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TRADE POLICIES AND COMMITMENTS IN THE WORLD TRADE ORGANIZATION*

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The views expressed in this report, for which the author assumes full responsibility, may not necessarily be in agreement with the views of the Organization.

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SUMMARY

The purpose of this report is to review the main commitments undertaken in the framework of the World Trade Organization (WTO) and the policy implications of such agreements. A study is made of the content of the agreements and the dilemmas faced in implementing them. As the trade agenda has expanded and more and more policies have come under international scrutiny, the delicate balance between trade policy and trade negotiations must be fine tuned. Under the new trade system, governments must deal with the tension between the need to develop new exports and the pressure to harmonize policies.

Nevertheless, the commitments undertaken in the framework of the World Trade Organization outline the course, if not the scope, of trade reform in Latin America. In moving from general issues on the trade agenda to the specific matters that are being dealt with by WTO, it becomes apparent that the countries still have considerable manoeuvring room. Clearly, the new international standards have different long-term and short-term effects when it comes in terms of the manoeuvring room left open on the domestic and the external markets, and in the region as a whole as compared with individual countries.

I. INTRODUCTION

In today's world, any country that wishes to grow must become competitive and play a more dynamic role in the international market. Recognizing this situation and thanks to the changes that have taken place on the international market, the countries of the region have substantially changed their trade policies, as well as their negotiating strategies.

Many of the governments of the region have found that when wisely applied, some of the limitations which the international agreements place on economic policy can actually help strengthen the position of public policy when faced with pressures from the domestic private sector. Basically, the WTO agreements ensure greater transparency and predictability in many areas of trade policy (Rodrik, 1995); for example, information on changes in regulations regarding imports and subsidy programmes must be published in advance. Similarly, the steps taken to consolidate tariffs have enhanced the credibility and predictability of reform and deregulation programmes.

In broader terms, the World Trade Organization provides an opportunity to determine the direction (if not the degree) of changes in trade policy. This is possible thanks to the agreements on tariff consolidation, safeguards, subsidies and others. In other words, WTO can be used as a multilateral anchor for economic policy. This is useful inasmuch as it shows the private sector what the new rules of the game are and helps channel potential political pressures along a different track. Nevertheless, there is still a great deal of room for manoeuvring.

There are several differences between the WTO agreements and the new regional agreements, such as the North American Free Trade Agreement (NAFTA) and the European Union the latter requiring a higher degree for harmonizing policies. The World Trade Organization still allows for considerable discretionality on the part of the economic authorities. It does not create obligations or rights for individuals, as NAFTA does; under NAFTA, an individual can take the initiative in setting the conflict settlement mechanisms in action.

In the case of services, for example, the NAFTA mechanism is based on full liberalization, with only a few exceptions (negative lists). The World Trade Organization, on the other hand, follows the usual GATT practice on goods, according to which only services offered as a result of negotiation (positive lists) are liberalized. Consequently, in WTO discretionality can be maintained simply by leaving a particular set of services out of the list provided for under the General Agreement on Trade in Services (GATS). In the bounded sectors, in fact, the primary commitment is that of granting most-favoured-nation treatment to foreign suppliers. National treatment or commercial presence is not obligatory, but rather is a matter to be negotiated. As a result, national treatment has been offered only to a very few sectors, and within each sector, not every modality was included. The General Agreement on Trade in Services also allows for this commitment to be revoked, subject to negotiation with the countries concerned.

The objective of this study is to review the main commitments that have been undertaken in the framework of WTO and to assess their implications for the design of trade policy. This introduction is followed by five sections. In the following section, the content of the agreements and the dilemmas faced in implementing them are reviewed. In general terms, the WTO agreements are significant from two standpoints. They point, on the one hand, to the issues that need to be dealt with on the new trade agenda and, on the other, to possible formulas that could be applied in future trade negotiations. This section shows how, as the trade agenda has expanded and more and more policies have come under international scrutiny, the delicate balance between trade policy and trade negotiations must be fine tuned. Under the new trade system, governments must deal with the tension between the need to develop new exports and the pressure to harmonize policies.

In the third section of this report, the agenda of the World Trade Organization itself is discussed, and specific issues are analysed in terms of the new parameters of trade policy. First, the matter of special and differential treatment for developing countries is discussed. This discussion is followed by an analysis of the negotiations conducted under the agreement on intellectual property rights. Finally, the issue of harmonizing trade policy in regard to subsidies and safeguards is taken up. In this connection, the cost of the new system and the manoeuvring room that remains are examined.

The fourth section brings together and summarizes the two previous sections. The general aspects of the agenda, which were discussed in the second section, are reviewed and discussed in terms of the detailed analysis presented in the third section. In the fifth section, the institutional implications of WTO for the countries of the region are discussed. The final remarks stress the different effects which the new international standards will have, from three different standpoints: the long-term and short-term impact; the manoeuvring room that is left at the domestic and at the external levels; and the impact on the region as a whole and on the countries individually.

II. THE NEW AGENDA OF THE INTERNATIONAL TRADE SYSTEM

The agenda of international trade negotiations has grown as integration has increased or, to put it another way, as the old agenda of shallow integration has been completed. Robert Lawrence (1993) defines shallow integration as the reduction of protection at the border, including the elimination of tariffs and quantitative restrictions. The concepts of shallow and deep integration are equivalent to the concepts of negative and positive integration in the traditional theory of customs unions (Johnson, Wonnacot and Shibata, 1986).

A. HARMONIZATION OF NATIONAL POLICIES

The Uruguay Round marked the end of the era of negotiations focused on trade policy instruments applied at the border. As tariffs were reduced to lower and lower levels, it was only natural that cross-boundary instruments would become more important. As a result of this process, the regulatory mechanisms applied by individual countries became more apparent, competing with each other and starting a regulatory race between countries. As frictions arose between the different economic and political systems, the issue of the disparities among regulations and their impact on trade became more important.

Economic integration thus reached a turning point, and issues pertaining to public policies gradually became negotiable. The Uruguay Round was an important step in that direction, as the negotiations went well beyond the question of measures at the border and included issues such as intellectual property, investment and services (Tussie, 1994).

Thus, the nature of trade policies changed, as they began to include domestic policy measures and tools which had previously been beyond the scope of international negotiation. As the "outer layer" of tariff protection was removed, the governments were required to account for their actions on a wider range of issues. Measures which had previously been viewed as only having an indirect impact on trade policy were now seen as factors that "distort trade". The World Bank handbook defines non-tariff barriers as all public regulations and government practices that introduce unequal treatment for domestic and foreign goods of the same or similar production. Under such a broad definition, it is obvious that they constitute the single most important obstacle to the growth of international trade (Olechowski, 1987, p. 121).

In brief, as trade integration deepens, the spectrum of public policies that can influence trade relations has broadened. Consequently, the conventional distinction between trade policy and economic policy has disappeared, and more and more, governments have found it necessary to discuss domestic policy with their trading partners.

