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Seattle and Beyond
A WTO Agenda for the New Millennium

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Executive Summary

Representatives of the 134 member nations of the World Trade Organization will meet in Seattle in November 1999 to launch the newest round of multilateral trade negotiations. The new round should be seen as a "bottom-up" process in which countries liberalize, not merely to gain "concessions" from other countries, but primarily to reap the economic rewards of their own liberalization.

The emphasis of the new round should be on reducing trade barriers; the greatest potential for economic gains is in services and agriculture. The United States should seek the global elimination of agricultural export subsidies, a drastic decline in domestic price supports, and a steep cut in trade barriers, especially the tariff spikes that protect certain favored farm sectors. In services, which now account for almost a quarter of global trade, barriers to foreign competition should be lowered across sectors, with exceptions kept to a minimum.

Trade barriers against manufactured goods should be lowered aggressively, with tariffs now below a 5 percent tariff rate reduced to zero and higher tariff spikes reduced to 5 percent and eventually phased out. All duties on information technology should be eliminated and international commerce on the Internet kept duty-free. Advanced economies must keep their commitments to phase out all textile and apparel quotas by 2005. WTO rules on antidumping should be tightened to prevent such laws from being abused for protectionist purposes. The WTO's dispute settlement mechanism, although on the whole a tremendous success, is in need of reform with respect to the enforcement of WTO rulings. Specifically, countries that refuse to implement adverse rulings should be required to offer offsetting liberalization rather than be subject to trade-restricting sanctions.

No compelling need exists for adding foreign investment and intellectual property rights to the WTO agenda, given existing WTO rules and ongoing unilateral reforms. The new round of talks should avoid entirely competition policy and the enforcement of environmental and labor standards, which could threaten to overwhelm the WTO administratively while broadening the scope for sanctions.

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Free traders must wage their campaign domestically, building support at home for opening markets, and internationally, pressing foreign countries to join in eliminating trade barriers.

Introduction

On November 30, 1999, representatives from the 134 member nations of the World Trade Organization will meet in Seattle to begin the newest round of multilateral trade negotiations. The agenda will center on trade in services and agriculture, as agreed upon at the end of the Uruguay Round of negotiations in 1994, but the scope of the talks could expand to include tariffs on nonagricultural goods, electronic commerce, intellectual property, antidumping rules, investment, competition policy, labor and environmental issues, and the WTO's own dispute settlement mechanism.

The potential gains for the United States and the rest of the world from the continued liberalization of global commerce are enormous. Removing trade barriers in agriculture and services alone could deliver hundreds of billions of dollars in annual net economic welfare gains to the world economy, raising living standards for workers and their families and stimulating efficiency and innovation among producers.

Since its inception half a century ago, the General Agreement on Tariffs and Trade (now the WTO) has facilitated a spectacular drop in global trade barriers from their destructive peaks of the interwar years. The result has been an explosion in the global volume of trade and foreign investment. Today, thanks in part to trade liberalization through GATT/WTO, the U.S. economy is flourishing at a time when Americans have never traded more with the rest of the world. Another successful round of multilateral trade negotiations could enhance American prosperity and spread the benefits of trade to a wider circle of countries.

What follows is an analysis of the role of multilateral trade agreements in fostering free trade and a review of the major subject areas that may be included on the new round's negotiating agenda. Those include some areas in which new agreements would clearly push in the direction of open markets, others in which they would just as clearly push in the opposite direction, and yet others in which the ultimate effect of new agreements is unclear. In areas that present opportunities for liberalization, we make proposals for negotiating goals; in danger areas, we make the case for keeping illiberal initiatives off the table.

Our proposals for negotiating goals are based on our own assessment of how best to use the opportunity of the upcoming round to push forward liberalization and strengthen the WTO system. As the discussion makes clear, our assessment frequently differs from the tentative negotiating proposals advanced by the U.S. government and the governments of other major trading nations. Accordingly, our analysis should be understood, not as a prognosis for the likely outcome of the round, but as an analysis of how the round *should* proceed.

That said, we are mindful of political realities. Indeed, according to the "bottom-up" perspective on international economic order that shapes our thinking (as explained in the next section), the modest role of the WTO is simply to facilitate decisions at the national level to liberalize in the national interest. Consequently, the WTO process can operate effectively only when the constraints imposed by national-level political realities are understood and respected. The record of "top-down" internationalism is replete with grand, windy declarations that are ultimately ignored by the signatories. For WTO negotiations to avoid that fate, their goals must match the temper of the times.

That is not to say that free traders should be passive in the face of opposition. Far from it. Reform is accomplished only with unremitting effort—organizing and energizing the constituencies with the clearest stake in liberalization and hammering away at interests that strive to block it. Free traders must wage their campaign domestically, building support at home for opening markets, and internationally, pressing foreign countries to join in eliminating trade barriers. It is the extent to which free traders have done this work at the national level at home and abroad that determines the horizons to which negotiations can profitably be extended. If the proper groundwork has not been laid, negotiations will fail; worse, they will undermine the free-trade cause by rousing

An Action Agenda for the New Round

The agenda for the new round of WTO negotiations should focus exclusively on reducing barriers and distortions to international trade in order to raise living standards and spread the fruits of economic progress to a wider circle of humanity.

Specifically, we recommend in this study that the United States and the other 133 WTO members take the following steps:

- Limit the new round to three years and seek an "early harvest" of realizable agreements if progress stalls in more contentious areas.
- Abandon the traditional "exports good, imports bad" rhetoric of trade negotiations and instead emphasize the economic reality that trade liberalization is its own reward.
- Cut global agricultural tariffs in half, and the highest tariffs more sharply, with the goal of eventually eliminating all agricultural protection; eliminate export subsidies and production-distorting domestic subsidies; allow the "Peace Clause" to expire in 2002 so that agricultural subsidies are exposed to full WTO discipline.
- Liberalize trade in services through "negative lists" that assume all service sectors will be liberalized unless specifically excluded and through cross-sector rules that emphasize basic rights to establishment and national treatment; strengthen WTO rules to encourage transparency of domestic regulations.
- Eliminate all nonagricultural tariffs below 5 percent and reduce all higher tariffs to that level, with the ultimate goal of eliminating all tariffs; reconfirm the commitment of the advanced economies to fully implement the Agreement on Textiles and Clothing by 2005; eliminate all barriers to trade in information technology products through an "ITA II," and guarantee cyberspace as a duty-free zone.
- Reform the Dispute Settlement Understanding to make additional liberalization, not trade sanctions, the chief enforcement mechanism for WTO rulings.
- Tighten the WTO's antidumping code so that domestic "fair trade" laws cannot be used as a tool for protectionism.
- Seek full compliance with the existing Agreement on Trade-Related Aspects of Intellectual Property Rights without opening the agreement to further negotiations that could undermine its positive aspects.
- Encourage further liberalization toward foreign investment through unilateral and bilateral means rather than comprehensive multilateral negotiations.
- Reject enforcement of labor and environmental standards through trade sanctions, relying instead on trade liberalization and economic development to encourage higher standards; eliminate barriers to trade in environmental goods and services; rely on multilateral environmental agreements and the International Labor Organization to monitor international standards.
- Resist inclusion of competition (i.e., antitrust) policy in the agenda, given the WTO's unsuitability to monitor and police the domestic activities of private-sector companies; pursue legitimate international antitrust issues through a bilateral, country-by-country approach.

nationalist resentment against an overreaching international authority. The debacle of the stillborn Multilateral Agreement on Investment is a case in point.

With those thoughts in mind, it must be admitted that the political realities that define the horizons of the upcoming round are not especially auspicious. The WTO is drifting into a new round rather than moving purposively toward it; if it had not been for the built-in agenda of agriculture and services talks carried forward from the Uruguay Round, it is highly doubtful that a new round would be occurring at all. None of the major trading powers has taken the initiative and offered anything in the way of a bold vision for the new round.

The U.S. government, which historically has been the leading force in GATT and WTO negotiations, is thinking small as it heads to Seattle. Since the conclusion of the Uruguay Round, U.S. trade policy has been in disarray, as evidenced by the repeated failures to renew "fast-track" negotiating authority. Despite the almost unbelievably strong performance of the American economy in recent years, political support for continued liberalization has deteriorated in the face of misbegotten fears of globalization.[1] Instead of addressing those fears head-on and unapologetically making the case for the benefits of open markets, the Clinton administration is dancing around them—supporting a new round but failing to propose any significant reforms of existing U.S. protectionist policies. A negotiating agenda of "do as I say, not as I do" might dampen protectionist opposition from the U.S. steel and textile lobbies, but it is not a prescription for effective international leadership.

Free traders should focus on getting the available gains as quickly as possible and fend off efforts to clog and corrupt the agenda with illiberal initiatives.

The European Union, meanwhile, has been much more enthusiastic about a broad and ambitious negotiating agenda—but that is not to say that it has any enthusiasm for real liberalization. Anti-globalization sentiment is stronger in the EU than in the United States, as foreign competition makes a convenient scapegoat for dysfunctional domestic policies that produce chronically high unemployment. In keeping with political conditions, the EU's proposals for the new round are much more focused on expanding international bureaucracy than on reducing national barriers to trade. Thus, the EU favors the negotiation of international rules on competition policy, and early EU proposals on foreign investment emphasize the need to "preserve the ability of host countries to regulate the activities of investors."[2] Meanwhile, the EU continues to mount a zealous defense of its own protectionism, most especially in agriculture.

Japan, the other great trading power, has never been a leader in multilateral trade negotiations. Currently absorbed with reviving its stagnant domestic economy, it has neither the credibility nor the energy to start now. In the developing world, there is at present no country or group of countries with the inclination or organizational capacity to outflank the industrialized nations in a push for aggressive market opening.

All told, national-level political conditions do not provide the necessary foundation for bold strokes or dramatic breakthroughs in the upcoming round. Free traders, accordingly, should look at these talks as at best an opportunity for incremental progress. They should focus on getting the available gains as quickly as possible and fend off efforts to clog and corrupt the agenda with illiberal initiatives.

Two important conclusions regarding procedure and logistics follow from this reading of the round's modest prospects. First, the round should have a fixed deadline of no more than three years. There has been widespread support for such a limit, but deadlines in trade negotiations have a bad habit of slipping—there is a reason that the old GATT was dubbed the "General Agreement to Talk and Talk." In the present case, though, the deadline should be firm.

Realistically, there are no gains in the cards that would justify a more protracted round; accordingly, half a loaf in three years is preferable to nine-sixteenths in six. Whatever can be agreed to at the end of three years should be wrapped up and signed; whatever is left over should be carried forward for future negotiations.

In a similar vein, the idea of "early harvests" of agreements prior to the ultimate deadline deserves support. The case for early harvests grows stronger in inverse proportion to confidence in a three-year deadline. If the deadline were really rock solid, waiting three years for a "single undertaking" would have much to recommend it. After all, a unified package of agreements allows for the possibility of cross-sector deals that can maximize the total amount of liberalization achieved. Unfortunately, however, there is a very real chance that any deadline set now will be flouted when the time comes. Under these circumstances, it is better to finalize agreements in some areas while continuing to work through more contentious subjects.

