6

The New Issues and Developing Countries

A number of the agreements in the Uruguay Round relate to issues that have not previously been covered by GATT Rounds. Since the areas covered by these agreements are of particular relevance to developing countries, in terms of the relative incidence of the measures (e.g. TRIMs), or the greater potential constraint on domestic policy (e.g. TRIPs), or the implications for the design of development strategies (e.g. services), we give special attention to these issues in this section.

6.1 TRIMs and Policies Towards Foreign Investment

Developing countries make far more extensive use of TRIMs than do industrialised countries (see Greenaway 1992). They are often seen as an important instrument of investment policy, in particular foreign investment policy; quid pro quos for the special incentives and the protected or dominant position in the domestic market of the foreign investor. Some analysts have argued that there is a good economic case to be made for their use (see, for example, Balasubramanyam 1991). However, as we have seen, the TRIMs agreement outlaws the more trade-distorting measures (local content requirements, trade-balancing requirements, minimum export requirements) which are in fact the most widely deployed TRIMs. (These are covered by the illustrative list provided in the agreement and set out in Table 11.)

In time (five years for less developed and seven years for least developed countries), this part of the UR will remove a degree of freedom from policy-makers. One might argue that this is desirable to the extent that it constrains the use of a potentially costly instrument of intervention. There are, however, political economic considerations to bear in mind here. It is most plausible to believe that the use of TRIMs by developing countries emerged out of a desire to redistribute rents from multinational enterprises (MNEs) and to counter the use of restrictive business practices by MNEs. Admittedly the need to do so may often have been created by other aspects of the policy regime; trade barriers that created rents and reduced competition on the domestic market. Although many developing countries now pursue more liberal trade policies, non-negligible trade barriers remain in many of the less and least developed countries. Constraining the use of TRIMs by these countries will certainly constrain policy options and alter their bargaining position with foreign investors, especially MNEs. Although the precise impact on trade, investment and welfare of the use of TRIMs or of their removal is not well researched, there must be a strong presumption that developing countries would in general be worse off as a result of this part of the Agreement (see Morrissey and Rai 1995) if GATT remains out of the competition policy field and/or if the developing countries do not explore new approaches to policy in this area.

Fortunately, there is a commitment in the Agreement to evaluate the role of TRIMs in the wider context of competition policy. This, as argued above, will be important given the symbiosis between TRIMs and forms of anti-competitive intervention such as restrictive business practices. Developing countries must, however, also be careful to use their trade and investment policies in a pro-competitive manner. Substitution of tariffs for quantitative import barriers serves, for example, to maintain competition at the margin on local markets which may be dominated in that specific sector by foreign investment. Similarly, industrial and investment licensing procedures and decisions should not be determined only by considerations of the size of existing markets and claims by existing entrants of the 'appropriateness' of current capacity. Such procedures are likely to be subject to capture by existing market entrants with an incentive to restrict competitiveness. In the more liberal policy regimes now to be found in most developing countries, there needs to be a greater willingness to allow new investors/entrants to contest domestic markets rather than to rely on bureaucratic decisions about the number of firms that markets are judged to be able to support. This same principle needs also to be extended to the privatisation programmes currently under way in many developing countries.

Table 11 **Illustrative list of TRIMs**

1. TRIMs which are inconsistent with national treatment obligations in Article III to include:
   a) purchase of inputs required whether specified in volume or value, or as a proportion of volume or value
   b) requirements which link an enterprises purchases or use of imported inputs to the volume or value of local products that it exports
2. TRIMs which are inconsistent with the general elimination of QRs under Article XI and which restrict:
   a) importation by an enterprise of products used in, or related to, its local production
   b) access to foreign exchange limited to an amount related to the foreign exchange inflows attributable to the enterprise
   c) exportation or sale for export products linked to a proportion of its local production

Finally, it must be recognised that the shift to more outward-oriented development strategies based on export promotion themselves alter the nature of the motivation for inward investment. Foreign investors, especially large-scale ones such as MNEs, are likely to place greater emphasis on attributes such as political stability, the simplicity and clarity of the domestic policy environment, the quality of the infrastructure and access to competitively-priced intermediate and factor inputs, rather than on the rents available from protected domestic markets. The need to design trade-related investment policies that claw back rents from investors or which impose trade conditions on foreign investors, is thereby diminished. Of course in the competition for foreign investors many developing countries use investment incentives (e.g. duty exemptions, tax holiday etc.) as an additional attraction for investment.