Simply stated, up to now, when governments opened up their trade, they did so in terms of the tariff nomenclature. The parties concerned exchanged concessions on products without questioning the rules of the game at the domestic level. The only commitment required at that level was to grant national treatment to foreign products once they had crossed the border and the tariff had been collected. Now, however, negotiations are centred less and less on products for which national treatment was in order, and more and more on policies that determine competitiveness. The reason for including domestic policy issues on the international agenda is not merely to prevent the application of measures to replace a tariff that has already been eliminated. It is also a matter of expanding the competence and the sphere of action of WTO.[1]

Competitiveness is affected when the variations in costs from country to country go beyond certain parameters which, although difficult to define, are considered standard by the country or countries concerned. This difference in costs will be influenced by subsidies, intellectual property protection, labour standards and environmental regulations. When the differences in costs between countries are significant, there will be pressure to avoid or reduce regulatory powers.

Such pressure was particularly evident at the Uruguay Round during the discussions on intellectual property. Although the negotiations on services and trade-related investment measures (TRIMs) were basically aimed at achieving a degree of harmonization, they did not get very far when it came to reducing regulatory powers. Actually, it was in these two areas that the discussions most clearly brought to light the twofold effect of the boom of capital markets, on the one hand, and on the other, of the revolution in the trade policies of the developing countries in general and of the countries of the region in particular. In the course of the Uruguay Round, many countries deregulated their policies on foreign investment and on services in order to support their trade liberalization efforts and strengthen their competitiveness. At present, the countries are actually racing against each other in their effort to attract foreign capital and offer conditions that will encourage investors to stay. Thus, the negotiations that centred on the old system of rewards and punishments for foreign investment, which marked the beginning of the Uruguay Round, are no longer relevant.

B. WAYS TO ACHIEVE HARMONIZATION

The inclusion of domestic regulatory policies on the agenda of trade negotiations raises new questions; in particular, it will be important to establish the scope of harmonization that is to be sought.

If regulations are to be brought in line with each other, a number of contradictions must be addressed. In the first place, not all the measures which, in theory, should be harmonized are equally important in ensuring the sustainability of liberalization. If all regulations are seen as arbitrary "distortions", it would seem logical that all these "distortions" should be eliminated in order to increase efficiency. If this approach were taken to extremes, it would mean that the impact of all public policies on competitiveness would need to be investigated.

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[1] The lengthy process of reducing trade barriers may be compared to draining a lake only to find mountain peaks at the bottom, or, to put it in more pessimistic terms, to peeling an onion (Kahler, 1994, p. 8).

One possibility that has been tried out in this regulatory race is that of mutual recognition of regulations. This principle has occasionally been used in the framework of the European Union, as it moves towards deep integration (Pelkmans, 1987; Kahler, 1993). Under the mutual recognition approach, the objectives of harmonization are negotiated, but each country is free to decide on what measures it will apply in order to achieve those objectives. When countries choose mutual recognition of regulations, they accept a high degree of institutional power. Hence, this option is only feasible when the trading partners already have already had an opportunity to know each other well in the framework of a regional agreement. Mutual recognition is feasible if the countries concerned have already tested the ground and trust that their objectives are compatible. Given the large number and the disparity of regulations currently in force in the WTO member countries, this alternative is difficult to apply.

When mutual recognition is not feasible, other methods are sought to halt the regulatory race by means of negotiations aimed at harmonization. Harmonization may be either shallow (or negative, according to Johnson, Wonnacot and Shibata, 1986) or deep (positive, in the traditional terminology).

In the first case, harmonization is focused only on corrective or preventive measures aimed at ensuring that the agreed liberalization is not eroded by non-tariff barriers. In this regard, the Uruguay Round has tried to establish more precisely under what circumstances it is appropriate to apply countervailing duties, antidumping tariffs, technical or sanitary regulations and customs procedures.

In the second case, a deeper (or positive) harmonization is sought which extends to the regulations governing production in each country. The problem then is to determine what domestic policies each country is prepared to put on the negotiating table. This dilemma has already arisen —in the Uruguay Round negotiations on intellectual property rights—, and it will be a key issue when it comes to setting environmental and labour standards.

Negative harmonization is only aimed at ensuring the effectiveness of the liberalization that has been negotiated. Actually, measures at the border are still the main trade policy tool used, and harmonization measures are designed with that in mind. In deep, or positive, harmonization, the idea is to implement common policies in certain fields, and access to markets is contingent upon the adoption of such common policies. Acceptance and implementation of harmonization becomes a prerequisite for gaining access to markets. Harmonization thus becomes a condition of trade, and goods that are not produced in accordance with the agreed conditions or standards lose the right of access. For instance, article XX(e) of the General Agreement, which deals with general exceptions, provides that countries may refuse to accept goods produced by prison inmates. The problem is whether to extend this precedent to other conditions that are less generally accepted, such as those relating to trade union rights, the right to a minimum wage, protection for child labour and sustainable development.

On the other hand, the constant effort to reduce institutional differences that are seen as creating "distortions" could get stuck in a vicious cycle, and any policy (or at least, the absence of a policy) might affect competitiveness and would thus be subject to negotiation. If negotiation becomes a condition for gaining access to markets, instead of achieving deep integration, the countries would be risking fragmentation. The growth of trade would be blocked to the extent that there was non-compliance with the growing list of conditions for access. The other side of the coin is the development of an "imperial harmonization", wherein conditions regarding production and defined according to the preferences of the central countries (Lawrence, 1993).

This trend towards harmonization of economic policies has two effects. On the one hand, at first sight, "binding" certain policies in the framework of WTO helps mark the general direction of economic reforms. It makes the course of economic policy more credible. On the other hand, if it is taken beyond certain limits, it can become a hindrance to the sustainability of outwardly oriented growth. International agreements have increasingly delimited the boundaries of action within which the countries can participate in international trade. Compared with the past, freedom of action has been limited. But this does not mean it has completely disappeared.

It is within these boundaries that the new trade negotiations must be conducted. On the one hand, enough manoeuvring room must be maintained to allow for "active" development policies to be pursued; on the other hand, however, external credibility must be strengthened, and this may entail imposing some limits on manoeuvring room.

III. THE NEW RULES OF THE WORLD TRADE ORGANIZATION (WTO) AND THE MARGINS OF FREEDOM THEY ALLOW

A. SPECIAL AND DIFFERENTIAL TREATMENT

The granting of special and differential treatment was conceived as a way to offset differences in income levels among countries. It was implemented in two ways: as a means of protecting economic development and dealing with issues such as balance-of-payments vulnerability, and as a means of gaining preferential access to international markets. The first is reflected in article XVIII of GATT-1947. The second was implemented through the Generalized System of Preferences (GSP) (Tussie, 1988, pp. 43-47; Hindley, 1987).

The two streams were merged in the Enabling Clause developed at the Tokyo Round of multilateral negotiations. This represented the high point of special and differential treatment. The generalized system of preferences, however, never constituted a contractual obligation, and was therefore subject to a number of discretionary criteria.

The Uruguay Round marked a turning point in the evolution of special and differential treatment. On the one hand, the developing countries were more willing to take on commitments. At the same time, pressure was brought to bear on the relatively more developed countries to persuade them to waive the benefits of special and differential treatment.

As a result, the pillar that had supported this treatment was significantly weakened, and a difference was established between two major categories of countries: the developing countries, on the one hand, and on the other, the least developed countries (47 countries identified as such by the United Nations) along with the low-income countries (those with an annual per capita GDP of less than US$ 1,000).[2] Under the new agreements, the first group normally has a grace period at the end of which it must take full responsibility for all commitments undertaken. In the case of the second group, the requirement to fulfill obligations is not so strict (ECLAC, 1994; Weston, 1995).