Free Trade from the Bottom Up

In determining the proper course of future WTO negotiations, it is useful to ask a very basic question at the outset: why have international trade negotiations in the first place?

That question is addressed to free traders, not protectionists. Of course protectionists oppose trade talks; they do so because they oppose open markets. But the fact that protectionists are against trade negotiations does not mean that free traders should automatically embrace them.

This suggestion might seem baffling at first, since the cause of free trade and the vehicle of trade negotiations are so inextricably connected in the conventional wisdom. But if we step back from current preconceptions and examine the underlying economic and political realities, the need to pursue trade liberalization through

international negotiations becomes much less obvious.

In trade negotiations, countries offer to reduce import barriers in exchange for other countries' offers of equivalent reductions. In other words, liberalization at home is made contingent on liberalization abroad. Indeed, according to the rhetoric of negotiations, removal of domestic protectionist policies is treated as the price to be paid for freer markets elsewhere. Countries "gain" access to other nations' markets, in exchange for which they "give up" protection of their own. Thus, in official GATT parlance, commitments to open one's own market are labeled "concessions," while other countries' commitments to open their markets are labeled "benefits."

The rhetoric of negotiations, however, turns out to be economic nonsense. The overwhelming weight of economic analysis and evidence supports the conclusion that a country benefits from opening its own markets *regardless of what policies other countries choose to pursue.*

Free Trade Is Its Own Reward

The case for free trade at home can be embellished with all kinds of technical complexities, but in the end it boils down to common sense. It is now widely recognized that free markets are indispensable to our prosperity: when people are free to buy, sell, and invest as they choose, they are able to achieve far more than when governments attempt to control economic decisions. Given that fact, isn't it obvious that free markets work even better when we widen the circle of nations from whom we can buy, to whom we can sell, and where we can invest? Free trade is nothing more than the extension of free markets across political boundaries. The benefits of free trade are the benefits of *larger* free markets: by multiplying our potential business partners, we multiply the opportunities for wealth creation.

From this perspective, it becomes clear that Americans gain from open U.S. markets even when other countries' markets are relatively closed.[3] The fact that people in other countries are not as free as they should be is no reason to restrict the freedom of Americans. When goods, services, and capital can flow over U.S. borders without interference, Americans are able to take full advantage of the opportunities of the international marketplace. They can buy the best and cheapest goods and services the world has to offer; they can sell to the most promising markets; they can choose from the best investment opportunities; and they can tap into the worldwide pool of capital.

Openness to foreign competition boosts American productivity and living standards in two basic ways. First, import penetration causes us to shift resources from import-competing sectors in which we are relatively less productive to exporting sectors in which we are relatively more productive. Thus, the workings of comparative advantage raise our nation's overall productivity by allowing us to concentrate on the things we do best.

Second, resistance to import penetration on the part of domestic suppliers causes them to reduce costs, improve quality, and otherwise increase productivity. Thus, even when foreign competitors do not succeed in expanding their market share, the spur of added competition that they provide sharpens the incentives to innovate here at home. For example, Americans today drive much better cars than they did 20 years ago—not just because many Americans drive imports. American cars are much better today, in large part because the U.S. auto industry was forced to compete at a higher level to stave off the challenge of Japanese and European competition.

Thus, contrary to the logic of trade negotiations, countries should open their markets as a simple matter of national economic interest. The benefits that come from openness to foreign competition should not be rejected just because other countries insist on sticking with benighted and dysfunctional policies.

Many free traders are familiar with the theoretical case for unilateral liberalization. Nevertheless, they dismiss any alternative to international negotiations as politically impractical. It is widely assumed that countries will undergo the political pain of liberalization only if they "get" something in return—namely, improved market access abroad, and with it

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improved business opportunities for exporting firms. According to this view, which enjoys overwhelming acceptance in contemporary U.S. trade policy circles, trade negotiations may be based on economically questionable premises, but for free traders they are the only game in town. Furthermore, in this conventional conception, trade negotiations are dominated by considerations of "reciprocity"—that is, countries are motivated to liberalize, not by the good it will do them, but by the quid pro quo they can win in return.

That belief, however firmly entrenched, is demonstrably incorrect as a matter of historical fact. Not only *should* countries liberalize because it serves their national economic interest, but in the big picture that is precisely what they *do*.

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Why Countries Liberalize

The past couple of decades have witnessed dramatic reductions in trade barriers around the world, and by and large those bold moves toward freer trade have occurred outside the context of trade negotiations. Countries as diverse as Australia, New Zealand, Argentina, Bolivia, Peru, Chile, the Philippines, Thailand, Indonesia, and India have decided unilaterally to forsake the old autarkic model of import substitution in favor of greater integration into the global economy. The driving force for sweeping change in those countries was not tough bargaining or the prospect of a quid pro quo but the realization that protectionism was causing economic stagnation. In other words, protectionist countries have changed their policies in order to catch up economically with more open countries. When liberalization is unilateral, it goes without saying that considerations of reciprocity play no role; rather, the impetus for reform comes entirely from changing perceptions of national economic interest.

Even when liberalization occurs in the context of negotiations, it often fails to follow the reciprocity model. Consider the case of our partner in the North American Free Trade Agreement, Mexico: It began dismantling protectionist policies on its own in the mid-1980s, and those initial unilateral reforms were actually far more sweeping than the additional reforms it promised under NAFTA. The NAFTA negotiations were then undertaken at Mexico's initiative, despite the fact that it still had more trade barriers than either the United States or Canada and thus relatively more to "give up" than to "gain" through negotiations. Mexico pushed for NAFTA primarily as a means of locking in prior unilateral reforms; the Salinas administration believed that it would be more difficult for future administrations to undo those reforms if they were made a matter of international obligation. Here again, then, considerations of the national economic interest in liberalization were paramount.

A similar dynamic explains China's bold offer of sweeping market-opening commitments during its WTO accession talks with the United States in 1999. China had been officially seeking GATT and then WTO membership for 13 years, over which time negotiations dragged on and on with little progress. Then, suddenly, in the course of a few weeks, China agreed to almost everything the U.S. government had been asking for. Why the change of heart? It seems clear that China's leadership came to the conclusion that a new round of market reforms was necessary to reverse the country's recently flagging economic performance; like Mexico in the NAFTA talks, China endeavored to use international negotiations to ram through needed domestic policy changes and then insulate those changes from later reversal. (Unfortunately, the Clinton administration unwisely rejected the Chinese offer, and talks then sputtered in the wake of the Belgrade embassy bombing.)

Of course liberalization also occurs through conventional reciprocity-driven swapping of "concessions." The point here, though, is that the conventional model is not the only, or even the most important, path to liberalization. The real energy propelling liberalization around the world over the past couple of decades has been at the national level. When countries perceive that it is in their economic interest to open their markets, they do so—without worrying especially about what reciprocal offers of market opening they may receive. On the other

hand, when countries do not believe that liberalization is needed, negotiations are doomed to achieve only marginal gains.

The conventional understanding of trade liberalization can be thought of as a top-down vision of international order. In this vision, the relatively open world trading system is something imposed from above by international institutions and agreements. This interpretation, however, distorts the reasons for which countries should liberalize trade and why they usually do. However at odds it may be with received wisdom, a bottom-up vision of international order is actually much more consistent with both economics and political reality. According to the bottom-up view, the bedrock of the relatively liberal international trading system is national-level decisions that openness at home is in the national interest. Freedom of international exchange thus flows up as a necessary consequence of predominantly unilateral decisions at the national level.[4]

How Trade Talks Can Help

What then is the role for international negotiations and institutions in the bottom-up vision of trade liberalization? When appropriately structured and limited, trade agreements can play an important role in facilitating liberalization and especially in consolidating prior gains.

In the first place, linking liberalization at home with liberalization abroad can greatly strengthen the political prospects for dismantling domestic trade barriers. For one thing, the economic benefits of combined liberalization are greater than those of acting unilaterally: While liberalization pays even if other countries remain protectionist, the payoff is richer still if other countries follow suit. Thus champions of international liberalization have a more appealing product to sell. Furthermore, while reforming protectionist policies brings economic benefits, it usually faces concerted political opposition from affected import-competing interests. If that lobbying pressure can be counteracted by the pro-trade lobbying, not just of import-using interests but also of exporting interests eager for improved access to foreign markets, then the chances of overcoming the opposition are enhanced considerably.

Probably the greatest assistance that international negotiations lend to trade liberalization, though, is in consolidating and institutionalizing prior gains. Once countries have decided to open their markets in the furtherance of their own national self-interest, those decisions can be harder to undo by subsequent protectionist-minded governments if liberalization has been enshrined as an international obligation. Thus, trade agreements can "lock in" reforms by imposing additional political constraints on their reversal. Mexico's pursuit of NAFTA, discussed above, was motivated primarily by such considerations. Similarly, the recent defeat of legislation to impose quotas on U.S. steel imports was achieved largely because such legislation would have amounted to a blatant violation of U.S. obligations under WTO agreements.

Avoiding the Pitfalls of Reciprocity

While trade negotiations can assist the process of liberalization, there are potential drawbacks as well. First, trade negotiations can actually undermine political support for open markets by fostering protectionist misconceptions and thus breeding a hostile political culture. As discussed above, the conventional "reciprocity" model of trade talks is premised on the protectionist notion that imports are harmful and trade barriers are prized strategic assets. By following that model, trade negotiators and their supporters end up validating the very ideas that give rise to protectionist pressure in the first place.

Because of the reciprocity model, protectionist assumptions and attitudes color every aspect of how trade agreements are currently negotiated and evaluated. Trade negotiators, in the process of championing freer trade, insist that a "bad deal" (i.e., one in which we liberalize more than other countries do) is worse than no deal at all. They oppose domestic reforms outside the context of negotiations on the ground that our own bad policies are "bargaining chips" that should be retained for their exchange value. More ominously, they refer to

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liberalization without reciprocity as "unilateral disarmament." And when an agreement has been reached, supporters focus on the benefits to exporters, not importers. They tout the benefits of reducing foreign trade barriers but say little or nothing about the benefits of reducing our own.

By adopting the reciprocity model, free traders forfeit the opportunity to educate the public about the true benefits of open markets. That defect was not especially important in the past when trade policy was hammered out in back rooms by experts and insiders. Now, however, trade issues engage the attention and passions of the broader public. And what the public sees in the often-heated debates over trade policy is not a contest between true free traders and protectionists but a disagreement between optimistic mercantilists and pessimistic mercantilists. The optimists, supporters of trade liberalization, highlight the new export opportunities created by opening markets abroad; the pessimists dwell on the supposed threat of increased imports posed by opening markets here. Neither side, though, challenges the fallacious "exports good, imports bad" worldview.