There are, however, good reasons for governments not being driven into offering excessively costly incentives (in terms of additional expenditures or forsaken tax revenue), despite the obvious pressures to 'outbid' neighbouring countries for foreign investment. Excessively costly incentives or highly subsidised foreign investments risk inappropriate inward investment and undesirable allocation distortions. These are also likely to encourage governments to seek to constrain the costs of the incentives scheme by setting selectivity criteria, e.g. the use of lists of products or industries which are viewed as (actual or potential) export activities. Those developing countries with a relatively well-developed and diversified export base in manufactures may (but only may) have a greater awareness and experience of production and market opportunities for new exports. But for many less and least developed countries, with small industrial sectors and/or high dependence on primary exports, then the process of 'picking winners' in export markets is more difficult and potentially expensive if incorrect selections are made. Rather, the lowering of anti-export bias in the trade policy regime will provide the appropriate signal or incentive for export-oriented foreign investment; investment that is attracted by permanent local resource and factor endowments rather than by small domestic markets or transitory fiscal and other incentives. In recent years CDCs such as Malaysia, Mauritius and Cyprus have benefited from foreign direct investment (FDI) driven by these considerations.

6.2 TRIPs and Technology Transfer

This Agreement will unambiguously require major policy changes by probably all developing countries, within five years in the case of developing countries and eleven years for least developed countries. Members will be required to apply the principles of MFN and national treatment to the protection of intellectual property rights (IPRs), which cover:

- copyright and related rights
- trademarks
- geographical indications
- industrial designs
- patents
- layout designs of integrated circuits
- protection of undisclosed information

Most of the areas are covered by the provisions already administered by the World Intellectual Property Organisation (WIPO) and the Agreement contains cross-references to these and to instruments in the Paris, Rome and Berne Conventions and to the Treaty on Intellectual Property in Respect of Integrated Circuits. Indeed, nothing in the TRIPs Agreement may derogate from those Conventions and certain exceptions provided in those Conventions may also apply to the TRIPs Agreement. But the TRIPs Agreement will extend the country coverage of the provisions, since membership of the WTO (and with it application of the TRIPs Agreement) will be made by countries that did not participate in the above Conventions. The Agreement will also extend the area of IPRs covered and extends the protection provided by the earlier Conventions. The most important new areas or extensions are:

- the granting of copyright protection to computer software;
- the reinforcement of the protection of data banks and phonogram producers;
- the requirement that patents must be available for all process and product inventions;
- the reversal of the burden of proof in civil legal actions from the patent holder to the accused patent infringer.

Thus most developing countries will be required to introduce and revise existing national laws in the area of IPRs, so as to enforce the provisions of the TRIPs Agreement. (There are provisions for countries to adopt measures that prevent or regulate anti-competitive licensing practices, or abuses of IPRs which adversely affect competition.)

For many of the small and least developed countries in the Commonwealth, with small or undiversified manufacturing and export bases, the TRIPs Agreement will involve legislative revisions or extensions but have little immediate impact on trade and development strategies. It will, however, have a more significant impact in the longer term. For example, a recent UNCTAD study estimates recurrent costs of $750,000 per annum in Bangladesh to comply with the TRIPs Agreement, with no apparent immediate offsetting benefits. However, one obvious benefit is the avoidance of the kind of unilateral action which the US recently launched against China. For those countries with diversified industrial bases (e.g. India) or trade strategies directed towards the exporting of more technologically-intensive goods (e.g. Malaysia), then the protection of IPRs could have greater impact on trade and development strategies. This latter group of countries already invested in technologies which will now embody a new distribution and pricing of intellectual property. Import substitution of generic pharmaceutical products in countries such as India will become more costly. Similarly, the export competitiveness of 'imitated' products (designs or trademarks) in some of those markets where the