Special and differential treatment still remains in the following forms:

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[2] The following Latin American countries are included in this group: Bolivia, Guyana, Honduras, Nicaragua and Haiti.

a) Extension of deadlines for meeting certain obligations under the agreements, such as the elimination of prohibited subsidies (article 27 of the Agreement on Subsidies and Countervailing Measures) or the adoption of an intellectual property regime (article 65.2 of the Agreement on Intellectual Property Rights.

b) Exceptions granted to least developed countries with regard to the fulfilment of certain obligations; for example, they are exempt from the requirement to reduce subsidies for agriculture (article 16 of the Agreement on Agriculture).

c) De minimis waivers when the volume of exports is minimal, or subsidy or dumping margins are also minimal.

d) Flexibility in regard to dispute-settlement procedures involving a developing country, which may request that at least one member of the panel or group set up to study the case be from a developing country (article 8.10 of the Understanding on Rules and Procedures Governing the Settlement of Disputes. Likewise, there is a commitment to exercise "restraint" when bringing up a dispute with a least developed country (article 24).

e) A commitment to allow the developing countries to have "increasing participation" in trade in services (article 4, General Agreement on Trade in Services).

It may also be inferred that there is still a certain margin of differential treatment with respect to bounded tariffs. The countries of the region have bounded all their tariffs, mostly under ceilings which range from 30% to 35%. This level is significantly higher than that offered by the developed countries.

To summarize, special and differential treatment is limited to the granting of longer time periods for countries to comply with international standards. It also allows for minor concessions that were made to mitigate the impact of the adjustment the countries of the region need to comply with the higher standards imposed under the new obligations. Special and differential treatment has been particularly eroded in the area of intellectual property.

B. INTELLECTUAL PROPERTY

The Agreement on Trade-related Aspects of Intellectual Property Rights, known as TRIPs, is the best example there is of deep, or positive, harmonization. As a result, extraterritorial protection is granted for intellectual property, and the Agreement has gradually been incorporated into the body of international economic law (Reichman, 1993). Prior to this, intellectual property only had to be given national treatment, i.e., countries were required to follow certain disciplines in regard to the protection granted, but they were free to decide which fields would be included and what level of protection would be granted (Maskus, 1990).[3]

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[3] This is similar to a directive issued by the European Union where minimum standards were established for government action.

The countries of the region have been at a great disadvantage in regard to the granting of patents in virtually every field of technology. The only exception that is made for the developing countries is that they are given more time to fulfill their obligations.

The countries of the region, which have traditionally been net importers of technology, have expressed their desire to see different preferences granted with regard to patenting, depending on the sector concerned and the potential for learning that it offers. In some cases, they have chosen to buy technology from abroad, whereas in others, they have obtained it through copies. The pharmaceutical industry is the one that is most often excluded from patent protection. There has been much controversy about medicines, given the high cost of research and development, the potential for access to process technology and the central role pharmaceuticals play in health policy.

The TRIPs agreement introduced the obligation to harmonize standards for six types of intellectual property: copyrights, trademarks, geographical designations, industrial design, patents and integrated circuit design. Guidelines are also provided for the enactment of laws to enforce intellectual property rights. The main obligation imposed on patent holders is to provide full information on the content of the innovation. But TRIPs does not require local use of the invention (article 27.1).

In general terms, it may be said that the Agreement establishes two distinct categories of products. Literary and artistic works, computer programmes and data bases are in the first category, and receive protection for fifty years. To a certain extent, trademarks are included in this group, since they are protected almost indefinitely, on the one condition that trademark owners continue to supply the domestic market.

The second category covers industrial patents. Any innovation that meets the requirements of newness, innovative effort and practical application may be patented. Patents are granted for twenty years. In the field of biotechnology, patents are granted for microorganisms and for plant varieties. There is no provision, however, for patents to be granted for the biological procedures involved in producing animals and plants or for the plants and animals themselves. The provisions of the Agreement in the area of biotechnology will be reviewed in 1999 (article 27.3).

1. Cost of the new regime

The industrialized countries have achieved a transfer of rents as a result of intellectual property provisions, whereas the countries of the region will be faced with an increasingly concentrated supply.

The existence of a new intellectual property regime could give rise to a number of different scenarios. The adverse impact on technology-importing countries will include the higher royalty payments to foreign innovators, the corresponding loss of opportunities for local investment in research and development, the higher product prices resulting from monopolistic systems and increased overall dependency on imports. The true social cost of these measures could well be greater than any trade concession obtained at the Round.

In order to meet the requirements established by the Agreement, the countries of the region will have to make major adjustments in their own intellectual property regimes. In many cases, these changes will be very costly. Moreover, the countries of the region usually do not have enough specialists in this

field to advise the three branches of government (executive, legislative and judiciary) on how to incorporate the new international rules into national legislation.

As far as patents are concerned, all the countries of the region will have to grant protection to pharmaceuticals and chemical products, which are usually excluded from the patent system. In addition, those countries that have intellectual property legislation will need to bring it in line with the Agreement. Under Chile's system, for example, patents are granted for 15-year periods; this now have to be changed to 20 years, in order to conform with TRIPs. Other countries have exceptions for the 20-year period that are not envisaged in the Agreement, while some use a different date for determining when protection begins (Braga, 1995). Those countries of the region that have heretofore required that products be manufactured locally, in order to encourage the producing company to locate in the country, will now have to grant patents for products even if they are not manufactured in the country.

As regards copyright provisions, TRIPs classifies software as a literary work. Most of the countries of the region do not have any protection for software. The few that do provide it, do so through legal means rather than a copyright law.

A similar situation obtains with regard to protection for plant varieties; in this case, the Agreement provides for the granting of patents or for the application of a special system, or a combination of both. Most of the countries in the region exclude this type of protection, and only three —Argentina, Peru and Chile— have their own special system (Ramassotto, 1995). Mexico, for its part, has undertaken to introduce protection for plant varieties and to comply with the standards of the International Union for the Protection of New Varieties of Plants two years after signing NAFTA (Braga, 1995).

What these examples show is that the countries of the region must make major changes in their legal systems in order to meet the standards established by TRIPs. Ensuring compliance with intellectual property regulations may be one of the most difficult points, given the countries' limited administrative resources and inefficient legal systems.

It has been argued that once they enact intellectual property legislation, the countries of the region will be compensated with an increase in innovations, since property rights encourage investment and innovation. There is little empirical evidence, however, to support the idea that granting patent protection will necessarily bring about an increase in R&D or encourage innovation.

2. Manoeuvring room maintained

Clearly, with these new obligations, the countries of the region will have to work harder to compete and, in particular, to acquire technological innovations. Nevertheless, the Agreement does allow for a fair degree of freedom in the following six areas:

Firstly, transition and grace periods are provided. The purpose of the transition period is to allow time for the sectors concerned to adjust to the new rules of the game that will be in force once the intellectual property law is adopted.

Article 65 of TRIPs establishes a series of transition periods totalling 10 years for the entry into force of the rules, as follows:

a) Under paragraph 1, all members have a one-year grace period, as of 1 January 1995, the date of entry into force of WTO;

b) Paragraph 2 provides that the developing countries may postpone for four additional years the application of the measures established in the agreement;

c) Paragraph 4 provides that the developing countries that are required under the Agreement to enact a patent law for sectors that had not previously enjoyed such protection (the pharmaceutical sector, in most of the countries of the region), may postpone for five more years the application of the provisions of TRIPs.