Meanwhile, although free traders push optimism when they are trying to sell trade agreements, they unwittingly corroborate the pessimists' fears when they are actually negotiating those deals. Thus, our trade negotiators never tire of claiming that the U.S. market is the most open in the world. Of course, within the logic of trade negotiations, that is a sensible bargaining position, since it supports the conclusion that the United States should not have to "give in" on this or that issue. The American public, though, hears those claims, and many people conclude that the United States has been shortchanged in past negotiations. Skepticism about future negotiations is therefore understandable. Similarly, U.S. trade negotiators complain incessantly about other countries' trade barriers and their failure to live up to past agreements. Again, that line makes sense at the negotiating table, since it pressures our trade partners to make additional "concessions." The American public also hears those repeated complaints, which confirm many people's suspicions that the U.S. government is always being outnegotiated or even cheated. Trade liberalization therefore looks like a losing proposition.

Trade policymakers can avoid those pitfalls by abandoning the old reciprocity model in favor of a new approach to international negotiations. Under the new approach, policymakers would explicitly recognize what is in fact the case—namely, that open markets at home are the primary benefit of participation in trade agreements. That recognition would create an entirely different negotiating dynamic—it would replace haggling over reciprocity with "coordinated unilateralism."

Unlike that of reciprocity-based negotiations, the goal wouldn't be to "win" at the bargaining table by "getting" more than you "give." Rather, the express purpose of negotiations would be for each country to gain by reforming its own policies and to maximize that gain by linking domestic reforms to liberalization abroad. Reforming one's own policies would be a central negotiating objective rather than the downside of the transaction, while coordination would strengthen the political case for free trade by adding the benefits of liberalization abroad to those of market opening at home.

Such an approach still leaves plenty of room for tough bargaining. Under coordinated unilateralism, however, the focus would be on the integrity of the overall agreement, not on any country-by-country tallying of "concessions" given and received. Specifically, the measure of success would be an agreement that reflected a serious international commitment to free-trade principles—as evidenced by the fact that a "critical mass" of countries had agreed to commit to some minimum threshold of liberalization. And in measuring the level of commitment of various countries, what matters is the extent of liberalization agreed to in the end; whether that end result is achieved through new reforms, or simply through an agreement to lock in previously made unilateral reforms, should be irrelevant.

Under this approach, if there is not sufficient international interest in meaningful and significant commitments, then no agreement is

reached. Countries are then free to continue to liberalize unilaterally. Going it alone will not mean a loss of "bargaining chips" or leverage in subsequent negotiations; if such negotiations do occur, countries will receive full "credit" for any liberalization achieved in the interim.

While coordinated unilateralism would represent a sharp break from the current rhetoric of trade talks, the divergence from current practice would be much less dramatic. In a study of the Uruguay Round negotiations, J. Michael Finger of the World Bank has found that the reciprocity model does a very poor job of explaining what actually happened. That model would predict that countries' "net concessions" should be close to zero; in fact, however, an analysis of the tariff commitments of 33 countries shows that net concessions varied dramatically from country to country. Meanwhile, interviews with 10 different negotiating delegations found none that had actually tallied concessions given versus those received (either within the tariff negotiations specifically or across the range of all Uruguay Round Agreements). There was broad agreement, however, about the importance of ensuring that each county made an "appropriate contribution" to tariff cutting. In this regard, Finger found that countries did receive "credit" for prior unilateral cuts when they agreed to bind their rates at the currently applied levels.[5]

In addition, the coordinated unilateralism model fits very well with the record of the post–Uruguay Round sectoral negotiations—the Information Technology Agreement and the agreements on telecommunications and financial services. For all three agreements the challenge was to enlist a critical mass of countries to agree to particular liberalization thresholds. In all those talks, the United States exercised significant leverage despite the fact that it already had a zero tariff rate for semiconductors and offered only to lock in current levels of openness in telecommunications and financial services. Other countries considered the lock-in by itself a valuable U.S. contribution; furthermore, U.S. participation in the agreements gave them legitimacy and thus bolstered other countries' confidence in each other's commitments. Because of its leverage, the U.S. government was able to walk away from the financial services talks when it was dissatisfied with some of the offers from key participants; in the end, negotiations resumed and a stronger package of commitments was achieved.

So how would coordinated unilateralism differ from the status quo? The difference would be primarily rhetorical, not substantive. But in politics rhetorical changes can be extremely important. In the present case, a shift to coordinated unilateralism would allow trade policymakers to continue to reap the political advantages of international liberalization without at the same time salting the earth with protectionist nonsense.

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Keeping Negotiations on Track

The other major problem with trade negotiations, in addition to their mercantalist assumptions, is that they can veer off in the wrong direction. Instead of reducing government interference in trade and investment flows, misguided international agreements can actually increase such interference. That risk has grown in tandem with the increasingly ambitious scope of trade negotiations.

The original focus of trade agreements was on border measures that discriminate overtly against foreign goods—namely, tariffs and quantitative restrictions. Over time, though, as tariff levels have fallen and import quotas have been relaxed and eliminated, the scope of trade negotiations has expanded to include nontariff barriers—domestic policies that discriminate against or simply inhibit international commerce. Thus, such areas as product standards, food safety regulation, subsidies, and intellectual property protection have been swept within the purview of trade policy.

As the reach of trade agreements into domestic policy has extended, it has become increasingly plausible to argue that any policy area that "affects" trade—and practically every public policy has some effect on trade—deserves to be included on the trade agenda. In particular, people who call for the negotiation of international labor and environmental agreements through the WTO are able to

make a seductive argument: If the WTO requires national governments to protect the intellectual property rights of software companies and pharmaceutical manufacturers, why shouldn't it require, or at least allow, national governments to protect the environment or the rights of workers? Are those objectives somehow less valuable than the profits of multinational companies?

If such thinking carries the day, there is a serious risk that future trade negotiations will end up doing more harm than good. First, they could create broad new exceptions that allow national governments to close their markets because of social policy considerations—for example, restricting imports from countries that do not guarantee a particular minimum wage or require certain air quality standards. Alternatively, trade agreements could impose on national governments ill-considered new international regulatory requirements, compliance with which would then be enforceable through the WTO dispute settlement process. (A fuller discussion of labor and environmental issues is provided in a later section.)

Such unfortunate developments can be resisted effectively only if free traders remember what makes trade negotiations worth pursuing in the first place. Trade agreements are beneficial insofar as they facilitate the opening of national markets to foreign competition. If they subvert that objective—whether by conferring international legitimacy on new forms of protectionism or by saddling the world with a new layer of international regulatory bureaucracy—they deserve the opposition, not the support, of believers in free trade.

In the end, a credible willingness to accept no agreement rather than a bad agreement may be the best guarantor of avoiding a wrong turn.

The risk that trade agreements will wind up increasing rather than decreasing government interference in international markets is heightened considerably by the currently dominant top-down vision of international order. People who believe that a global economy requires a global rule-making body will naturally sympathize with the extension of the WTO's mandate into any area of plausibly international concern—even when such extension conflicts with the original market-opening purpose of the organization. Even more committed free traders who do not welcome WTO "mission creep" will be influenced to compromise by the top-down viewpoint. To the extent that they believe the world trading system is completely dependent on international negotiations and institutions, they are correspondingly more likely to give in to demands to expand the trade agenda in illiberal directions if that is the only apparent way to keep the process moving forward. In just the past year or so, in the wake of the multiple failures of fast-track legislation, there has been increasing pressure within elements of the U.S. free-trade camp to make concessions on environmental and labor issues.

From the bottom-up perspective, on the other hand, it is clear that liberalization can proceed if need be without international negotiations—and indeed would be much better off without them if they become infected by anti-market initiatives. Free traders who counsel appeasement of environmental and labor activists cite the "bicycle theory" of trade negotiations, according to which the process must either keep moving forward or collapse into protectionism and conflict.[6] But as trade economist Jagdish Bhagwati has opined, it may be better to fall off the bicycle than to keep pedaling in the wrong direction. And in the end, a credible willingness to accept no agreement rather than a bad agreement may be the best guarantor of avoiding a wrong turn.

Having addressed in general terms how international negotiations can advance—and sometimes undermine—the cause of trade liberalization, we now focus on a specific set of negotiations: the upcoming round of multilateral trade talks to be launched at the WTO Ministerial Conference in Seattle. We review below both the opportunities and the pitfalls presented by the new round.

Bringing Economic Sanity to Agricultural Trade

For decades after the signing of the original GATT treaty in 1947, agricultural protectionism remained untouchable. Although GATT technically applied to trade in agricultural goods, its requirements were roundly ignored;

consequently, agricultural protectionism and subsidies remained outside any real multilateral discipline until implementation of the Uruguay Round Agreements in 1995.

While average tariff levels on manufactured goods have fallen steadily in the postwar era, restrictions on agricultural imports—including regulatory nontariff barriers—have remained stubbornly high, especially in the more advanced economies. Today, the average tariff on manufactured goods has fallen to about 5 percent worldwide, while tariffs on agricultural goods average more than 40 percent.[7] The average tariff figure masks an even deeper problem of tariff spikes as high as 300 percent and virtual bans and prohibitive tariff rate quotas on certain goods.[8]

Import barriers are only part of a larger problem of pervasive market intervention in agriculture. Domestic price supports and export subsidies cost taxpayers huge amounts of money while creating the market distortions that spur demand for import protection. The Organization for Economic Cooperation and Development estimates that the more economically advanced nations spent $362 billion in 1998 to support agriculture.[9] The EU spends nearly half its collective budget on the Common Agricultural Policy.

The result of that widespread intervention is production surpluses, artificially depressed and volatile world prices, and unnecessarily high food costs for domestic consumers. Consumers of rice in Japan, bananas in Europe, and sugar in the United States, for example, are paying as much as two or three times the global price because of distortions in agricultural trade. A study commissioned by the government of Australia found that cutting global trade barriers and subsidies to agriculture by half would raise global welfare by $89 billion a year. Complete elimination of barriers and subsidies would raise global welfare by $150 billion.[10]

The developed countries are the chief perpetrators—and hence the chief victims—of intervention in agriculture. Of the $89 billion that would be added to global welfare by a 50 percent cut in agricultural protection, almost half, or $43.1 billion, would accrue to Japan, $12.7 billion to the EU, and $6 billion to the United States and Canada (Table 1). The welfare gain that Europe, Japan, the United States, and Canada would realize by cutting farm tariffs in half would be six times the welfare gain for all of Africa, Latin America, China, India, Indonesia, Thailand, Malaysia, and the Philippines.[11] Considering the distribution of the gains, liberalizing trade in agriculture should be considered, not a "concession" to less-developed countries, but a favor the developed countries can do themselves.

