

Implementing the Uruguay Round Agreements: Problems for Developing Countries

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1. INTRODUCTION

MY points are three:

1. At the Uruguay Round, developing countries took on an implementation burden for which they did not get equivalent value in return.
2. The implementation burden is a real economic burden, beyond the difficult domestic politics that market access concessions entail.
3. Trade negotiations are – institutionally speaking – an ineffective instrument for dealing with the economics of the implementation issue.

Implementation issues are in substance development issues – issues that fit the World Bank's working structure, but not the GATT/WTO's. The World Bank and the WTO evolved as different institutions because they address different problems, taking on the implementation burden requires not so much 'coherence' between the Bank and the WTO as it requires that the World Bank lead.

2. THE URUGUAY ROUND BARGAIN

Until the Uruguay Round, implementation by developing countries of GATT/WTO obligations was hardly an issue. Through GATT's Tokyo Round, that ended in 1978, developing country participation in multilateral trade negotiations was either passive or defensive. Developing countries that had joined the GATT had in large part remained by-standers; many had acceded under Article XXVI.5(c), that exempted them from having to negotiate concessions in order to enter.

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To the extent that they involved themselves in the negotiations, developing countries focused their efforts on expanding their rights to free themselves from prevailing rules. GATT Article XVIII:B, while formally about trade restrictions to protect the balance of payments, was widely used by developing countries as legal cover for a variety of import restrictions. The Enabling Clause provided philosophical as well as legal reasoning for the developing countries to generally exempt themselves from the disciplines that the GATT otherwise provided.

At the Uruguay Round things were different. Already in the run-up to the Round, many developing countries took an active role. Many came to the negotiations prepared to take on full-fledged commitments in exchange for developed country commitments in areas of particular export interest to them, e.g., textiles and agriculture. This shift of position reflected a changed view among developing countries of the usefulness of trade as a development vehicle. It also reflected changes of a number of other economic and political developments, both internal to developing countries and international.¹

The 'grand bargain', as Sylvia Ostry has labelled it,² struck at the Uruguay Round was that the developing countries would take on significant commitments in 'new areas' such as intellectual property and services, where developed country enterprises saw opportunities for expanding international sales.³ The developed countries, in exchange, would open up in areas of particular export interest to developing countries: agriculture and textiles/clothing.

What the North gave in this exchange was traditional market access, reduction of import restrictions plus, in agriculture, reduction of export subsidies and production subsidies. What the South gave in the new areas was different. WTO obligations on services, on intellectual property rights and on standards are basically about the structure of the domestic economy. The developed countries who wanted these areas in the WTO rationalised their inclusion by reference to their 'trade-related' attributes.⁴ Whatever the fig leaf, regulation here is mostly about the domestic economy rather than about trade – 29,996 times out of 30,000, I will illustrate below.

The scorecard for the South? On their *gain* dimension, market access, they did not achieve a mercantilist surplus (Table 1). Developing countries' tariff reductions covered as large a share of their imports as did those of the developed countries. Their tariff cuts – when measured by how they will affect importers' costs – were deeper than those of the developed countries. This is true even when

¹ Tussie and Lengyel (2001) review these changes. From the end of the Tokyo Round in 1978 to 1987, 44 countries acceded to the GATT, 43 of them developing countries.

² Ostry (2000).

³ Few developing countries had signed the Tokyo Round codes, hence obligations in the areas these codes regulated, e.g., customs valuation, import licensing, technical standards, were also 'new' for developing countries.

⁴ The motivation was the trade interests of their enterprises.

TABLE 1
Uruguay Round Tariff Concessions: All Merchandise

	<i>Developed Economies</i>		<i>Developing Economies</i>	
	<i>% of Imports</i>	<i>Depth of Cut^a dT/(1+T)</i>	<i>% of Imports</i>	<i>Depth of Cut^a dT/(1+T)</i>
Including tariffication and bound reductions on agricultural products	30	1.0	29	2.3
Including the above plus the tariff equivalent of MFA elimination	30	1.6	29	2.3

Notes:

^a Depth of cut is a weighted average, across all products, including those on which no reduction was made.

Source: Finger and Schuknecht (1999), Table T-1, based on Finger, Ingco and Reincke (1995).

we take into account the tariff equivalent of the MFA quotas that the developed countries have committed themselves to remove.⁵

This then is my first point: The South was not a net gainer in the market access negotiations. South concessions in the new areas are, as mercantilism, unrequited.

As real economics they are costly. That is the topic of the next section.