In this context, it should be noted that the transition periods are the same for developing countries and for the least developed countries.[4]

Secondly, licensing may be required under certain conditions (article 31). "Adequate remuneration" must be provided, and licenses may only be granted in the fields of public health, nutrition and other areas of public interest in national emergencies, for non-commercial public use, to correct practices aimed at discouraging competition, or when the owner refuses to grant the patent on "reasonable commercial terms and conditions".

Thirdly, patents are not retroactive. Retroactive protection applies to products whose patent application is under review, products that are being developed or products that are not yet on sale in countries that are in transition, in the process of moving towards the adoption of stricter patent laws. Thus, patents are to be granted only in respect of applications submitted after the entry into force of the Agreement.

In the fourth place, articles 40 and 41 are aimed at preventing the creation of artificial barriers to entry. Members are authorized to specify in their national legislation which patenting practices or conditions "constitute an abuse of intellectual property rights having an adverse effect on competition".

In the fifth place, the final text of TRIPs does not include a definitive interpretation of parallel imports. On the one hand, TRIPs grants exclusive rights to the patent holder (article 28). The owner of a patent on a product or a procedure (paragraphs a-b) may prevent third parties from making, using, offering for sale, selling or importing for such purposes, without his consent, the patented product or a product obtained directly as a result of using the patented procedure. We may deduce from this article that parallel imports of patented products are not permitted.

On the other hand, other articles in the Agreement seem to contradict this provision. In fact, article 6 provides for the exhaustion of the right. Under the legal provisions regarding exhaustion, the holder of an intellectual property right is the only one who is authorized to place the protected object on the market and to receive compensation on that one occasion. But, once the object has been placed on the market, it "flies with its own wings", and the holder of the right may not claim any further compensation nor may he prohibit the continued circulation on the market of the protected product. The extinction of

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[4] The least developed countries do not enjoy any special exemptions, except a vague commitment on the part of the developed countries to encourage technology transfer (article 66). This commitment is not extended to the developing countries (article 66, paragraph 2).

the right allows for the free circulation of goods. Without this legal provision, in the marketing chain a third party would always be liable for payment of compensation to the owner of the patent.

The adoption of the principle of exhaustion of the right could be interpreted as an implicit acceptance of parallel imports, i.e., the possibility that a licensee might import an object which he has purchased legally on a different market.

In this matter, therefore, national legislations are free to define such exhaustion provisions as they deem appropriate. Thus, for example, whereas parallel imports are prohibited under Chilean and Mexican legislation, they are allowed in Argentina under legislation adopted by the Congress in October 1995. Under the law currently in force in Brazil, imports made by parties voluntarily licensed by the patent holder are allowed.

Finally, since the Agreement is an integral part of WTO, which has implemented a comprehensive dispute settlement mechanism, cross retaliation between non-compliance in this field and the access of goods to the market will now be more legitimate. The recourse to trade sanctions has led a principle of United States commercial law to be transferred —albeit in mitigated form— to international law. Under WTO, cross retaliation is a last resort, the third in a three-step procedure envisaged under the new dispute settlement mechanism.

In theory, cross retaliation provides a way for the countries of the region to refuse to grant intellectual property protection to a developed country that illegally or unilaterally prevents the access of its goods to the market (Reichman, 1993). In practice, this option is limited by the possibility of lateral payments having to be made in the context of the Generalized System of Preferences (GSP) or the hemisphere-wide negotiations currently under way.

3. Evolution towards a GATT-plus regime

The TRIPs Agreement settled the main differences on this issue in favour of the innovating countries, but it has not put an end to bilateral and plurilateral pressures, particularly those originating in the United States. These pressures have arisen mainly in connection with the margins of freedom mentioned above. There have even been threats of trade sanctions, particularly as regards exclusion from GSP, which is not consolidated in WTO, and hence might not be easy to defend under the new dispute settlement mechanism (see section 5).

In Argentina, for example, the legislation currently being considered had to be changed several times in order to bring it in line with the suggestions made by the United States. This led to much lobbying between the legislative and executive branches, and much concern among legislators as the United States Embassy intervened at crucial stages of the negotiation. Three votes had to be taken because the President partially vetoed it, and then kept on asking for changes. The struggle for its adoption was the lengthiest and most difficult action taken by the legislature in 1995.

One point of friction that arose had to do with automatic licensing. TRIPs (article 31) allows for recourse to licensing requirements when "the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time". The United States wanted the Argentine legislation to establish conditions in this regard that went beyond those set forth in TRIPs.

A second point in dispute was the introduction of licensing requirements when the patent holder incurs in monopolistic abuse, as set forth explicitly in TRIPs article 40, paragraph 2. The United States opposed this reference, arguing that it was not necessary to include monopolistic abuse in a patent law because it was already envisaged in anti-trust legislation already in force in the country.

In the third place, there was friction and disagreement with regard to the powers of the regulatory agency and the administrative implementation of the law. These aspects are not covered by TRIPs, but are of crucial importance to the implementation of the law.

A fourth issue that was controversial was that of the transition period for the entry into force of patenting requirements for pharmaceutical products. The United States held that Argentina could not be considered a developing country and therefore should not be granted the benefits allowed to developing countries, which are granted a longer transition period than the developed countries. In the beginning, the legislature opted for the 10 years allowed for developing countries under TRIPs. In the course of negotiations, the period was reduced to eight years and then to five. However, the executive decree establishing the regulations to the October 1995 law left the transition period without effect.

The precedent of Argentina shows that the type of sanction that can be expected is the removal of GSP benefits which, as mentioned above, are not established in WTO and have therefore become a system of rewards and punishments that is used to impose policies outside the framework of the international organization. It also brings to light the increasing demands on the three branches of government that the move towards deep integration entails. Should the Congress insist that the provisions of the regulatory decree are unconstitutional, the dispute between the executive and the legislative branches of government would be brought to the judiciary.

C. SUBSIDIES

The Agreement on Subsidies and Countervailing Measures is an example of negative harmonization, insofar as it covers trade measures per se. As the longest text produced by WTO, it reflects the importance of the new agenda item as well as of the discrepancies that arise when an active policy of access to external markets is followed. The end result has been a restriction of manoeuvring room to apply incentives in exchange for a restriction of manoeuvring room to apply countermeasures. The economic authorities should gradually abandon some of the incentive policies currently in force and adjust their regimes so as to be able to implement countervailing measures.

Article 27 of the new agreement recognizes the fact that subsidies can be an integral part of development programmes (previously included in article 14 of the Tokyo Round Codes). Beyond this general endorsement, however, the effect is actually to restrict aggressive subsidy programmes of the scope, variety and intensity of those applied by Taiwan Province of China or the Republic of Korea in the initial stages of their outwardly oriented industrialization process (Amsden, 1993).

The agreement establishes two "trigger" clauses that considerably restrict the "graduation" of the countries of the region. In the first place, the developing countries are to be allowed to graduate when they have achieved export competitiveness, this being defined as the achievement of a share of more than 3.25% of the world market for the product concerned, for two years in a row. A product is defined as

an item (four digits) included in the harmonized system. The higher the level of aggregation, the more remote is the likelihood of reaching this threshold.