Americans would gain from the liberalization of agricultural trade both as producers and as consumers. Thanks to high productivity and abundant land, agriculture is one of the most export-oriented sectors of the U.S. economy. In 1998 Americans exported $52 billion in farm goods, and one out of every three farm acres in America is now producing for export.[12] Foreign trade barriers and subsidies, especially those of the EU, depress global prices, making U.S. farms less profitable and raising political pressure for an increase in taxpayer-financed

Table 1
The Cost of Agricultural Protection

	Annual Welfare Gain from 50% Cut in Agricultural Protection (U.S. $ billion)	Share of World Welfare Gains	Total Agricultural Support Estimate, 1998 (U.S. $ billion)
United States and Canada	6.0	6.7%	101.5
European Union	12.7	14.3%	142.2
Japan	43.1	48.4%	56.8
Less-developed countries	10.3	11.6%	N/A
Other countries	16.9	19.0%	N/A
World total	89.0	100.0%	362.4

Sources: For annual welfare gains, see Australian Department of Foreign Affairs and Trade, "Global Trade Reform: Maintaining Momentum," 1999, p. 28. For Total Support Estimates, see OECD, *Agricultural Policies in OECD Countries,* 1999, pp. 189-90.

Notes: Less-developed countries include those in Africa, Latin America, and Southeast Asia, as well as China and India. The world total for the Total Agricultural Support Estimate includes OECD members only.

income support. The need to lower barriers to agricultural trade has been made even more urgent by the economic turmoil that has struck major export markets in East Asia.

U.S. food consumers also have a stake in liberalization. Although the U.S. government has made progress in the last decade in reducing its own subsidies and protection for agriculture, U.S. food consumers are still paying above-market prices for protected goods. According to the U.S. International Trade Commission, quotas and other import barriers force Americans to pay higher than world prices for peanuts, dairy products, and sugar and sugar-containing products.[13] The OECD estimates that America's interventionist policies impose an implicit tax on food consumers of about 3 percent.[14] As taxpayers, Americans pay for uneconomic export subsidies through such vehicles as the federal Market Access Program.

Beyond their inefficiencies, agricultural barriers and subsidies are terribly unjust. They transfer wealth from food-consuming families to a small group of food producers.

Beyond their inefficiencies, agricultural barriers and subsidies are terribly unjust. They transfer wealth from food-consuming families to a small group of food producers—with the burden falling disproportionately on poorer families that spend relatively large shares of their incomes on food. The OECD estimates that in 1996–98 barriers and subsidies caused a net transfer from food consumers to producers of $60.6 billion a year in the EU, $52.1 billion in Japan, $18.1 billion in South Korea, and $17.9 billion in the United States.[15] One of the principal goals of agricultural trade reform should be to end that unfair redistribution of income.

The Uruguay Round's Modest Beginning

One of the major achievements of the Uruguay Round in 1994 was to bring agriculture under the discipline of multilateral trade rules. Before the round, GATT requirements were routinely flouted. Whereas GATT rules require that import barriers be in the form of tariffs and that those tariffs be bound within upper limits, quotas on agricultural imports were widespread. Production and export subsidies were virtually unchecked.

By the beginning of the Uruguay Round in 1986, plunging global food prices and soaring farm-program costs had created a consensus to at last reassert GATT authority over agricultural trade. The momentum for change was aided by 14 agricultural exporting nations that formed the Cairns Group in 1986 specifically to push for inclusion of agricultural liberalization on the round's agenda.[16]

After seven years of negotiations that almost broke down halfway through on the very subject of agriculture, Article 20 of the final agreement committed WTO members to "the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform"[17] of their domestic agricultural markets.

The resulting Uruguay Round Agreement on Agriculture focused on three interrelated areas in desperate need of reform: market access, export subsidies, and domestic price supports. Members of the newly minted WTO agreed that, between 1995 and 2000, they would do the following:

- Convert all existing quotas, other nontariff barriers, and unbound tariffs into bound tariffs (that is, tariffs that cannot be raised above a certain ceiling) and refrain from introducing new nontariff barriers. The unweighted average tariff level for each country must be reduced by 36 percent during the six-year period from the base period of 1986–88, with a minimum 15 percent reduction of each tariff line.
- Reduce existing export subsidies and refrain from introducing new subsidies. Expenditures on subsidies are to be lowered by 36 percent from the base period, although for some commodities only the volume needs to be cut, by 21 percent in advanced economies and 14 percent in less-developed countries.
- Reduce domestic production subsidies by 20 percent from the base period. The reduction does not apply to a list of "green-box" expenditures that include advisory services, domestic food aid, set-aside payments for land retired for a minimum of three years, and income support decoupled from production. Also exempt

are "blue-box" expenditures for "direct payments under production limiting programs." Green-box and blue-box subsidies are shielded from WTO challenges and countervailing duty complaints under the so-called Peace Clause that extends through 2002.

Another achievement of the Uruguay Round was the Sanitary and Phytosanitary Agreement. That agreement requires that any bans or quarantines in the name of protecting human, animal, or plant health must be based on "sound scientific evidence" or generally accepted international standards. The agreement aims to discourage WTO members from using health and safety regulations as a form of disguised protectionism.

The Uruguay Round made the new restrictions on agricultural intervention more enforceable by strengthening the dispute settlement mechanism (DSM). The losing nation in a dispute is no longer able to block a WTO panel's decision as it could under the old GATT system, under which unanimous consent was needed to implement any decision. Thus, for any decision to be enforced, the losing nation needed to vote against itself—which virtually never happened. Under the post–Uruguay Round DSM, unanimous consent is needed to block implementation. As long as at least one nation votes to uphold the decision, it goes into effect.

For example, under the old system, the EU was able to effectively veto any ruling against its ban on hormone-treated beef. But because of the strengthened DSM, the EU was not able to block the WTO's recent string of rulings that the ban lacks a sound scientific basis. Since 1995 the United States has used the DSM on 13 different occasions against alleged violations of the Agriculture and SPS Agreements.[18]

Finally, the Uruguay Round Agreement on Agriculture committed members to negotiate further reductions in agricultural trade barriers and subsidies by the end of 1999 as part of a built-in agenda that also includes trade in services. The WTO Ministerial Conference in Seattle from November 30 through December 3, 1999, will launch those talks.

In the almost five years since their enactment, the Uruguay Round reforms on agricultural trade have proven to be a mixed success. The 1996 Federal Agricultural Improvement and Reform Act marked a major step by the U.S. government to decouple support payments from farm production. Unfortunately, the $8.7 billion "emergency" farm relief bill passed by Congress in 1999 was a step backward from the goal of reducing overall levels of domestic support for agriculture. After more than a decade of decline, price support payments as a percentage of total farm income increased from 32 percent in 1997 to 37 percent in 1998, due to falling commodity prices worldwide.[19] The blue-box and green-box exceptions ensure that large-scale export subsidies will continue.

Progress in reducing trade barriers has been modest. In the conversion from quotas to tariffs, the ceilings on the new tariff rates were set far above the prevailing tariff equivalent at the time. For example, in the EU the average tariff binding was set at 60 percent above the actual tariff equivalent of the protection extended by the Common Agricultural Policy in recent years. In the United States the tariff bindings were set at 45 percent above the average level of protection in recent years, and in many developing countries the bindings were set 50 to 150 percent above tariff-equivalent protection of the phased-out quotas.[20] This so-called "dirty" tariffication means that, even after the required reductions, existing tariff rates in many cases continue to provide the same level of protection that quotas did before the Uruguay Round.

By imposing even modest constraints on what had been almost unchecked intervention, the Uruguay Round Agreement on Agriculture was a noteworthy achievement, but much remains to be done if consumers around the world are to enjoy the full benefits of an efficient and open market for food products.

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An Agenda for the New Round

As an ultimate objective, WTO negotiators should seek a global agricultural market that is free of production subsidies and trade barriers. There is no inherent reason why agriculture should be treated differently than the manufacturing or service sectors. As it does in other sectors, a free and open global market in agriculture would provide the widest variety of products at the lowest possible prices for global consumers. It would encourage nations to produce those food products and commodities in which they enjoy a comparative advantage while importing what other nations can produce more efficiently. The result would be a huge boost to global welfare.

At minimum, negotiators should aim to do the following:

- Drastically cut domestic production subsidies. In the United States, this will mean resisting attempts to dismantle the 1996 farm bill, either through a wholesale rewriting of the law or by piecemeal revisions in "emergency" farm relief bills. In Europe, it will require a genuine reform of the Common Agricultural Policy, including a clean break from production-linked subsidies. The Agenda 2000 plan unveiled this year fell far short of the kind of reform necessary to reduce the policy's huge negative impact on global markets.
- Quickly phase out export subsidies including export credits the U.S. government extends to foreign buyers of U.S. farm goods. Only a complete ban will bring agriculture into conformity with the general rules on export subsidies applied to manufacturing. The blue-box exception should be eliminated and the green-box exceptions narrowed to eliminate any possibility that they will be abused to shelter subsidies for output. The Peace Clause should be allowed to expire in 2003 so that agricultural export subsidies are subject to the full force of WTO discipline.
- Lower tariff barriers to no more than half their current levels and reduce tariff peaks even further. One approach would be the "Swiss formula" applied to manufactured goods during the Tokyo Round, which requires that higher tariffs be reduced at a steeper rate, thus shaving tariff peaks closer to the average. The gap between tariff bindings and actual tariff levels should be reduced to ensure that countries do not backslide on their commitments to more open trade. Finally, WTO members should commit themselves to eliminate all agricultural tariffs by some stated date.
- Restrict state trading enterprises so they cannot distort trade in favor of domestic producers. Those enterprises should be monitored so they do not use their monopoly position to discriminate against imports.
- Resist any compromise of the standards set in the current SPS Agreement. The EU has hinted that it wants to broaden the language of the SPS Agreement to allow products to be banned or quarantined even if the scientific evidence is not yet conclusive. Under the "precautionary principle," restrictions would be permitted in the case of potential health risks that are inadequately understood or documented. If adopted, this looser standard would be a prescription for endless delays. The WTO member imposing a health and safety regulation being challenged under the SPS Agreement would have no incentive to conduct a thorough and objective study. As long as the defending party could claim that the alleged risk, such as genetically modified grains, is poorly understood or documented, the restriction would stay in place.

Obstacles to Reform

The EU and Japan have sought to justify continued intervention by stressing the "multifunctionality" of agriculture. Agriculture deserves government support, the argument goes, because its functions reach beyond merely producing food and include a number of other "positive externalities" that benefit society as a whole. Among the supposed benefits: soil and water conservation, habitat for threatened

species, more economically viable rural communities, and a more aesthetically pleasing countryside for city dwellers to visit.

Even if one accepts that those positive spinoffs from agriculture exist, they would not justify a policy of protecting and subsidizing domestic farm production. First, the positive externalities need to be weighed against possible negative externalities such as pollution from pesticides and fertilizers. Second, they need to be compared with the positive externalities that might be created in sectors that would expand if agriculture were not artificially supported.

