA agreement or the TRIPS Agreement, which contain provisions that would probably never have been accepted by a democratic parliament with open discussion in a deliberative process.

The hallmark of earlier trade agreements is that they were conducted in secret, with many of the terms not fully disclosed until the end of the negotiations, and then governments faced an 'all or nothing' choice. Because parliamentarians could have no effect on the outcome, they had little incentive to understand the intricacies. Given the extent to which trade issues overlap with other issues, including those touching on the environment, it is important that the procedural reforms make deliberations about trade issues more like other deliberative processes—including more open deliberation.

Trade has become too important to be left to trade ministers alone. Part of the deliberative process must entail the active involvement of others (meeting together, not just through the trade ministers). Thus when intellectual property matters are being discussed (if they are to be discussed at all), the science ministers must be involved. When trade policy affects the environment, there must be some mechanisms for the environmental ministers' voices to be heard. They would insist, for instance, that provisions be inserted that prevent a race to the bottom, that low environmental standards (e.g. those associated with allowing the pollution of the world's atmosphere) be viewed as a form of subsidy to be prohibited.

We emphasized in Chapter 5 that the fairness of the international regime is to be judged not only in terms of the outcomes, but also in terms of the processes. There is now a large literature documenting the deficiencies in the procedures,¹ and for reasons already noted, these procedural deficiencies disadvantage developing countries. That is why procedural reforms—particularly those relating to transparency and representation—should have a high priority. Civil society should be given a greater role in the negotiations.

The developed countries should continue the kind of support they have provided to help the developing countries participate more effectively in these deliberations. Trade negotiations involve complex issues, including economic issues on which even the experts are not in agreement. Meaningful participation in these discussions requires understanding these complexities, knowing the full import of each of the provisions, how it might affect countries differently in quite different situations.

Structures and representation

As the number of WTO members has grown, and the demands for a more inclusive bargaining process have increased, the current system appears to be increasingly unwieldy. It is not the intent of this

¹ On participation see Blackhurst, Lyakurwa, and Oyejide (2000); on transparency see Francois (2001); on representation see Winters (2001).

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chapter to provide a detailed analysis of alternative proposals for institutional reform, but rather to highlight its importance, and to emphasize why such reforms should in fact be viewed as a priority in current discussions.

It is apparent that the opening up of the WTO to so many members has made negotiations cumbersome and difficult. This has been used as an excuse for secretive processes in which, somehow, a selected group of countries are chosen to negotiate with the United States, the EU, and Japan in the 'Green Room'. The arbitrary and capricious nature of the Green Room procedures needs to be changed. In other areas of democratic decision-making, especially those based on consensual processes, as trade negotiations are *in principle* supposed to be, the principle of *representativeness* is well accepted: a small group of countries is chosen to reflect the various interests and constituencies—say the largest trading countries, the United States, EU, Japan, China; a representative or two of the middle-income countries, say Brazil and one other country; a couple of representatives of the least developed countries; a representative of the Cairns Group, etc. Each would then consult with those they are representing on a regular basis. An open and transparent process would ensure that the views and voices of all are heard.

Trade negotiations entail a myriad of proposals for changing the rules of the game, and developing countries are often at a disadvantage in assessing the impact of each of these proposals on themselves, let alone the general equilibrium impact on the global trading system. Another requirement is a new body within the WTO responsible for assessing the impacts of proposed trade provisions on development and developing countries. Its objective would be to look objectively at the consequences of alternative proposals for all the countries of the world, recognizing that economic science is not at a stage where there is agreement about the 'right' model. Thus, such a body might attempt to assess the impact of the allegedly non-trade-distorting agricultural subsidies in a world in which there are capital constraints.

Such a body might help too in the enforcement of current agreements, providing guidance for instance on whether a particular proposed bilateral or regional trade agreement is consistent with the

principle that 'trade diversion' should be limited, and should be less than the amount of trade creation.

Other functions of an expanded WTO secretariat might include an independent body to assess countries in crisis and to adjudicate and approve the imposition of trade restrictions ('safeguard measures') and to investigate dumping charges, countervailing duties, and phytosanitary conditions.

There is a need to address the scope of technical assistance and the capacity of the WTO to provide this adequately within existing structures. Helping low-income countries strengthen their institutional capacity to permit them to meet WTO agreements will require not only technical assistance but also significant financial assistance. The costs of implementation of WTO commitments are very substantial.²

While a limited assistance program may assist developing countries to implement reform, technical assistance is not sufficient to deal with the economy-wide adjustment costs associated with structural change. These costs, which generate domestic opposition to trade liberalization, are no less important barriers to progress than the lack of institutional capacity.

In addition, lack of institutional capacity has the effect of limiting the access of developing countries to justice within the dispute system. Developing countries are disadvantaged in complex and expensive legal proceedings. An expansion of existing legal assistance schemes will be an important prerequisite for institutional fairness.

The bulk of technical assistance has fallen on international organizations. Both the World Bank and the WTO have increased their technical cooperation activities. However, as much as 90 per cent of financing for these activities is provided by trust funds provided by two or three bilateral donors, while the WTO itself has typically allocated for technical cooperation activities less than one per cent of its total annual budget—less than half a million US dollars (Michalopoulos 2000).

² Finger and Schuler (1999) 'The implementation of Uruguay Round Commitments: The development challenge', Policy Research Working Paper no. 2000, World Bank, Washington D.C.