In the second place, a very restrictive indicator has been established. All countries having a per capita GDP of over US$ 1,000 must assume the same obligations. Five countries in the region are exempt from this, either because they have a lower per capita GDP or because they fall within the United Nations classification of least developed countries. These countries are Haiti (least developed), Bolivia, Honduras and Nicaragua, Guatemala and Guyana.

The agreement goes way beyond the Tokyo Round Codes on a number of important issues relating to development policies. For the first time, it has been possible to define, albeit in very general terms, the concept of subsidy. A subsidy is defined as any form of financial contribution from the government or any income or price support mechanism that creates an advantage for certain enterprises or branches of production. The disciplines envisaged in the agreement only apply for certain specific subsidies, i.e., those granted to certain companies, industries or groups of companies. In order to provide some order in the listing of subsidies (and consequently in the circumstances under which countervailing measures can be taken), they are classified into three groups, namely those which are prohibited, those which are actionable and those which are non-actionable.

Subsidies for the use of domestic inputs or inputs explicitly destined for export are prohibited.[5] Developing countries are required to eliminate subsidies on domestic inputs within five years and those on products explicitly made for export within eight years; this period may be extended to 10 years by the Committee on Subsidies and Countervailing Measures established to supervise the agreement. It should be borne in mind, however, that during the transition period, claims for countervailing measures can be made. The low-income countries listed in annex VII to the Agreement are exempt from this prohibition, provided their per capita GDP is under US$ 1,000.

Non-actionable subsidies are immune to countervailing measures. These are subsidies of a general nature that have no direct impact on prices, e.g., subsidies applied to basic research and development activities, pre-competitive development, assistance to backward regions or assistance in complying with new environmental regulations or standards. Within certain parameters, these subsidies are permitted, although a country may appeal to WTO if it feels that it is being harmed by a subsidy, even if in principle the subsidy is non-actionable.

Actionable subsidies are all those "specific" subsidies (i.e., those that are granted only for certain industries or companies) that have an effect on export prices. These may give rise to countervailing measures if it is shown that they have a detrimental effect on national production. The agreement outlines quite a restrictive procedure for determining serious harm and calculating the margin of subsidy. It is assumed that there is serious harm if the subsidies exceed 5% of the value of the export. However, if a developed country wishes to initiate action against a country of the region, it must show evidence of the harm. This leaves more room to the countries of the region than to the developed countries in regard to

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[5] It should be borne in mind that the following are not subsidies: temporary admission (duty-free entry of goods or parts for subsequent export) and drawbacks or tariff reimbursement for imported inputs used in the production of exports. These measures are not prohibited. The time limits for reimbursement are not regulated at the international level, so each country is allowed to established its own and to be as lax or as strict as it deems appropriate. In the United States, for example, reimbursement may be obtained up to five years after the entry of the goods.

offsetting measures, inasmuch as the burden of proof is reversed for the developed countries, which must prove that they are not causing harm.

The agreement includes other measures that benefit the countries of the region, granting them special and differential treatment. There are innovations which provide safeguards for small or incipient exporters, as well as the de minimis waiver first used in the North American Free Trade Agreement and then included in WTO.

Under the de minimis waiver, any investigation relating to the application of a countervailing duty against a country of the region will be terminated if the subsidy involved is small. In order for a developing country to benefit from this clause, which is set forth in article 27.9, the level of subsidies it grants must not amount to more than 2% of the unit value of the product (3% in the case of countries listed in annex VII). The de minimis provision also applies if the export concerned does not account for more than 4% of the total volume of imports of the product, provided the share of all the developing countries together is not more than 9% of total imports of the product.[6]

Containment of the countries that already have a very visible presence on the world markets opens up a window of opportunity for the countries of the region. Such countries will not be able to introduce new subsidies and will have to eliminate existing export subsidies within a 10-year period. For the countries of the region that are only beginning to develop their exports, checking those countries will have a positive effect on two fronts.

On the external front, it leaves them space to increase their share of the market. Moreover, small exporters will have even more freedom of action. The de minimis waiver (as regards the requirement to keep total imports of the product below 4%) allows some room for growth.

On the domestic front, the legitimate possibility of containing the countries that are more actively involved in international trade strengthens the sustainability of the liberalization process. The countries of the region must now complete their opening-up and deregulation process by adopting flexible mechanisms —compatible with WTO— for the application of countervailing duties (as well as effective safeguard mechanisms) to support the trade reforms that have been implemented.

Beyond the aggressive use of manoeuvring room to gain access to international markets, there are other positive aspects to reducing the degree of discretionality in the application of countervailing measures. The use of such measures will now be limited in three ways.

In the first place, there is the sunset clause. Under the sunset clause, all countervailing duties must be eliminated within a five-year period, except in cases when the competent authorities determine, on the basis of a new investigation, that eliminating the tax would encourage the continuation or reinstatement of the subsidy and would cause harm to national producers.

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[6] This clause is an indication that developing countries will need to avoid supporting products in which their exports are concentrated, which are normally considered sensitive products on the international market. In order to avoid reaching this threshold, the countries will need information on the market share held by their competitors in each case. The regional agencies can play a crucial role in centralizing and disseminating such information, so that the countries can avoid granting subsidies that are counterproductive or do not have an export outlet.

In the second place, a company cannot individually initiate a claim for offsetting action; rather, the claim must be made in the context of "domestic industry" of a similar product. The request for offsetting action is considered to have been submitted in the context of domestic industry "if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application" (article 11.4).

Thirdly, for the first time all affected parties (not only domestic producers but also importers, consumers and companies that are users of intermediate products) have the right to present evidence.

In any case, national authorities must keep abreast of any negotiations being conducted by exporters if offsetting action is initiated in foreign markets. The Agreement on Subsidies grants legitimacy to pricing agreements aimed at settling and eventually interrupting investigations on subsidies. The authorities of the region must be on the alert in this matter because if such compensatory pricing takes place, it would mean that the subsidy is no longer needed, and unnecessary transfers to the exporter should be terminated.

D. SAFEGUARDS

1. Article XVIII.b

The safeguard that is most often used by the developing countries is the one provided for in article XVIII.b. This article (which was added to GATT in 1955) has given the developing countries a significant margin of action in regard to the imposition of quantitative restrictions for the stated purpose of protecting the balance of payments and maintaining an adequate level of reserves.[7] In the past, this recourse was used not only for this reason, but also for the purpose of facilitating implementation of import-substitution programmes.

The understanding reached at the Uruguay Round does not entail new binding commitments nor does it significantly curtail this freedom of action. Import quotas are not prohibited. As a result of the negotiations, however, the developing countries have undertaken to use tariffs to deal with balance-of-payments problems. In addition, they have undertaken to give notice of the measures they take and to hold consultations with the Committee on Balance-of-Payments Restrictions, an organ of the Council for Trade in Goods.

In this regard, the freedom of action that is maintained under WTO can play a significant role in correcting shortcomings on the international capital market. Should there be a recurrence of past financial weaknesses, countries would again have to resort to article XVIII.b; in the present international economic environment, however, it will clearly be much more difficult to invoke this article for purposes of protecting the domestic market, as was done so often in the past.