Finally, if governments want to encourage certain activities, any intervention should be focused as directly as possible on the desirable activity. For example, if Britain wants to preserve rural hedgerows because they look nice and provide shelter for small animals, then a direct subsidy for maintaining hedgerows would be more effective and less distortionary than is using trade barriers to indirectly subsidize nearby farm production by keeping farm commodity prices artificially high.

Another objection to agriculture liberalization is that it would compromise "food security," an argument made by the government of Japan in its preliminary submission to the WTO. The best food security for a net-food-importing nation such as Japan should be open markets and the ability to earn foreign exchange. It seems a foolish policy to punish food consumers year after year, sapping tens of billions of dollars annually from the economy, to prepare for a remote and vaguely defined "emergency." As is multifunctionality, food security is an issue that should be addressed in more direct and non-trade-distorting ways.

The principal obstacle to reducing trade barriers and subsidies to agriculture is the political influence of protected producers in developed countries who do not want to face the price competition of global markets. Those producers have delayed reform in certain sectors in the United States, such as sugar, peanuts, and dairy products; kept the expensive and distortionary Common Agricultural Policy intact in the EU; and stymied efforts to further liberalize the Japanese agricultural market. The losers have been consumers, of course, and also nonagricultural producers in the developed countries who have been forced to compete against the artificially expanded agricultural sectors for scarce domestic resources or have been crowded out of export markets by subsidized agricultural exports.

The persistence of agricultural protectionism in the face of huge costs points to an underlying problem of political economy. The benefits of protection are concentrated in a small and dwindling group of agricultural producers in the advanced economies. Those producers have much to lose individually if markets are opened and subsidies cut, so they fight tenaciously and often effectively within the political process to preserve their protected status.

Meanwhile, the costs of the intervention are spread among tens of millions of consumers and taxpayers, many of whom are not even aware of the higher prices they are paying to maintain a subsidized agricultural sector. Through a commitment to domestic reform and multilateral trade negotiations, government officials can begin to correct this wasteful and unjust imbalance.

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Advancing Liberalization of Trade in Services

We frequently hear that world trade is undergoing a "services revolution," reflecting the fact that knowledge-based industries are the most dynamic component of the world economy and have been for the past two decades. Although it is difficult to define the term clearly, "services" include a wide array of sectors such as financial services (accounting, banking, insurance); consulting and legal services; distribution services (air freight, maritime shipping); telecommunications; architecture; tourism; energy services; and entertainment. Services are often conceptualized as "nontradable" because there is sometimes no cross-border activity involved. In air transport and film exports, for example, cross-border transactions take place, but in many other sectors it is impossible to dissociate the provision of services from the movement of capital or labor.

There is every reason to believe that trade in services will continue to be the fastest growing area of world trade.

To help thinking about trade in services more clearly, a classification system for the different modes in which transactions take place was developed in the 1980s by economists Gary Sampson and Richard Snape.[21] These four modalities are still used today both in the academic literature and in trade negotiations and agreements:

- *Cross Border*: flows across borders in which neither the supplier nor the producer moves physically but instead relies on an intermediate service such as a telecommunications network.
- *Consumption Abroad:* movement of a consumer to a supplier's country as occurs in industries such as tourism.
- *Commercial Presence:* movement of a commercial organization to the consumer's country (the equivalent of foreign direct investment).
- *Presence of Natural Persons:* movement of individual service suppliers (such as consultants and fashion models) to the consumer's country.

Trade in services by those four modes has been a key engine of growth in the world economy. According to the WTO, the share of commercial services (which excludes commercial presence) in world trade grew from 17 percent in 1980 to 22 percent in 1995 and accounted for roughly $1.26 trillion in 1996. The WTO also reports that service exports increased 8.4 percent on average between 1980 and 1995, while merchandise exports increased 5.2 percent.[22] To be sure, it is difficult to measure that contribution definitively in light of the way service transactions are recorded. Sometimes service transactions are measured in broad, aggregated categories and sometimes on a net as opposed to a gross basis.[23] For a variety of reasons, it seems likely that the service statistics are underestimated. Those statistics do not capture intrafirm transactions or foreign direct investment (i.e., commercial presence), which is estimated to account for more than one-half of all service transactions.

There is every reason to believe that trade in services will continue to be the fastest growing area of world trade. The service sector share of annual gross domestic product is already 80 percent in countries such as the United States and Hong Kong and 70 percent in countries such as Australia, France, and the Netherlands. Many developing countries are finding that services account for an increasing share of annual GDP as well. Services account for more than 50 percent of GDP in Argentina, Brazil, Chile, Egypt, Hungary, India, Indonesia, South Korea, Mexico, and Thailand. Even in some of the poorest countries, services account for more than one-third of annual GDP.

Despite conceptual and measurement problems, studies suggest that there are substantial economic gains to be realized through increased services liberalization. One study suggested an increase in global welfare of $250 billion if distortions in the provision of services were decreased by 50 percent.[24] Those gains will be realized not only in services but in manufactured goods as well. Liberalization of services will help promote transparency and clarify market pricing and information. It will also make it easier to transport goods to and distribute them in overseas markets, suggesting that there are intersectoral gains from services liberalization.

At present the major exporters of services are the developed countries, but export opportunities also exist for developing countries, particularly those engaging in the export of labor-intensive services. The empirical evidence from Asia, which liberalized the most in comparison with other parts of the developing world in the 1990s, suggests that this is true. Services exports in Asia increased 12 percent between 1990 and 1997, in comparison with Latin America and Africa, where services exports increased only 8 percent and 6 percent, respectively.[25]

The Creation of the General Agreement on Trade in Services

Liberalization of service transactions poses rather different challenges to trade negotiators than does liberalization in the goods area. The reason is that in most cases the barriers to trade in services are nontariff in nature.[26] Put differ-

ently, the barriers to trade in services are present in national economies in the form of domestic law and administrative practices—practices inherently less transparent than tariffs and quotas. In accounting services, for example, some countries have visa requirements or have regulatory procedures that restrict the right of foreign accountancies to operate. Other countries might adopt consumer protection laws governing Internet access or issue "buy local" decrees covering government procurement practices. Under the Buy America Act, for example, the U.S. government offers a 6 percent price preference to domestic suppliers, a 12 percent preference to suppliers in areas or regions that traditionally have a high level of unemployment, and a 50 percent preference for defense-related contracts.[27] This can often lead to contentious negotiations, not only between trade negotiators from different countries, but between trade negotiators and domestic regulators from the same country.

In contrast to the case of agriculture, developed countries are at the fore in advancing liberalization in services. As a consequence of their relative openness, developed countries possess a comparative advantage in this sector at this time. Many developing countries resist liberalization of service industries and invoke standard "infant-industry" arguments.

Despite those difficulties, and in light of the growing importance of trade in services, the Uruguay Round did establish a set of multilateral rules and discipline on services for the first time under the rubric of the General Agreement on Trade in Services, which came into being on January 1, 1995. Though riddled with exceptions, GATS extends the traditional GATT principles of national treatment (no discrimination against foreign producers relative to domestic producers) and most-favored nation, or MFN, (no discrimination against some WTO members relative to other WTO members) to trade in services.

In light of the inherent nontariff barrier problem that afflicts trade in services, GATS also has important provisions on transparency of domestic rules and regulations that have an impact on services trade. GATS says governments must publish all relevant laws and regulations. By 1997, countries were to have set up inquiry points within their bureaucracies. In theory, foreign companies and governments can now use those inquiry points to obtain information about regulations in any service sector. Countries are also required to notify the WTO of any changes in regulations that apply to the services that come under specific commitments.

While the contributions of GATS have been positive, it is clear that, some five years later, the gains in services liberalization have been relatively modest. Michel Servoz, who negotiates services on behalf of the European Commission, likens GATS to a "good house" awaiting someone "to bring in the furniture."[28] While GATS does embody important provisions on national treatment and MFN, there are some important qualifications that dilute their importance and make GATS very different from GATT.

In GATS, countries put forward their commitments to liberalize particular sectors within the service economy. They can do so independently or at the request of another nation, which explains why the current GATS framework is said to have a "request-offer" approach. The commitments offered guarantee access to the country's market in the listed sectors, and they spell out any limitations on market access and national treatment. For example, if a government commits itself to allow foreign banks to operate in its domestic market, that is a market access commitment. And if the government limits the number of licenses it will issue, that is a market access limitation. If it also says foreign banks are allowed only one branch while domestic banks are allowed numerous branches, that is an exception to the national treatment principle.

That approach is problematic for several reasons. First, governments can choose the services in which they make market access and national treatment commitments. Members are required to apply new GATS rules only to service sectors they agree to put forward. This contrasts with GATT rules, which apply generally to all goods except those that were specifically exempted. Consequently, only 14 WTO

The barriers to trade in services are present in national economies in the form of domestic law and administrative practices—practices inherently less transparent than tariffs and quotas.

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members have made commitments in the audiovisual services sector, and no developing country has made commitments on the gathering and dissemination of news. Also, fewer than 50 WTO members have made commitments on distribution services.

Second, with regard to market access, countries can limit the degree of participation in a sector by foreign companies. In terms of national treatment, where there should be no discrimination between foreign and local companies, the provisions are weaker than in GATT. Under GATS, a country has to apply this principle only when it has made a specific commitment to provide foreigners access to its services market. It does not have to apply national treatment in sectors where it has made no commitment. This contrasts with the way the national treatment principle is applied for goods—in that case, once a product has crossed a border and been cleared by customs, it has to be given national treatment even if the importing country has not made any commitment under GATT to bind the tariff rate.

Third, WTO members have also made separate lists of exceptions to the MFN principle of nondiscrimination. When GATS came into force, a number of countries already had preferential agreements in services that they had signed with trading partners, either bilaterally or in small groups. WTO members felt it was necessary to maintain those preferences temporarily. They gave themselves the right to continue giving more favorable treatment to particular countries in particular service activities by listing "MFN exemptions" alongside their first sets of commitments. To protect the general MFN principle, the exemptions could be made only once; nothing can be added to the lists. They will be reviewed after five years, in 2000, and will normally last no more than 10 years.

As a result of those qualifications, the previous round of GATS negotiations yielded minimal progress. During those negotiations, countries had the opportunity to make 620 market access commitments and 620 national treatment commitments indifferent service sectors, for a total of 1,240 overall commitments on services. Industrialized countries made a total of 53.8 percent of those commitments, while developing countries made far fewer. Asia was the developing region with the highest level of service commitments (26.0 percent), followed by the Middle East (16.5 percent), then Latin America (15.3 percent), while Africa was the lowest (9.8 percent).[29]

One positive difference between GATS and GATT (in addition to avoiding rules-of-origin problems) is that the former does attempt to deal more explicitly with domestic regulations and regulatory regimes. Since domestic regulations are the most significant means of exercising influence or control over services trade, the agreement says governments should regulate services "reasonably, objectively and impartially." When a government makes an administrative decision that affects a service, it should also provide an impartial means of reviewing the decision (for example a tribunal). It is not lost on the world trading community, however, that the terms "reasonably," "objectively," and "impartially" are quite imprecise.