3. THE IMPLEMENTATION BURDEN

The two sides of the grand bargain have fundamentally different economics. Market access negotiations may have led governments to take on policy changes whose domestic *political* costs were severe, but in real economics giving away an import restriction is not a cost, it is something that *adds to* the national economic interest. GATT bargaining is a response to the difficult *politics* of liberalisation, not to the good sense of its economics.

Moreover, while considerable political courage and diplomatic skill were needed to make the necessary decisions, implementing them, e.g., changing the tariff rates, required no more than the stroke of a minister's or a legislature's pen.

⁵ I limit my discussion of 'implementation' to the 'rules' or 'new areas' side of the grand bargain. Developing countries also complain that elimination of MFA quotas is back-loaded; will be in large part delayed until the final of four tranches that comes due on 1 January, 2005. The agreement allows such, the basic difference between appearance and reality here is that the agreement schedule is about certification that textile imports are free of MFA quotas, hence import categories on which there are no MFA quotas can be used to fill the early tranches. Finger and Schuknecht (2001) elaborate this, document that the first two tranches, that require integration of 33 per cent of textile imports into the WTO, have been fully met by elimination of only one per cent of US MFA quotas, seven per cent of EU MFA quotas – all perfectly legal.

A lot of money will flow in different directions because of tariff cuts, but it costs nothing to cut the tariffs.

The economics of a tariff reduction is the economics of Portia's plea to Shylock in *The Merchant of Venice*:⁶

The quality of mercy is not strain'd, It droppeth as the gentle rain from heaven ...
It is twice blest; It blesseth him that gives and him that takes.

The real economics of New Area responsibilities – of the implementation burden – are different in two respects:⁷

1. Implementing such responsibilities will cost money; e.g., laboratories to develop and to enforce standards.
2. The required change might make things worse, not better.

(a) *Implementation's Cost*

New Area obligations will cost considerable money to implement. Finger and Schuler, in a review of World Bank project experience, found that to get up to speed in three areas, customs valuation, TRIPS and sanitary/phytosanitary measures, would cost each country some 150 million dollars, more than a full year's development budget in many of the least developed countries.⁸

(b) *Implementation's Return*

If the \$150 million is spent, an economist should ask if it will be *well spent*? In our analysis of World Bank project experience Philip Schuler and I went beyond asking how much implementation would cost. We drew from Bank project experience information on what the development problems are in these areas – what things are developing countries willing to borrow money to fix? We then asked two further questions:

1. Does the WTO agreement correctly diagnose the development problems?
2. Does the WTO agreement prescribe an appropriate remedy?

'Appropriate' in the last question refers both to correct identification of the problem and to recognition of the capacities (resource constraints) of the developed countries.

Our conclusions on both points were negative – the customs valuation agreement provides an example.

⁶ By William Shakespeare, of course.

⁷ Finger and Schuler (1999) elaborate the following points.

⁸ Finger and Schuler (2000), Finger and Schuler (1999) is a more detailed report of the study.

(i) Incorrect diagnosis

The WTO agreement covers only customs *valuation*, it addresses no other aspect of the customs process. One of the customs users we interviewed snorted, 'It takes me 60 days to get a container through the port! What matters the valuation system, I have in any case to bribe the official to do it.'

Bert Cunningham (1996), in an assessment of poorer countries considering customs reform, observed that systems and procedures appeared to have evolved to maximise the number of steps and approvals – to create as many opportunities as possible for negotiation between traders and customs officials. Valuation, we concluded, is perhaps a centimetre in the full metre of customs process that needs improvement.⁹

A second example of the irrelevance of WTO-imposed standards to the situation on developing countries I will draw from a recent experience in Senegal. In connection with a project to develop the music industry in Africa, a Bank mission met with musicians in Dakar, meetings arranged by the Senegalese Musicians Association.¹⁰ At the meetings, the musicians laid out many problems they faced, one of which was piracy in the *local* market.

Musicians skilled or fortunate enough to gain an audience in the US or Europe, they explained, were protected by copyright laws there. Those who depended on the local market saw their cassettes pirated immediately they reached the markets, and heard them played on the radio without payment of royalty.

Of some 30,000 musicians in Senegal (Musicians Association estimate) perhaps four enjoy international sales. The other 29,996 depend on the local market.

The copyright problem in Senegal is thus only four parts in 30,000 a *trade* problem. To search for the 'development dimension' of copyright as a tag-on to the TRIPS agreement – the agreement on the *trade related* aspects of IP, would be to miss the 29,996 domestic parts of the problem.