NICs have moved up the ladder of comparative advantage (e.g. textiles, electrical and electronic goods, software) will be eroded by the additional cost of acquiring technology. There is clearly a complex balance of issues involved here. Reverse engineering has been a key element in technology transfer and therefore the weak protection (or its absence) of IPR obligations by developing countries has contributed positively to industrialisation efforts. The correct 'pricing' of technology may, however, encourage the adoption of appropriate technologies and induce greater allocative efficiency in developing countries; the result in the longer term may be improved export performance. Of course this may also come for indirect reasons. Institutional devices for the protection of IPR provide incentives for intellectual property creation, which may in turn raise productivity in both the technology-exporters and technology-importers. Such dynamic benefits and reduced pressures for protection in the innovating countries would in turn be to the ultimate benefit of developing countries. Indeed, developing countries may already have, or expect to have in the longer run, an interest in the protection of their own intellectual property; arising for example out of research intro crop varieties or more labour-intensive areas of innovation such as the production of computer software.

6.3 Services and Development Strategies

The GATS sets out principles to govern trade in services; extending the general principle (where possible) of MFN to services trade. 'Trade' in services covers:

- cross border movement
- movement of the consumer
- commercial presence or right of establishment
- movement of people

However, the actual commitments of the signatories to the Agreement are only confined to the specific sectors or types of 'trade' that are included in each of their Schedules of Commitment. Most of the offers are also accompanied by MFN exemption lists and vary widely in terms of sectoral coverage and of limitations to market access, national treatment and types of 'trade'. The implications therefore for different types of countries for access to their own and other markets will depend critically on the specifics of these Schedules. In some sectors (financial and maritime services and telecommunications) it is also the case that negotiations are not completed. Given also the need to have detailed information, country-by-country, on existing and planned regulatory regimes and on the data on service trade flows, cross-country cost differences and current barriers to 'trade', in order to make a meaningful assessment, then the impact on developing countries of liberalisation in services remains uncertain. Indeed, little or no quantitative research has been completed on this subject area.

The range of sectors offered by countries tends to be positively related to their level of development. Developing countries have tended to make fewer offers, given their weaker services sectors, and in the case of some least developed countries the offer only covers a single sector. There are, however, some major sectoral exclusions also in the case of the major industrial countries, e.g. maritime services (US), audio-visual (EU) and certain types of financial service (Japan).

The types of 'trade' or modes of supply most often covered in the offers of the developed countries are commercial presence, movement of consumers and movements of persons in the form of intracorporate transferees (i.e. managers and specialists) linked to commercial presence. Most developing countries are not in a position to benefit from this mode of exporting, when faced with high costs of establishment in developed countries and disadvantages in terms of endowments and technologies. The sectors of interest to developing countries, e.g. tourism,

Table 12: **Net Earnings from Labour Services*: Selected Commonwealth Developing Countries (1992)**

Country	Labour Service Net Earnings Million (US$)	Labour Earnings as a Percentage of Merchandise Exports (%)
Antigua and Barbuda	10	62
Barbados	14	8.7
Bangladesh	912	43.5
Belize	15	9.6
Cyprus	57	6.4
Dominica	14	7.2
The Gambia	13	9
Grenada (1991)	19	85
India (1989)	2,498	15.5
Jamaica	173	16.5
Malta	22	2
Nigeria	56	0.5
St. Kitts and Nevis	12	37
St. Lucia	18	14.7
St. Vincent and the Grenadines	25	37.4
Singapore	181	0.3
Swaziland	78	12.8
Tanzania	165	40.3

* includes labour income, migrant transfers and workers' remittance

Source: GATT (1994)

construction, business services and maritime services, are included among developed country offers but few countries have offered access to categories of persons beyond intracorporate transferees. Movement of persons other than executives and specialists is required (and has been repeatedly requested by the developing countries) if they are to provide services in these sectors. (Negotiations on movement of persons as a mode of delivery continue.)