In light of the weaknesses of GATS, the progress in services liberalization has been modest. The request-offer approach reflected the individual interests of participants that selectively made commitments based on trading partners' specific requests. The commitments often reflected the status quo, which did not lead to major liberalization. Consequently, the U.S. government has concluded:

> In the area of services, the primary accomplishment of the Uruguay Round was the framework agreement itself, the first multilateral agreement to create a set of rules to liberalize trade in services. However, in most cases, specific commitments in country schedules merely reflected existing laws and regulations, including restrictive measures—essentially preserving the status quo. Many of the commitments were vague, and there were few sweeping commitments to remove barriers.[30]

In addition to GATS itself, the agreement allows for "annexes" to be negotiated. Since the

Uruguay Round, there have been two such annexes, one on telecommunications and the other on financial services. Basic telecommunications, for example, were not included in the original commitments because the privatization of government monopolies was complex and, more important, a politically sensitive issue in many countries. Sophisticated value-added telecommunications services, which are more commonly provided by the private sector were, however, included in many of the original GATS schedules. The negotiations on basic telecommunications ended in February 1997 with new national commitments on the part of 70 countries that took effect on January 1, 1998.

In the Financial Services Agreement, completed in December 1997, 102 WTO members agreed to a legal framework for cross-border trade and market access, and to a mechanism for dispute settlement. While the high number of signatories to the FSA is laudable, the liberalizing aspects of the agreement are mixed. In banking, there were limited new market-access opening initiatives, while in insurance progress was much greater.[31]

Attempts to have a separate agreement on the movement of natural persons achieved only minor results. Currently, many countries include onerous rules in the requirements that foreign service providers have to meet in order to operate in a market. The objective of the negotiations was to prevent those requirements from being used as unnecessary barriers to trade.

One advantage of the annex agreements is that they allow domestic regulatory principles to be worked out more clearly. The Basic Telecommunications Agreement, for example, broke new ground by developing specific regulatory principles for the sector. As it stands now, Article VI of GATS, which attempts to ensure that domestic regulations do not impede trade in services that are listed in members' schedules of commitments, is written in a general fashion. Resolving this issue is difficult, though, even for countries at the forefront of services liberalization, such as the United States. The reason is straightforward: it pits the U.S. Trade Representative, for example, against U.S. regulators, who want to impose the fewest restrictions possible on their actions.

Crafting an Agenda for the New Round

Although sectoral negotiations are important, it is also necessary to improve and clarify certain features of the overall GATS framework. Fortunately, as GATS is still a work in progress, the original agreement specifically provides for such negotiations. According to the agreement, a new GATS 2000 round will be launched (regardless of the other agenda items agreed on at the Seattle meeting in November 1999). There are three ways in which the GATS architecture can be improved to foster services liberalization.

Negative vs. Positive Lists. The first way that the GATS institutional architecture can be improved is for countries to move away from the pick-and-choose "request-offer" approach. Under the current GATS framework, as noted above, countries can either request that other countries specify the sectors in which they are making liberalizing commitments, or they can themselves put forward a specification. This is referred to as a "positive" list. This contrasts with a "negative" list where countries specify the sectors that are not covered by commitments. While the negative-list approach is no panacea, there are some reasons to believe that it might help foster liberalization. The evidence of NAFTA gives empirical support to this proposition.

Three reasons suggest that this is true. First, a negative-list approach will foster greater transparency as it will become immediately clear which sectors are excluded. That will help highlight specifically identifiable nonconforming measures in particular sectors. Second, governments may be embarrassed to provide an extremely long list of sectoral exceptions. Third, and most important, a negative-list approach implies that any new services developed through innovation would be subject to established discipline. To be sure, this last reason is why so many countries, particularly in the developing world, oppose this type of negotiating approach.[32]

Application of "Horizontal-Formula" Approach.

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The second way that GATS could be improved is for trade negotiators to embrace a "horizontal-formula" approach to negotiations, in which countries would make commitments—say, to the right of establishment or national treatment—and apply them across *all* services sectors. The horizontal aspect of the approach could address all or part of a particular mode of delivery—for example, a commitment to electronic delivery of services, across sectors, subject to specified sectoral exceptions. Another example of a commitment suitable for a horizontal approach is the free movement of certain commonly defined categories of natural persons in services. Undoubtedly, critics will point to the diversity of service sectors and the inherent difficulty of making policy-relevant generalizations. As Patrick Low of the WTO and Aaditya Matoo of the World Bank suggest: "Though services sectors differ greatly, the underlying economic and social reasons for regulatory intervention do not. And focusing on these reasons provides the basis for the creation of meaningful horizontal discipline."[33]

In tandem with a horizontal approach, participants in the Seattle meeting should support the negotiation of formulas for liberalization to be applied to all sectors; those formulas would apply the same amount of liberalization across all sectors. While formulas would apply best to cross-border transactions and ownership requirements, they would also serve as a powerful device for further liberalization. As would a horizontal approach that covers all sectors, formulas would make it more difficult for countries to single out sectors where there should be only limited liberalization. The combination of those two approaches could quicken the pace of services liberalization because it would allow members to seek liberalization in areas without having to wait for other members to put forward those areas.

It is also important to note that a horizontal-formula approach and a sectoral approach are not mutually exclusive—embracing the former does not rule out additional sectoral annexes that could be negotiated, as was done for financial services and telecommunications. For example, developing countries have identified sectors in which they have an export interest, including some or all of the following: audiovisual services, tourism, private health care, computer services, and professional services. Those sectors would be ripe for additional liberalization in the context of annexes.

Transparency and Clarity of Domestic Regulation. Arguably the most significant area where GATS is in need of improvement is transparency and clarity of classifications and schedules of commitments. Transparency is a crucial component of effective market access. The value of scheduled commitments is diminished if descriptions of the service activities covered are imprecise, outdated, or incomplete.

One notable problem is that member countries have used their own definitions of certain sectors and service activities. For example, the description of health services does not adequately cover all of the relevant services such as remote diagnostics. With an inadequate nomenclature, a country could insist it does not have to live up to commitments made because the service in question is not adequately described. In other cases, there are problems such as provisions allowing for "economic needs tests" that would exempt countries from fulfilling commitments. The problem is the lack of specification of how such tests should be conducted. In other cases, there is too much descriptive material in the services schedule; that leads to legal uncertainty.

A key task for negotiators is to resolve those issues of transparency. It is the only way to give substance to the GATS provisions that require domestic regulators to operate in a "reasonable, objective and impartial" manner. In the meantime, all countries should continue, as some have done, to follow a unilateral and autonomous path toward liberalization of their service economies. As Professor Patrick Messerlin of l'Ecole des Sciences Politiques in Paris notes, developing countries have a unique opportunity to take advantage of this opportunity for unilateral liberalization because they do not have to deal with complex regulatory bureaucracies that will inevitably develop over time. The experience of the developed world suggests that battles between trade negotiators

and domestic regulators representing the same country are often quite intense.[34]

For advanced and less-developed countries alike, the liberalization of trade in services would inject greater international competition into an area of already huge and growing economic importance.

The Unfinished Business of Nonagricultural Tariffs

The removal of barriers to trade in nonagricultural (mainly manufactured) products was the initial purpose of GATT, and efforts in that regard have been remarkably successful. Tariffs imposed by industrialized countries have fallen from an average of 40 percent in 1948 to less than 5 percent today—an impressive record by any standard.[35] Furthermore, voluntary export restraints and most quotas have been banned, and nearly 99 percent of tariffs in industrialized countries have been bound.

However, the process of liberalization is not yet complete. The challenge for the next trade round is to ensure that previous tariff-reduction commitments continue to be phased in on schedule, that already-low tariffs start moving toward zero, that new commitments to reducing peak tariffs on certain holdout products be secured, and that developing countries be convinced to join the process in a more meaningful way.

Because the average tariffs applied to manufactured products are relatively low, they have lately received less attention than trade restrictions in such high-profile sectors as agriculture and services. But the benefits of reducing or eliminating the remaining tariffs on manufactured products are substantial. Trade in manufactured products represents the bulk of global commerce, so seemingly small tariff cuts can yield relatively large benefits. The Australian Department of Foreign Affairs and Trade estimates that an annual global welfare gain of about $66 billion could be achieved by cutting existing tariffs in this sector by 50 percent.[36] Given those potential benefits, it is essential to include manufactured products in any new trade rounds.

Negotiators will not lack targets. Tariff treatment of manufactured products is still highly uneven, particularly in developing countries. And although average tariffs have fallen considerably over the past five decades, many products are still subject to high tariff peaks. The problem is not limited to the developing world. Industrialized countries continue to subject textiles and clothing in particular to abnormally high tariffs. The true challenge for the U.S. government at the next round of trade talks will be to relinquish its own folly by bringing the limited number of high-tariff holdouts into line with other products. That may be a daunting task from a domestic political standpoint, but it is a necessary precondition for a successful round.

Many of the tariff cuts negotiated during the Uruguay Round have yet to be fully implemented, so the first priority for countries must be to keep their existing commitments on schedule. A resolution reaffirming WTO members' intention to do just that could be a useful starting point for a new trade round. Such a resolution would help allay the fears of developing countries that the U.S. government does not intend to keep its Uruguay Round commitments. But beyond pledging to honor old promises, a positive agenda for reducing—and eventually eliminating—tariffs on manufactured products should be a major aim of the upcoming round.

Moving toward Zero Tariffs

Average tariffs on manufactured goods, after all Uruguay Round commitments are phased in, will be approximately 3.8 percent in industrialized countries.[37] But the 3.8 percent figure conceals a stubborn protectionist reality: The majority of developed-country imports enter duty-free, or at very low rates, while a few politically favored sectors are sheltered from international competition by high tariffs. Developing countries have further to go on a wider range of products, but their task is essentially the same—to harmonize wildly divergent tariffs downward.

An early objective of the upcoming round should be the elimination of minimal tariffs.

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There is no reason to retain extremely low tariffs; at some point, the costs of administration outweigh the revenues collected. Moreover, such tariffs offer no serious protection, so removing them should be politically feasible.

A more challenging—but necessary—task will be tackling protectionist outlier tariffs. So far, the attitudes of developed countries toward this issue have been discouraging. The United States, for example, has been aggressively pushing liberalization in areas where it has a perceived comparative advantage—such as information technology—but has been extremely reluctant to address areas where U.S. import-competing industries face competitive pressures. Unless developed countries offer a credible plan for eliminating their own remaining trade barriers in politically sensitive sectors, developing countries will have little enthusiasm for making substantial new tariff-cutting commitments.

There are many ways to approach tariff reduction, but a simple formula-based system holds the most promise. Along those lines, the EU has proposed a "tariff-band" strategy.[38] The idea is to define a low, medium, and high band within which all tariffs would have to fall, with no product sectors excluded. If necessary, the approach would include average weighted tariff objectives differentiated according to a country's level of development, and would take into account certain sensitive products. The EU's plan is comprehensive but not particularly inspiring.