(ii) Inappropriate remedy

The valuation process the Uruguay Round agreement imposes is one that complements customs systems in place in most of the advanced trading nations (including both developing and industrial countries). That system is based on generalised use of electronic information management and built-in incentives for self-compliance. Trade in these countries takes place in large-scale lots and duty

⁹ None of the twenty customs reform projects that the Bank has supported in the past five years involved reform of valuation process. They dealt with much more basic matters: physical security, elementary improvements of process toward increased transparency, objectivity and accountability.

¹⁰ The meetings were held in Dakar on 4 and 5 December, and brought together the musicians and a World Bank, Policy Sciences Centre, Inc. mission there doing preparatory work on a project titled 'Developing the Music Industry in Africa.'

rates are generally low. In this context, departure from routine business practice is costly, e.g., retrieving additional information in response to a valuation inquiry. By contrast, where duty rates are high and incomes are low, small-scale smuggling can be an attractive occupation. I have seen loaded onto one bicycle-jitney television receivers on which the customs duty would be more than a year's wages. In poor countries physical control is a much larger part of the problem.

Schuler and I concluded that imposing the WTO valuation system into customs systems as they exist in many developing countries would likely create more, not less, opportunities for a negotiated rather than an objective outcome.

(c) Implementation Assistance

Many of the new area agreements take up implementation; treatment of implementation in the agreements both recognises that developing countries might have problems and promises assistance. The text of the treatment of assistance in TRIPS and in the SPS agreement are as follows:

TRIPS Article 67: Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and *on mutually agreed terms and conditions*, technical and financial cooperation in favor of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

SPS Agreement Article 9: Technical Assistance

1. Members agree to *facilitate the provision* of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.

2. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter *shall consider* providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved (emphasis added).

The texts thus promise assistance, including support for 'substantial investments.' The promise is not however a bound obligation, it is compromised by such phrases as 'shall consider', or 'on mutually agreed terms.' Developing countries accepted bound commitments to implement, they received in exchange unbound promises of assistance to do so.¹¹

The technical assistance that is provided is often driven by the same export interests that drove the negotiations. An African friend who had attended a US

Agriculture Department seminar on sanitary and phytosanitary measures summed up his experience, 'They want us to understand SPS so that we will import more chickens.'

(d) Costs: Some Estimates

The economics of TRIPS is the economics higher prices; for sellers (exporters) a benefit, for buyers (importers) a cost. The negative economic impact can be substantial. For Argentina, Nogúes (1993) estimates that TRIPS concessions bring a *cost* just for pharmaceuticals of \$425 million a year.¹² This is a *real cost*, like the rent premium on MFA quotas, or the OPEC oil price increases.

Keith Maskus reports more extensive estimates of the economics of increasing patent protection to the level required by TRIPS.¹³ His figures indicate that the US will be the major winner, gaining a net transfer of almost \$6 billion/year from foreigners. But there will be few winners, of 29 countries for which he presents estimates, only six are made better off by TRIPS-required patent reform.

A few comparable estimates allow comparison in Table 2 of the scale of developing country losses from TRIPS vs. their gains from Uruguay Round reduction (by all countries) of import restrictions on manufactured goods. The developing countries for which we have comparable data will lose as much or more from TRIPS as they gain from the market access agreement on manufactures including MFA elimination. The US on the other hand will gain enormously from TRIPS, 7.5 times as much as from all countries' liberalisation on imports of manufactures, including its own liberalisation.¹⁴

(e) Reform is Needed!

One should not conclude from the above that reform in the new areas such as intellectual property, customs procedures, sanitary and phytosanitary measures, etc., are irrelevant to development.

¹¹ The stalemate over provision of such assistance has prompted Rubens Ricupero (2000) to suggest that in the future negotiations over topics that will involve expensive implementation be accompanied by a concrete 'implementation audit' that will identify concretely what developing countries will have to do and what it will cost. Short of a bound commitment from the developed countries to meet such costs, statements about implementation assistance should be left out. No more creating the rhetoric (only) of reciprocity by exchanging bound commitments for unbound promises.

¹² Based on the size of the market in 1989.

¹³ Maskus's figures (p. 184) are updates of work by Phillip McCalman, based on patents that existed in 1998. Values of transfers were inflated to the 1995 price level. The US, for example, gains when a foreign country raises the level of IPR protection it provides on patents owned by US nationals, loses when the US raises the level of IPR protection it applies to patents owned by foreigners.

¹⁴ There was minimal liberalisation of agricultural trade in the Uruguay Round (Hathaway and Ingo, 1996), hence market access figures covering all products would come to the same conclusion.