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[7] It is well known that quantitative restrictions have a distorting effect, but because the balance of payments is slow in reacting to tariff increases, countries have usually resorted to the use of quotas (Stewart, 1989).

Resistance to the quotas on certain vehicles that were imposed by Brazil in June 1995, in an effort to deal with its growing trade deficit, is a good example of the difficulties that can be encountered in attempting to use this recourse. The Republic of Korea, the United States and Canada opposed the Brazilian quotas, and threatened to ask for countervailing measures on the grounds that Brazil's reserves were high enough to preclude the need for quantitative measures under article XVIII.b. Brazil's reserves, which totalled US$ 47 billion, could finance twelve months' worth of imports. Although two-thirds of this amount is accounted for by short-term reserves, the precedent shows how difficult it will be to justify imposing quotas that are not clearly intended to protect the balance of payments.

Given the financial weakness of the developing countries and the ever-present threat of external shocks, they must have some degree of freedom to protect their balance of payments and to respond immediately to adverse situations. Consolidating tariffs at higher levels than those applied also provides temporary protection for balance-of-payments purposes, without the need for countervailing measures.

2. Article XIX

One of the main concerns of the developing countries, as regards access to markets, has been the need to contain the proliferation of illegitimate measures (or voluntary agreements on restriction of imports). To accomplish this, it was essential to revise the safeguard provisions of GATT (article XIX).

This was a particularly controversial issue in the GATT negotiations. The safeguard clause contained in GATT-1947 was envisaged as a safety valve that would allow countries to impose temporary tariff surcharges when they were flooded with imports. Thus, under article XIX, higher tariffs could be imposed temporarily, provided the country impose them on a most-favoured-nation (MFN) basis. Nevertheless, article XIX has rarely been invoked because of the MFN requirement and the requirement that compensation be provided to the exporters affected.

A pragmatic consensus emerged from the Uruguay Round that allows for the selective application of import quotas and relaxes the compensation requirement. The new agreement prohibits the imposition by the developed countries of new "grey-area measures" and proposes that all existing ones should be eliminated within a four-year period, except for one specific measure per country, which must be eliminated before 31 December 1999. Likewise, all safeguard measures adopted under article XIX must be eliminated within eight years from the date on which they were adopted or within five years from the date of entry into force of WTO, whichever is first. All measures are subject to a sunset clause, and will have a maximum duration of eight years, provided the authorities confirm that the measure continues to be necessary and that it can be shown that the adjustment is being made. In any case, after one year the measure must be gradually liberalized for as long as it is applied.

The agreement also includes de minimis waivers and provisions regarding the imposition of countervailing and antidumping tariffs for the developing countries. It states that safeguard measures are not to be applied to a developing country when its share of total imports of the product in question is less than 3%, and when imports of the developing countries as a whole are not more than 9% of the value of all imports of the product.

The agreement represents a compromise. Although it sanctions selectivity, it includes time limits on safeguards and procedures for determining damage. In any event, security of access will not necessarily be enhanced, inasmuch as the adjustments to the safeguards mechanism will divert protective

measures towards more intensive use of antidumping tariffs, the rules for which are purely procedural in nature.[8] The relative ease with which antidumping tariffs can be applied has turned this measure into the spearhead of a new protectionism.

E. MANAGEMENT OF TRADE DISPUTES

One of the most important innovations embodied in the World Trade Organization is the creation of a credible Dispute Settlement Body (DSB). The Dispute Settlement Body will deal with all disputes arising from the agreements set forth in the Final Act, and its powers will be considerably increased. The creation of this body is the most significant contribution of the Round, inasmuch as it provides security and predictability in the multilateral trade system. The Dispute Settlement Body will set up special groups to review claims presented by member countries, and it will adopt reports, monitor implementation of recommendations and resolutions, and authorize retaliatory measures. This represents a significant improvement with respect to GATT, under which dispute settlement procedures were scattered, some falling to the GATT Council and some to the committees set up to administer the Tokyo Round codes.

The WTO mechanism is different from the previous one in two important respects. In the first place, there must be consensus against the setting up of panels or the adoption of panel reports; under the previous system, consensus was required before a positive decision could be made. Thus, under the new system, the parties to a dispute will not be able to block indefinitely decisions that are contrary to their interests. In the second place, decisions of special groups may be appealed to a standing appellate body.

The creation of the Dispute Settlement Body has not changed the method for establishing compensation or penalties, the magnitude of which is still determined at the discretion of the parties to the dispute. The Dispute Settlement Body is not empowered to take the initiative. Moreover, a last-minute amendment to the antidumping agreement proposed by the United States has, in practice, removed antidumping proceedings from the competence of the Dispute Settlement Body. In essence, the Dispute Settlement Body has not been granted authority to challenge the substance of national investigations; only procedural disputes can be brought before the Dispute Settlement Body. Consequently, antidumping rules remain subject to discretionary interpretation under domestic legislation. This is the greatest gap left by the Uruguay Round.

On other matters, however, the Dispute Settlement Body helps make procedures more automatic. This greatly facilitates efforts to obtain compensation and the implementation of penalties in trade disputes. The Dispute Settlement Body is a credible multilateral negotiating body, and it is to be hoped that the countries will increasingly come to it to settle their differences. There is already evidence that use of this system is on the increase. The countries of the region should bear in mind that they are more likely to have claims brought against them now than in the past. This means that they need to receive

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[8] As is well known, antidumping and countervailing measures have proliferated in recent years, despite the negotiations underway in the Uruguay Round. Antidumping legislation is the most often used tool in the area of trade. As the Latin American countries have liberalized their trade, they have also resorted to antidumping and countervailing tariffs. This could be counterproductive, inasmuch as intraregional trade contributes significantly to growth (Tussie, 1996).

training in this area. Peru and Chile can use the WTO dispute settlement mechanism, for example, to bring up the matter of France's decision to consider the term coquille St. Jàcques a "appellation of origin" that cannot be applied to shellfish from Peru and Chile. Venezuela and Brazil have presented a case against the United States, claiming that environmental regulations are being used in discriminatory fashion. This dispute was brought before the standing appellate body, which decided in favour of Venezuela.

IV. SIMILARITIES BETWEEN THE GENERAL TRADE AGENDA AND THE SPECIFIC AGENDA OF THE WORLD TRADE ORGANIZATION

As it is currently presented, the international trade agenda is aimed at achieving, over the long term, an increasing harmonization of practices. The clearest example from the Uruguay Round is the outcome of the negotiations on TRIPs. In the post-Uruguay Round agenda, the issues of labour rights and the environment are headed in the same direction, although with much less impetus. The road towards harmonization of regulations is certainly a slow, uphill path, at least in the multilateral sphere.

Over the short term, however, WTO allows significant room for discretionary action, particularly in regard to the domestic market. This margin of action is no longer unlimited, as it was in the heyday of special and differential treatment, when the developing countries could avoid offering reciprocity in negotiations and broad consolidations, or they could resort to article XVIII.b. Nowadays, although nearly all tariff positions have been consolidated, there is still manoeuvring room in the domestic market to consolidate above the tariff levels actually applied, and there is some leniency (or potential differences of interpretation) with regard to commitments based on article XVIII.b.