Unfortunately, the U.S. government has endorsed an even more timid approach that would phase out tariffs only in selected sectors. Under the Accelerated Tariff Liberalization initiative started in the Asia Pacific Economic Cooperation forum, tariffs would be cut in nine economic sectors: chemicals, fish products, forestry products, energy goods and services, environmental goods and services, gems and jewelry, medical equipment, telecommunications, and toys (conveniently, mostly sectors where U.S. businesses enjoy a comparative advantage). Although it has the virtues of simplicity and speed, this approach would do nothing to address the problems of tariff peaks at home.

A bold yet simple alternative to both the U.S. and the EU proposals is needed. All tariffs below 5 percent (roughly the current developed-country average) that are not already scheduled to reach zero should be bound at their current levels and taken to zero over no more than five years. Ideally, countries should be able to complete the process by 2005, when all Uruguay Round tariff reductions are scheduled to be completed. A five-year reduction schedule is amply generous to import-competing industries, which will be losing only a negligible amount of protection. As those modest reductions are multiplied across many products, consumers and import-using industries will enjoy substantial gains.

In addition, tariffs above the 5 percent level should be lowered to that level over time. This will, of course, be a considerably more difficult task than cutting already-low tariffs since protected domestic interests can be expected to defend their current special status. Consider, however, that at present only 10 percent of tariffs in the EU, Canada, Japan, and the United States remain above 10 percent ad valorem.[39]

If a single 5 percent level proves impracticable, an additional, higher threshold could be added (for example, tariffs under 10 percent could be reduced to 5 percent and higher tariffs could be reduced to 10 percent). The point is simply to harmonize WTO members' currently Byzantine tariff structures. With all remaining industrial tariffs at the same level (or at two levels), ongoing across-the-board tariff liberalization will be rendered virtually automatic. Resistance to continuing tariff cuts for particular products will be difficult when all tariff rates for all products are expected to decline in lockstep fashion. In this regard, Chile's unilateral decision to impose a single across-the-board tariff rate has greatly facilitated continuing liberalization.[40]

Although reducing tariff peaks should be the primary focus of the next trade round, it is important not to ignore minimal tariffs. Zero tariffs must be the ultimate goal for all manufactured products, not only because free trade is inherently beneficial, but because the adminis-

trative cost savings would be substantial. The United States' harmonized tariff schedule fills more than 3,825 pages and requires an army of customs officials to administer. It has spawned absurd metaphysical debates over the true nature of things like minivans, Halloween costumes, and predrilled lumber. The elimination of all nonagricultural tariffs would obviate the need to differentiate between products and to audit declared shipment values, greatly enhancing commercial certainty by reducing the risk of an unfavorable and costly tariff reclassification.

End Special Treatment for Textiles

A 1997 joint study by the United Nations Conference on Trade and Development and the WTO reported that the manufacturing sectors with the highest levels of tariff escalation and tariff peaks were textiles, clothing, footwear, leather, and travel goods.[41] All of those sectors are of special interest to exporters in developing countries, especially clothing and textiles, which are often subject to tariff rates of 12–30 percent.

Since January 1995, trade in textiles and clothing has been governed by the WTO's Agreement on Textiles and Clothing—a 10-year transitional program designed to bring textiles under normal GATT discipline. Prior to the ATC, most trade in these products was conducted under the Multifiber Arrangement, which departed from normal GATT rules to impose a constrictive web of quantitative restrictions (quotas) on imports by developed countries. As part of the ATC's integration of textiles and clothing into GATT, countries will be required to remove all quotas by January 1, 2005. The phase-in procedure involves a staged raising of existing bilateral quotas, culminating in their eventual termination.

Although industrialized nations' keeping their Uruguay Round commitments on textiles is probably an essential prerequisite for convincing developing countries to undertake substantial new liberalization, the industrialized countries are rapidly losing credibility on this issue. During the first four years of the ATC, only 2 of 750 U.S. quotas and 14 of 219 EU quotas were eliminated.[42] Moreover, many of the products integrated into GATT thus far have been concentrated in the relatively low value-added range of products, and therefore represent a smaller share of value than the volume of trade might suggest.[43] Consequently, most politically sensitive products are scheduled to be incorporated into GATT within the next five years—a doubtful proposition given the declining but still potent political clout of the textile lobby. This foot-dragging should stop, and the United States and the EU should make clear that they intend to honor both the letter and the spirit of their ATC commitments.

Americans will gain from the liberalization of trade in clothing and textiles both as producers and as consumers. Important segments of the American clothing industry are heavily dependent on foreign fabric as well as offshore cutting and sewing operations. Meanwhile, U.S. textile and clothing producers, who are significant exporters, would benefit from reductions in import barriers abroad. At the same time, consumers will benefit from the reduced prices and increased choice that trade brings. And since clothing and textiles are a necessity of life, Americans at the bottom end of the income scale will benefit disproportionately from increased access to cheaper imports.

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Quantitative restrictions have actually compounded the long-term problems of U.S. producers. Faced with quotas, many textile-producing firms in developing countries have attempted to shift to production of higher-quality products, placing them in direct competition with U.S. producers and distorting natural trade patterns. A second unintended effect of quotas has been to increase world production and depress prices. Because textile exports from some countries were limited, investments in new facilities were made in less-restricted or unrestricted locations. As a WTO report notes, "This shift in production and export activity led to demands in the industrialized countries for yet more widespread restrictions which brought about further shifts to unrestricted countries . . . [which] served to expand global production capacity."[44]

Proponents of continued restrictions on textile and clothing imports often point to the

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plight of displaced American workers as evidence that protectionism is needed. But in the long run, liberalization is in the best interest of everyone involved. Instead of artificially inducing U.S. firms to devote workers to making products that may be obtained more cheaply abroad, the U.S. government would do well to drop trade barriers and free both capital and labor for more efficient and productive uses. The transition will undoubtedly be painful for some textile-dependent communities, but the pain of transition is largely the legacy of past protectionism. Domestic textile workers were enticed into a declining industry—into artificial jobs temporarily preserved by taxing consumers. That has been a costly mistake that should not be repeated with subsequent generations.[45]

Trade liberalization in the clothing and textiles sector also benefits developing countries. By dismantling trade barriers in this area, the United States would be opening its market to the primary exports of some of the world's poorest nations. The production of many types of textiles and clothing is a highly labor-intensive process that is well suited to countries where labor costs are low relative to the cost of capital. In addition, consumers in developing countries would benefit from reductions in the often highly restrictive import barriers that their own governments impose.

Once the ATC integration process is complete, textiles and clothing should become the focus of renewed efforts to lower remaining trade barriers to bring them in line with those of other manufactured products. It is absolutely essential that the developed countries maintain their commitment to this process since—along with agriculture—removing barriers to trade in textiles and clothing is a top priority for developing countries. If liberalization is compromised, developing countries will rightly doubt the veracity of U.S. promises, and much of the potential of a new trade round will be lost.

Concerns of Developing Countries

Over the past decade, many developing countries have instituted dramatic economic reforms, including, in many cases, extensive trade liberalization. The main force behind those changes has been a realization that open trade and investment policies are an essential foundation for growth and development, and thus much of the recent trade liberalization has been undertaken unilaterally. Nevertheless, the WTO has provided a framework of mutual obligations and benefits that has reinforced domestic reforms.

Unfortunately, many developing countries continue to impose high tariffs on a wide range of manufactured products. Average tariffs in India, for example, are a whopping 35 percent.[46] Compounding the problem is the fact that developing countries often have a low percentage of tariff bindings—or tariffs may be bound at a very high level—leaving governments susceptible to future protectionist pressures. In Mexico the bound ceiling rate for manufactures is 35 percent.[47]

Obviously, developing countries should open their markets further regardless of what industrialized countries do. On the other hand, rich nations can best encourage liberalization in the developing world by demonstrating the sincerity of their own commitment to open markets, especially by cutting tariffs in sensitive sectors such as agriculture and textiles. Clement Rohee, foreign minister of Guyana and chairman of the Group of 77—an organization of more than 130 developing countries—recently emphasized that point, noting that the first business of a new trade round must be to reaffirm "the full implementation of existing liberalization commitments. In this regard, many developing countries suggest that the Seattle Conference should be a time to initiate a process of 'review, repair and reform.'"[48]

Developing countries would also be more likely to continue the process of trade liberalization if preferential treatment were given to the exports of the less-developed countries, as the original—but too limited—General System of Preferences was designed to do. WTO director general Michael Moore recently spoke in favor of such a policy. "At Seattle I want to be able to deliver up-front open market access for all exports from the least devel-

oped countries. No exceptions," he stated.[49] Moore noted that those exports represent just one-half of 1 percent of world trade, so preferential tariff treatment will not greatly distort patterns of global commerce. Not surprisingly, his view is shared by the governments of many developing countries.

Moore is on the right track. The United States and other industrialized countries should grant duty-free access to *all* exports from the least-developed countries. Tariff preferences can help bring such countries into the multilateral trading system, while offering hope and opportunity to the world's poorest citizens. Indeed, it makes little sense to continue wasting billions of dollars on counterproductive foreign aid each year while taxing the meager exports of poor countries at our border. While nondiscriminatory free trade should continue to be the ultimate goal of multilateral trade negotiations, zero tariffs on exports from the poorest, least-developed countries would nevertheless be a useful short-term measure.

Information Technology and Electronic Commerce

Information technology (IT) is one of the strongest forces driving U.S. economic growth, and American companies lead the world in the production of IT goods and services. As the Commerce Department's recent report, *The Emerging Digital Economy II*, notes, "Over the past four years, IT industries' output has contributed more than one-third to the growth of real output for the overall [U.S.] economy."[50] Given the importance of IT products to its economy, the United States has a clear stake in the continued liberalization of this sector.

Since April 1997, trade in many high-technology products has been governed by a special set of rules known as the Information Technology Agreement. The U.S. government played an instrumental role in creating and selling the ITA, despite the fact that the United States already applied virtually no tariffs to high-technology imports when talks began. As noted earlier, U.S. negotiators were able to effectively participate in the process by agreeing to commit to a continued open market. Other countries readily signed on to the ITA despite the fact that Washington had nothing to "concede." The final results were impressive: The ITA specifies that all tariffs on a wide range of semiconductors, computers, telecommunications equipment, and similar high-technology products will be eliminated by January 2000 or, for some developing countries, by January 2005. The parties to the ITA are responsible for more than 90 percent of world trade in the products covered by the agreement.