TABLE 2
TRIPS Patent Requirements and Market Access on Manufactures: Impacts Compared

<i>Country</i>	<i>Gain from TRIPS-Patents/Gain from Manufacturing Market Access Liberalisation (Ratio)^a</i>
Colombia	-0.9
Mexico	-2.0
Brazil	-1.6
United States	+7.5

Note:

^a The underlying estimates of gain from manufactures liberalisation *include* MFA elimination.

Sources: Estimates of TRIPS impact from Mascus (2000, p. 184), for impact of manufacturing liberalisation from Harrison et al. (p. 222). These are the only developing countries for which the sources provide overlapping information.

On intellectual property rights, for example, I have described above the need for improved copyright enforcement in Senegal.

A parallel story could be told for standards, for customs reform, etc. Developing countries have been borrowing from the World Bank to finance such reforms, but the reforms they conclude are worth borrowing money for and the ones the Uruguay Round new areas rules insist on overlap little. Developing countries' own behaviour suggests that implementation is not something to be avoided, it is something to be done *correctly*.

4. DEALING WITH THE ISSUES THAT IMPLEMENTATION RAISES

Implementation is not a trade issue, it is a development issue. Decisions in the new areas are more appropriately structured as development/investment decisions, the traditional methodology is project design, cost-benefit analysis. The international community normally assigns such issues to the World Bank rather than the GATT/WTO.

(a) WTO and World Bank Approaches to Such Issues

At the WTO, taking on and honouring legal commitments is the basic mode of operation. Because of the political incorrectness of trade reform, the international community has found this mode necessary in order to achieve trade reform. The facts support this necessity.

The GATT/WTO approach however, is hard to apply to the issues WTO implementation brings forward. We know enough to conclude that the needed work is one-off in nature – identifying local problems, finding ways to approach them. Too much of what is important *differs* from one country to another for a

universal standard to spot what needs to be done. Development experience suggests that while trade barriers do provide *one-size-fits all* – situations, implementation issues do not.

Working out what is needed will also require a good deal of experimentation – to find, for example, legal structures that will identify, defend and amplify the economic value of indigenous knowledge. A Bank project or two is under way to do so, it is not likely that anyone would get it exactly right the first time. The Bank can change a project design, doing so is a normal part of the Bank's work procedures. The WTO would have to negotiate an amendment to TRIPS.¹⁵

A negotiation, particularly one driven by export sales, is not a forum that accommodates the more complex cost-benefit analysis that is necessary in the new areas. This is bean-counting, not negotiation.

The World Bank is a bean counter, charged by its shareholders – who are almost identically the shareholders of the WTO – to help developing countries to ensure that every dollar they spend has the maximum impact on poverty reduction and growth. Legitimate questions can be raised about the economic sense of some countries implementing some parts of their Uruguay Round obligations – a situation that in World Bank parlance would be a disparity between obligations taken on at the Uruguay Round and what makes economic sense. The WTO can be complementary, but the economics of the new areas is more likely to be identified by the unilateralism of the developing countries' liberalisation of the 1980s and early 1990s, a unilateralism that the World Bank is more suited to support than the WTO.

Implementation issues are in substance development issues – issues that fit the World Bank's working structure, but not the GATT/WTO's. The World Bank and the WTO evolved as different institutions because they address different problems, taking on the implementation burden requires not so much 'coherence' between the Bank and the WTO, it requires that the World Bank lead.

(b) World Bank Support for Trade Reform in the 1990s

The World Bank in the 1990s has not been as active on trade reform as it was in the 1980s. Trade reform is, in Figure 1, the smallest category of Bank adjustment lending, and a declining category as well.

Some of Bank investment lending has a trade impact, the distribution of Bank investment lending is plotted in Figure 2. The lighter columns there indicate the distribution of investment lending across sectors – read against the left scale, e.g.,

¹⁵ At the Bank, a binding obligation is project-specific, expressed in a loan document. General statements of policy advice, such as in a World Development Report, do not impose legal obligations on either the Bank or on countries who borrow from the Bank. Statements at the level of generality of WTO obligations are, at the Bank, intelligent conversation, not binding commitments.