In comparative terms, it may be said that the countries have greater freedom of action within their own boundaries than in their efforts to strengthen their position on the international market. While the de minimis waiver initially allows manoeuvring room for small-scale exporters, it ultimately acts as an external check, especially for the less dynamic (or sensitive) sectors of international trade.

By the same token, the de minimis waiver guarantees windows of opportunity for small-scale exporters taken individually. This is not the case, however, when all the countries are considered together. The aggregate volume of exports from the developing countries can easily surpass the 9% threshold beyond which the provision no longer applies to the developing countries. Thus, in sensitive sectors, the present level of access is not likely to increase significantly in overall terms.

Finally, there is likely to be a resurgence of antidumping measures and a general tendency for protection measures to follow this course, since it seems to be the measure that is least regulated by WTO. The relative ease with which antidumping measures can be applied and the failure to consolidate the generalized system of preferences are the weakest links in the trade system, as far as the participation of the countries of the region in the trade system is concerned.

As importers, the countries of the region need to adapt their legislation to the more precise terms in which these commitments are couched. The commitments reduce discretionary powers and make it all the more necessary to ensure transparency in decision making (Guimaraes and Naidin, 1994).[9]

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[9] Perhaps the greatest advantage of these agreements is that they could potentially provide a basis for regional integration processes that are already underway.

V. INSTITUTIONAL IMPLICATIONS OF IMPLEMENTING THE INTERNATIONAL AGREEMENTS

It will be noted from the above that WTO offers an opportunity for marking the general direction of trade reforms (although not their depth or intensity). The World Trade Organization can help ensure transparency in incentive policies or sharpen their focus, so that they are targeted to newly emerging export sectors that do not represent a volume large enough to cause a reaction on the external market. Thus, the multilateral framework can be useful in preventing incentives from being diverted to highly concentrated sectors that have a strong lobbying capacity and greater access to international financial markets.

It should be borne in mind that the linkage between trade policy and trade negotiations will be weakened, as there is likely to be tension between the export development needs of individual countries and the trend towards harmonization of policies that is implicit in the new trade system. States will need to have sufficient institutional capacity to adjust to the new international commitments. They will need to rebuild their institutions in order to apply more complex policy tools (Hoekman, 1995).

Efforts to bring domestic legislation in line with TRIPs standards, for example, can create friction between the executive branch of government, which negotiates the international agreements, and the legislative branch, which is responsible for changing the laws. The legislature gets involved in the process, even though it may not have all the necessary information on the matter, as it tries to interpret the agreements and legislate on them. The manoeuvring room that is left and the grey areas that allow for different interpretations enable the legislature to take initiatives that may lead to conflict with the executive branch.

The authorities will have to deal with the political fallout of this situation, in which the historic concepts of sovereignty, independence and national autonomy are at stake (Lanus, 1995). In other words, the legislative adjustment calls for considerable political negotiation at the domestic level. A power struggle could have undesired consequences and lead to political and economic instability instead of the modernization and progress that should result from participation in the international trade system (Rodrik, 1995).

There are also other aspects in which adapting national law to the agreements may require unprecedented institutional change. One of these has to do with the notification requirements included in the agreements. Notifications are the basic input for the WTO surveillance system, and each member is responsible for providing those inputs. The notifications that are required involve so much detail that the countries will have to assign staff for the specific purpose of gathering the information requested.

The notification obligations include reporting to WTO on the adoption of restrictive import measures taken for balance-of-payments purposes (or any change in restrictions or in the agreed schedule

for the removal of such measures). The agreements also call for annual notification of changes in laws and regulations. In the case of tariffs, a detailed description must be given of the type of measure applied, the criteria used for their administration, product coverage and the impact on trade. In addition, notification must be made of changes in sanitary and phytosanitary measures, as well as changes in technical regulations. Information must also be provided on the adoption of any standards that are different from the internationally agreed ones.

As far as subsidies are concerned, notification is required on the following aspects: form of subsidy (e.g., loan, tax concession, etc.); level of subsidy per unit, or at least the total annual amount budgeted for the subsidy in question (including, if possible, the average subsidy per unit granted the year before); purpose of the subsidy; duration of the subsidy; statistical data permitting an assessment of the trade effects of the subsidy (Agreement on Subsidies and Countervailing Measures, article 25). Notification obligations extend to the introduction or modification of sectoral incentives, even if exceptions have been agreed.

Few countries of the region have the necessary institutional structure to comply with the aforementioned notification requirements. The technical and administrative staff do not always have the necessary training to be able to obtain the microeconomic data and information at the subnational level that are called for under the new international rules of the game. In order to comply with these requirements, the governments will have to establish new agencies or institutional structures to provide the detailed information needed to prepare notifications. Statistical data and information must be available on a regular basis, in areas not systematically monitored by the authorities; consequently, they will now need to be better prepared in this regard.

Furthermore, in areas in which trade has already been liberalized, there are indications that there will be an increase in domestic claims pertaining to the application of countervailing or antidumping duties. The institutional mechanisms for dealing with these claims will need to be adjusted to international standards for determining damage and proving the existence of dumping or subsidies, as well as the level of such subsidies. Negotiating mechanisms will have to be created to accommodate the interests that are at stake.[10]

In brief, the new trade policies need to go hand in hand with an ongoing effort to improve negotiating strategies. The countries of the region must be aware of the need for greater professionalism, not only in the executive branch, which has traditionally been responsible for international economic negotiations, but in the other branches as well, which will be increasingly involved in the process. The legislative branch is important because it is responsible for transferring international regulations to the national level, and the judiciary will be called on to settle differences between the different branches of government, as well as between individuals, that may arise from the application of the new regulations.

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[10] See Tussie (1996), regarding the case of Argentina.

VI. FINAL REMARKS

The World Trade Organization poses a number of challenges to both the domestic and the foreign sectors of individual countries. Internally, institutions are challenged to change procedures, to compile more and more information, and to become more transparent. Sectoral and thematic agreements require notification of changes, and governments need to be prepared to provide the information requested. The World Trade Organization's Trade Policy Review Mechanism will call for follow up and for periodic reviews of trade policies.

This mechanism could be used to improve transparency in trade policy and enhance access to information by the parties concerned at the local level. The need to centralize information could lead to the creation of a national agency in charge of monitoring trade policy. Such an agency would be responsible for drawing up and publishing a regular report on the impact of the trade and investment policies adopted (Hoekman, 1995).[11] This monitoring can ensure, for example, that subsidies do not generate a claim for countervailing measures by determining whether it matches the list of permitted and actionable subsidies, or if it does not, determining whether it falls within the range of the de minimis waiver, as regards the value of the product and its share in the export market.

On the external front, the concept of "graduation" still needs to be defined and reformulated. The Uruguay Round agreements were excessively restrictive in that they established a cut-off line for countries having a per capita GDP of over US$ 1,000. The traditional division between developed and developing countries no longer exists. But the concept of emerging industry is still valid. Moreover, the financial weakness of the economies cannot be ignored. Therefore, a WTO verification system should be devised to draw up criteria for defining "graduation". Agreement would have to be reached as to whether a country should "graduate" in all areas at once or whether it should do so in stages, issue by issue, sector by sector. Agreement is also needed as to which authority should decide at what point a country "graduates" from special and differential treatment. It would be useful for the countries of the region to establish a surveillance system in order to ensure that concessions and transition periods granted under the agreements are not used to tip the balance in one direction or the other at crucial moments of the negotiations.