Table 12 demonstrates the importance of income from labour services to many Commonwealth developing countries. In the case of Bangladesh, for example, such labour earnings were equivalent to over 40 per cent of merchandise exports in 1992. The other important item on the export side is tourism. Table 13 indicates that many of the Commonwealth countries, especially the small island economies, have a net surplus on tourism. But there is not a uniform picture across all the countries in Table 13. Some of the primary product exporters are large net importers across-the-board. At the other extreme, some of the more industrialised countries in Asia have significant service exports across all the broad categories (including transport and other services which are typically debit items for CDCs). In between, the smaller economies reveal comparative advantage in travel (tourism) and/or labour income.

The absence of improved access for non-executive labour does not mean, however, that there is little scope for significant future gains for developing countries arising from the present GATS Agreement. Of course there would be much greater potential for gains from a more ambitious set of offers but the entry of services into the GATT framework provides greater opportunities for reaping these benefits in future. Benefits from the current Agreement may come in a number of ways, direct and indirect. Import services whose quality or price are driven down by

Table 13: **Commercial Services trade balance of Developing Regions, 1992 (billions of US dollars)**

		Total	Africa	Asia	**Developing Regions** Latin America & Caribbean
Total	Exports	174.2	15.9	96.5	38.7
	Imports	206.2	23.5	99.0	40.7
	Balance	-32.0	-7.6	-2.5	-2.0
Transport	Exports	49.0	4.8	27.8	9.4
	Imports	85.1	11.0	43.6	16.9
	Balance	-36.0	-6.2	-15.8	-7.5
Travel	Exports	59.9	5.7	31.6	17.0
	Imports	50.7	4.3	25.6	14.4
	Balance	9.2	1.4	6.0	2.6
Other Private Services and Income	Exports	66.3	6.4	37.1	12.4
	Imports	70.1	8.2	29.7	9.4
	Balance	-3.8	-1.8	7.4	3.0

Source: International Monetary Fund, Balance of Payments Statistics Yearbook, Part 2, 1993.

liberalisation will give income gains to consumers in developing countries and improve the competitiveness of domestic production at home and abroad.

Additionally, growth in international trade and production arising out of the UR Agreements on trade in goods is likely to bring about an increase in the demand for labour services, including countries such as Malaysia, from lower wage cost developing countries. Similarly, improved market access for goods and services within a particular region may create new opportunities for regional specialisation in services. Mauritius, for example, has recently created a freeport which aims to serve a regional warehousing and distribution centre for eastern and southern Africa.

The preceding discussion establishes that there are significant opportunities for gains for developing countries, even from the relatively limited multilateral liberalisation implied by the UR Agreement on services. This is in terms both of the cost of imported services and of the scope for growth of exporting in services in line with comparative advantage. It must be recognised, however, that this comparative advantage is not likely at present to be in technology- and human capital-intensive services.

It follows that the competitiveness of those goods and services activities, for which developing countries do have a comparative advantage (and for which in the case of trade in goods the UR Agreement provides improved market access), will be influenced by the willingness of these countries to strengthen their services, infrastructure and to increase the competitiveness of supply through deregulation, privatisation, elimination of discrimination against foreign investment, and unilateral improvements in market access for foreign services. This may require revisions to investment codes that discriminate against foreign investors in the services sector, by reducing their eligibility for incentives relative to foreign investment in non-service sectors. Alternatively, it may require revisions to legislation that restrict or prevent foreign investment in specific service sectors, or reductions in the number of service-providing public enterprises in which government needs to retain full or partial ownership. Even where continued public ownership is desirable, monopoly power and resulting inefficiencies can be reduced by allowing increased competition. This approach should also be applied to utility (water, electricity, telecommunications) parastatals where partial deregulation and increased opportunities for entry by private (local and foreign-owned) operators should be encouraged. For many developing countries, however, there is neither a need for public provision of specific services, nor the local expertise or resources to permit competitive local supplies. Consider the case of direct services to international traders such as trade insurance. In many low income developing countries, creating a competitive trade insurance sector requires a regulatory environment that permits entry of foreign insurance and reinsurance firms. Any attempts at 'reserving' some of this insurance business to local firms almost certainly results in an implicit tax on trade in goods. Restrictions on the opportunities of developed economies to take advantage of their comparative advantage in a range of service activities have the effect of restricting developing economies' opportunities for trade expansion in goods.