FIGURE 1
Composition of World Bank Adjustment Lending FY93-95 – FY97-99

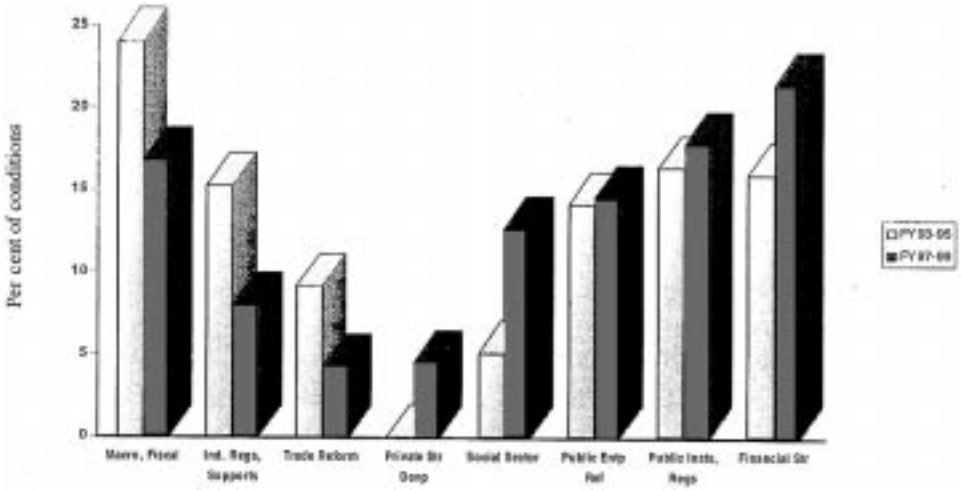
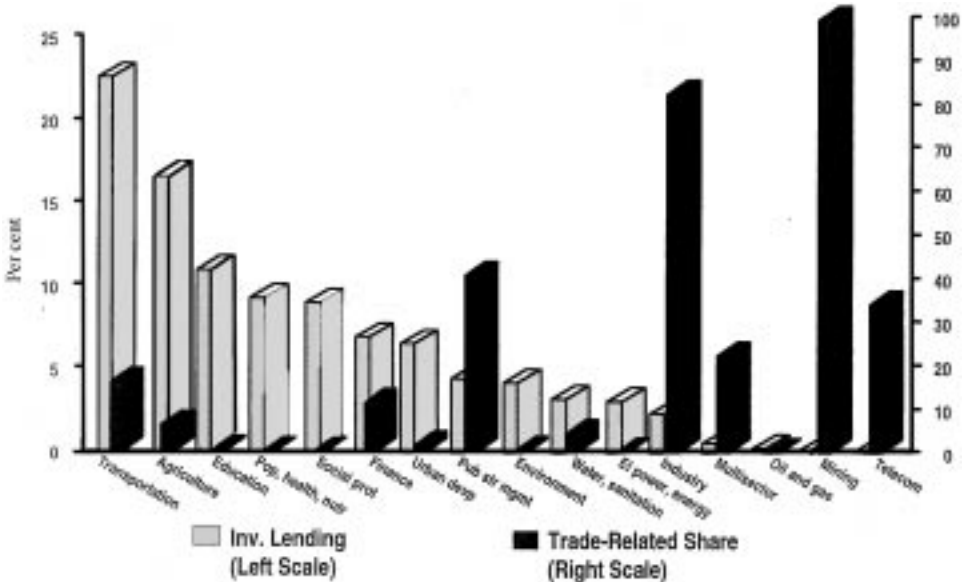


FIGURE 2
Sector Composition of World Bank Investment Lending, Trade-Related Share, FY99



about 23 per cent of lending was for transportation projects. The darker columns, measured against the right scale, indicate the proportion of lending in each sector that was for trade related projects. For example, all of Bank investment lending in the mining sector related to trade, to exporting. The story told by the two sets of

columns together is that the Bank lends mostly in sectors in which projects have a minimal trade component.

In the latter half of the 1990s, the Bank has presented much of its trade work as neither direct support for trade reform nor experimentation to find the appropriate institutional structures to help developing countries take advantage of the opportunities that trade offers. Instead, the Bank has pointed to the support it has offered for developing country participation in the WTO. One attractive feature of this approach – of accepting WTO leadership on trade reform in developing countries – is that it leaves the WTO as a firewall against trade reform's political incorrectness. Another is that negotiations are romantic. 'Support for developing country participation in the WTO' is more cosmopolitan politics than support for trade liberalisation.

5. CONCLUSION

Implementation is a development issue before it is a trade issue. The problems it presents are more effectively approached by the World Bank's mode of operation than by the WTO's. The Uruguay Round was, for the development community, a wake-up call for new areas such as services, standards, and intellectual property. An alarm clock is a good instrument for waking up, it is not a good instrument for planning the day. More directly worded, the issues I have raised in this essay cannot be adequately addressed in WTO negotiations. As I have argued several times before,¹⁶ to take up such issues as WTO issues is to try to eat soup with a fork. My recommendation is to put down the fork and pick up the spoon. World Bank procedures are better suited, but the World Bank has shown little inclination in the past decade to engage itself on such matters.

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¹⁶ Particularly in Finger (2001).

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