

Institutional Reforms

7.1 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 disadvantage. This is particularly important, given the increasing role that such trade agreements have in our societies. They define a wide set of rights and obligations, yet they are arrived at in a manner that is distinctly different from the way in which 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 NAFTA or the TRIPS Agreement, which contain provisions which would 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 when governments faced an 'all or nothing' choice. Because they could have no effect on the outcome, parliamentarians had little incentive to understand the intricacies of the negotiations. Given the extent to which trade issues overlap with other issues, including those touching on the environment, it is important that the procedural reforms move deliberations about trade issues to make them 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 trade ministries. Thus when intellectual property matters are being discussed (if they are to be discussed at all), science ministers must be involved; when trade policy affects the environment there must be some mechanism for the voice of environment ministers to be heard. They could then insist that provisions be inserted that prevent a race to the bottom, and that low environmental standards (for example those associated with allowing the pollution of the world's atmosphere) be viewed as a form of subsidy which should be prohibited.

We argued in Section 3 that the fairness of the international regime should be judged not only in terms of outcomes, but also in terms of processes. There is now a large literature documenting the deficiencies in the procedures,⁹³ and for reasons already noted, these procedural deficiencies disadvantage developing countries. That is why procedural reforms – particularly reforms relating to transparency and representation – should have a high priority.

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 disagree. Meaningful participation in these discussions requires an understanding of these complexities, and knowledge of the full import of each of the provisions and how it might affect countries differently in different situations.

7.2 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 many as increasingly unwieldy. It is not the intention of this paper to provide a detailed analysis of alternative proposals for institutional reform, but rather to highlight its importance, and to emphasise 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 makes negotiations cumbersome and difficult. This has been used as an excuse for the 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 replaced. In other areas of democratic decision-making, especially those based on consensual processes (as in *principle* trade negotiations are supposed to be), the principle of *representativeness* is well accepted. A small group of countries is chosen to reflect the various interests and constituencies: the largest trading countries, the United States, EU, Japan and China; a representative or two of the middle-income countries, for example Brazil and one other country; representatives of the least developed countries; a representative of the Cairns Group, etc. Each would then consult with the countries that they are representing on a regular basis. An open and transparent process would ensure that the views and voices of all are heard.

Another requirement is a new body within the WTO responsible for assessing the impacts of proposed trade provisions on development and developing countries and also for assessing the 'trade diversion' as against 'trade creation' effects of bilateral and regional agreements. Its objective would be to look objectively at the consequences of alternative proposals for all the countries of the world, recognising that economic science is not at a stage where there is agreement about the 'right' model. Thus, the body might attempt to assess the impact of the allegedly non-trade distorting agricultural subsidies in a world in which there are capital constraints.

Other features of an expanded WTO Secretariat might include an independent body to assess countries in crisis, 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 it adequately within existing structures. Helping low-income countries to 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.⁹⁴

While a limited assistance programme 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 liberalisation, 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 is an important prerequisite of institutional fairness.

The bulk of technical assistance is provided by international organisations. Both the World Bank and the WTO have increased their technical co-operation 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 less than 1 per cent of its total annual budget – less than US\$500,000 – for technical co-operation activities (Michalopoulos, 2000).⁹⁵