As it is presently posited, the international trade agenda is geared, for the long term, towards increasing harmonization of domestic policies. Over the short term, however, manoeuvring room in the domestic market has been maintained. Although the margin of action is not unlimited, as it was in the

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[11] Mexico, for example, has already taken steps to consolidate its promotion policy by merging the Fondo para las Exportaciones de Productos Manufacturados (FOMEX) and the Instituto Mexicano de Comercio Exterior (IMCE), under the aegis of the Banco Nacional de Comercio Exterior (BANCOMEXT).

heyday of special and differential treatment, it still exists to a considerable degree. In comparative terms, there is less freedom of action on the international market than on the domestic one. The de minimis margins operate, to begin with, as manoeuvring room for small-scale exporters. Ultimately, however, they could act as an external "corset" that would restrict the growth of exports, especially in sensitive or slow sectors of the international market.

International commitments provide a framework for the implementation of trade policy. The World Trade Organization still allows for a significant degree of discretionality. Just as special and differential treatment, at its peak, allowed for a broad margin of action in applying import-substitution policies without necessarily determining either the depth or the extent to which such policies were implemented, the same situation obtains today with regard to trade reforms. WTO sets the course for trade liberalization, but not the extent or the speed with which it is carried out. Significantly enough, even with bounded tariffs, a respectable margin is still left for effective protection of activities considered to be of priority at the national level.

In terms of general market access strategy, the countries will need to replace the usual fiscal transfers by state support for activities with strong externalities, which are usually more sheltered from countervailing or antidumping measures. In this area, WTO leaves room for wise policies aimed at avoiding countervailing measures. The countries should try not to compete on markets for standardized goods, and concentrate their subsidy policies on correcting obvious market deficiencies or situations involving substantial hidden costs. There are serious market deficiencies, for example, in the area of dissemination of information about foreign markets, e.g., foreign consumer preferences, marketing channels, design changes, compliance with technical standards, environmental labelling and quality requirements. No restrictions are placed on market studies or on the whole range of publicly funded market information programmes carried out by export-promotion agencies. In this regard, there are major openings to be explored; this is already being done by PROCHILE in Chile, EXPORTAR in Argentina, PROEXPORT in Colombia and others (ECLAC, 1995). Consideration might also be given to the possibility of providing preferential financing for exports.[12]

In the area of pre-competitive support, the public sector can and should consider providing ample support to the private sector's efforts to comply with international quality standards developed by the International Organization for Standardization (ISO). The private sector will need more and more of such support as it strives to improve production systems and obtain technical advisory services so as to qualify for certification. ISO certification will be the key to gaining access to international markets; without it, companies wishing to export will have to go through a long and costly procedure in order to sell their products. Beyond facilitating access to markets, compliance with ISO standards can reduce hidden costs within a couple of years (Sykes, 1995).

There are also possibilities for direct support. Consideration might be given, for example, to setting up a system for reimbursing indirect taxes, both for the product exported directly and for inputs and components used in making the final product, including energy, fuel, oil and catalysts. Any mechanism aimed at putting national exporters on an equal footing with international competitors is legitimate. In this regard, there is no prohibition against granting export credit so as to give exporters access to international

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[12] UNCTAD (1996) has conducted a study of export financing schemes that are compatible with the agreements.

interest rates and even to allow a subsidy margin following the guidelines of the relevant OECD agreement.

Subsidies may also be granted to enable industries to move towards compliance with environmental standards, provided the subsidies are transparent and that notification requirements are met. Such subsidies must not amount to more than 20% of the cost of making the necessary adjustments, and they must be granted on an exceptional, one-time basis. This type of restructuring helps improve the efficiency of enterprises.

Finally, a programme could be put underway to support incipient exports. A moderate temporary subsidy could be offered which would be ended once the exports concerned reached a certain threshold (in terms of price or of share of overall export revenues) and were no longer considered incipient. Such support programmes are not entirely legal for countries that have a per capita GDP of over US$ 1,000, but if they are considered to constitute "pre-competitive" support, they can be used, albeit cautiously. As long as these lines of export are small and their market share remains below 4%, they will be exempt from countervailing measures (unless the aggregate share of the developing countries exceeds 9%).

Still along this same line of incipient exports (or exports that can be kept outside the scope of countervailing measures), consideration might be given to the possibility of granting subsidies to all companies that export products falling within the same tariff classification and whose overall exports remain beneath a pre-established ceiling, which must be determined on a case-by-case basis. As long as the subsidy is granted to all the companies concerned, it cannot be defined as a specific subsidy and hence is not obviously prohibited. Chile, for example, applies a simplified system of reimbursement to exporters; this consists of returning up to 10% of the value of goods exported as reimbursement of taxes that affect the cost of inputs, provided total annual exports do not exceed a given amount (ECLAC, 1995). This type of support could be defended under de minimis provisions.

Despite these open windows, it should be borne in mind that in the context of bilateral negotiations, many countries of the region have undertaken "not to innovate" and to gradually eliminate their subsidy programmes. This means that introducing new programmes could give rise to claims at the bilateral level.

A number of disputes on jurisdiction have already arisen in connection with investigations that began before the WTO Agreement entered into force, but which were completed afterwards. In other words, the Agreement is not retroactive. Subsidies that were granted in the past may be subject to countervailing measures under the more lenient rules of the Tokyo Round Codes. Likewise, it should be noted that in the United States, subsidies can be appealed for 15 years from the date on which they were granted.

More and more, the countries of the region will need to include as an integral part of their export strategies the establishment of offices to promote access to external markets through contacts with consumer associations or intermediate users of export products. In this regard, consideration should be given to the possibility of setting up joint information and liaison offices in the framework of the regional agencies. This could be very useful in supporting the growth of exports and reducing vulnerability of access, and in promoting access to international markets, in view of the fact that under the new procedures relating to countervailing duties, safeguards and antidumping measures, users are entitled to make their interests known. Activities aimed at promoting access will be increasingly fruitful, especially if they are carried out jointly, inasmuch as de minimis provisions are more restrictive for the developing countries as a whole than for individual countries.

Independently of the limitations which these commitments entail, the era of indiscriminate and massive fiscal incentives for exports is over, not only because of the fiscal restrictions prevailing in most countries of the region, but for other important reasons as well. In the first place, as the trade policies applied by the countries of the region have reduced and even eliminated their traditional antiexport bias, incentives are not so important in general terms. In the second place, many of the incentives used in the past were designed to counteract the adverse effect of the restrictive trade practices followed by the transnational corporations, which were reluctant to produce for competition on the international markets. The accelerated pace of globalization and the growing shift of direct foreign investment towards external markets also make it less necessary (and sometimes unnecessary) to support exports by means of fiscal transfers. At present, the competition for incentives is to be found mainly in the race to influence decisions on the location of investment flows (UNCTAD, 1995). In this regard, the progress made in the Uruguay Round was very tentative. The TRIMs agreement contains only two requirements: to eliminate incentives to increase the degree of national integration, and to maintain a positive foreign exchange position (Sauvé, 1995).

It is within these parameters that trade policy should operate. The extent to which production patterns change will depend mainly on what domestic policy options are available and on the impetus that the growth of the international market can provide.

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