To participate in the ITA, a country must accept three basic conditions: (1) all products listed in the declaration must be covered, (2) tariffs on all covered products must be reduced to zero, and (3) all other duties and charges must be bound at zero. There are no exceptions to product coverage; for sensitive items, however, it is possible to have an extended implementation period. The commitments undertaken through the ITA are on an MFN basis, and therefore the benefits accrue to all WTO members.[51]

One of the most significant aspects of the ITA is that it can serve as a model for other product areas—proof that self-defeating trade barriers need not be retained as bargaining chips. All signatories to the ITA must still abide by their MFN commitments, so the tariff reductions are offered to *all* WTO members regardless of whether they participate in the ITA. Nevertheless, a core group of countries was able to successfully conclude the ITA, and new countries have applied for membership since that time. Countries agreed to drop tariffs or lock in tariff reductions because all recognized that it was in their best interest to do so, not because they were being offered a "concession."

There is, of course, room for improvement in the ITA. Numerous additions should be made, both to the number of products covered and to the number of countries that participate. In recognition of those areas of opportunity, negotiations on an "ITA II" began in October 1997; those talks, however, hit a number of snags. An agreement on ITA II should be concluded in the upcoming round.

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A New IT Agreement?

The seeds of ITA II are contained in the original agreement, which calls for participants to meet periodically to consider expanding the list of covered products and consult on nontariff barriers. Thus, an ITA II would not necessarily entail expansive "new" negotiations; many of the shortcomings of the original agreement could be quickly addressed on the margin. This built-in agenda makes IT a ripe area for an "early harvest" agreement. Specifically, negotiators should aim to do the following:

- At a minimum, make sure that original tariff-reduction commitments are kept on schedule. Ideally, however, the liberalization process should be accelerated. For example, the ITA Coalition has proposed that once a tariff scheduled for elimination under the ITA reaches 3 percent, that tariff should be immediately reduced to zero.[52]
- Expand the scope of the agreement. There are many IT products and parts that were not included in the original ITA, as well as a range of new products that have been developed since the agreement was implemented. An ITA II product expansion review should broaden the list of duty-free products to the maximum extent possible.
- Bring more countries into the ITA framework. The ITA currently has 48 participants—including the 15 EU member states—representing most regions of the world. Those members conduct the vast bulk of world trade in high-technology products, but there is no reason that all WTO members should not adopt ITA tariff commitments. New members—possibly including China—should be required to implement their ITA commitments relatively rapidly.

Free Trade in Cyberspace

True electronic commerce—the purchase and delivery of products and services online—already takes place in a largely free-trade environment. Whether through prudent restraint or simply lack of the necessary technological capability, no nation currently levies customs duties on wholly electronic transactions. Given that nations have devoted considerable time and energy to lowering barriers to international trade through the WTO in other areas, it only makes sense that they work to lock in the current beneficial state of affairs for trade in electronic goods and services.

Free trade in electronic goods and services is a unique situation. Never before have all nations started from a free-trade position *before* negotiations began. Thus, for network-delivered digital content, countries should be able to easily agree to a zero tariff rating. The Clinton administration first advocated classifying the Internet as a "duty-free zone" in a paper published in 1996.[53] That proposal was a commendable starting point that has helped to build international support for keeping trade in electronic content free of all tariffs. The proposal is not likely to encounter much resistance at home. Despite being unable to agree on much else, the federal Advisory Commission on Electronic Commerce—created by Congress as part of the Internet Tax Freedom Act—recently passed a unanimous resolution in support of free trade online.[54] The resolution—the first substantive act taken by the commission—suggests that the administration's policies in this area have widespread domestic support.

Duty-free Internet commerce is also popular with the United States' major trading partners. The OECD has endorsed the basic concept, noting that it is not intended to "limit the application of VAT/GST as appropriate by any national tax administration in respect of importations of all relevant goods and services."[55] In other words, establishing the Internet as a free-trade zone would result in negligible revenue losses for governments (since tariffs are currently nonexistent) and would not interfere with national income or consumption tax systems.

A digital free-trade zone would have other benefits. For example, it would dispense with the nettlesome task of characterizing electronic products as either goods or services under the

WTO. If countries decide to apply tariffs to trade in digital products, it will be necessary to classify the content of data flows to determine whether they are to be governed by GATT or GATS. That would not be an easy job—many online transactions are clearly services and yet no universally agreed on classification system currently exists. Developing such a system would needlessly squander scarce WTO resources.[56]

As the world's leading producer of electronic goods and services, the United States has an especially strong interest in setting a good example by resisting domestic pressures to charge customs duties on electronic transactions. As a 1998 paper published by the WTO pointed out, "85 per cent of Internet revenue is generated in the United States while only 62 per cent of the users are located there. This suggests that the United States is probably a net exporter of products through the Internet."[57] Moreover, because the U.S. Treasury derives most of its revenues from personal and corporate income taxes, Washington must be careful not to raise barriers to trade in digital content that will encourage businesses to locate elsewhere. Federal income tax receipts will rise to the extent economic activity is encouraged through a commitment to free trade online.

In addition to the sale and electronic delivery of digital content, the Internet will also promote the flow of low-value shipments of physical goods directly to consumers. The growth of electronic storefronts on the Web, for example, makes it relatively simple for a customer in one country to order a product directly from a foreign seller. Because the costs of insurance and customs administration can equal or even exceed the value of a low-dollar shipment, this type of commerce may not reach its full potential unless reforms are instituted.

To facilitate the growth of those transactions, governments should consider expanding tax- and duty-free thresholds, especially when the costs of inspection and collection would likely exceed revenues raised. As the country with the most commercial Web sites, the United States will benefit greatly if such sales are allowed to flourish. And as it does from any reduction in trade barriers, the U.S. economy will benefit from unilateral action. Consequently, the U.S. government should raise the threshold for customs treatment on small cross-border purchases—at least doubling the current $50 limit—regardless of whether other nations initially follow suit.

Fortunately, the prospects for online free trade are good. Working from the original U.S. proposal, 132 members of the WTO reached a temporary agreement on the exemption of electronic transactions from customs duties in May 1999.[58] To guarantee that this beneficial state of affairs continues, an agreement on the tariff treatment of digital transactions should be included in the negotiating agenda for the upcoming trade round.

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Restraining Antidumping Abuses

One of the major flaws in the WTO at present is its explicit authorization of protectionism in the name of antidumping. That authorization dates back to the original GATT; since then, efforts have been made in the Tokyo and Uruguay Rounds to negotiate antidumping "codes" that impose some constraints on the use of antidumping remedies, but those constraints are minimal. It is possible today for countries to block "dumped" imports in an entirely WTO-consistent manner even when the foreign producers whose goods are targeted are engaging in perfectly normal business practices that do not meet any plausible definition of "unfair trade."[59]

Antidumping abuses are becoming an increasingly serious problem for the world trading system. Until the past decade or so, antidumping was basically a sin of industrialized countries. In recent years, however, dozens of countries around the world have followed the bad examples of the United States and the EU and begun blocking imports under new antidumping legislation.

An overhaul of the WTO antidumping code to impose meaningful restrictions on protectionist abuses is urgently needed. At the very least, "dumping" needs to be redefined so that duties

are imposed only when market-distorting practices (for example, trade barriers or subsidies in the exporting market) are clearly identified.[60]

Unfortunately, the Clinton administration is dead set against any liberalization of WTO antidumping rules in the upcoming round. U.S. trade officials have decided to forsake the interests of U.S. exporters injured by foreign laws and U.S. import-using industries injured by our own law and instead put all their weight behind the narrow interests, especially domestic steel mills, that support antidumping protectionism as currently practiced. This position is a sad abdication of leadership by the government of the world's greatest trading power. The U.S. government should reverse its position and allow antidumping talks in the new round.

Improving Dispute Settlement

The WTO's dispute settlement mechanism can fairly be called the backbone of the whole multilateral system. By offering automatic and impartial resolution of controversies under all the WTO agreements, the mechanism ensures that the requirements of those agreements are clear and that violations carry real consequences. It thus represents an enormous improvement over the old GATT rules, under which important controversies were frequently left unsettled and countries could therefore ignore their obligations with impunity.

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Under GATT, rulings of dispute settlement panels could not be issued without unanimous consent—that is, without the consent of the country that lost the case. Needless to say, such an arrangement was not conducive to upholding agreements against powerful violators. The new WTO rules close this loophole by providing that rulings will be issued automatically unless there is unanimous opposition—that is, including the country that won the case. In addition, the WTO system features a permanent appellate body that reviews panel decisions and ensures internal consistency in the interpretation of agreements.

After nearly five years of operation, the WTO dispute settlement process must be judged on balance as a tremendous success. The clearest evidence of the mechanism's solid reputation for fair rulings is that member countries are making frequent use of it: As of September 1, 1999, it had been invoked in requests for consultations 181 times.[61] In the overwhelming majority of cases, disputes either have been settled amicably before any formal decision has been made, or panel and appellate body rulings have been implemented satisfactorily by the losing parties. With few exceptions, the system is working well.

Unfortunately, the major exceptions have occurred in two extremely high-profile cases—namely, the disputes between the United States and the EU over bananas and hormone-treated beef. In both cases the EU refused to bring its policies into conformity with WTO requirements, and the U.S. government retaliated with WTO-approved trade sanctions.

Those cases, and the tensions and outright rancor they have generated, highlight a serious flaw in the dispute settlement mechanism as presently constituted. Its "enforcement" procedures—in other words, the remedies it provides when countries refuse to obey WTO rulings—are seriously flawed, although not in the way that most WTO critics would argue.

Those critics have argued for changes in the system to make it easier for complaining parties to levy trade sanctions when countries fail to implement WTO rulings. And indeed, the bananas case in particular highlighted a technical inconsistency in the language of the WTO agreement on dispute settlement (known as the dispute settlement understanding, or DSU). Specifically, current procedures are unclear in cases in which the "defendant" country has changed its policies to implement a WTO ruling, although not enough to remedy fully the violation in question.

On the one hand, Article 21 of the DSU states explicitly that any disagreement about the sufficiency of implementation measures must be resolved through dispute settlement procedures; in other words, parties do not have the authority to decide unilaterally that implementation is or is not sufficient. On the other hand, though, Article 22 sets a specific deadline by which a

complaining party must request authorization for imposing trade sanctions, a deadline that would be missed if it were necessary to go back to a panel to determine whether the offending party's new policies were still in violation of WTO obligations. In the bananas case, the WTO muddled through this conundrum by provisionally authorizing sanctions pending a finding by the panel that the EU's changes in its bananas regime still violated GATT.

This inconsistency should be patched up through an amendment to the DSU. First of all, the DSU should confirm that only the WTO can resolve disagreements about the sufficiency of implementation; aggrieved parties should not have the authority to decide such matters unilaterally. The raison d'être of the dispute settlement process is to subject contending sides to an impartial authority; it would be foolhardy to allow one of the litigants to play judge at a critical stage of the proceedings. At the same time, though, it should not be possible for countries to game the system by repeated sham reforms; a country found to violate its obligations should get one chance to make things right before enforcement measures are taken. Such a limitation would preserve the impartiality, and therefore the legitimacy, of the process without sacrificing the complaining party's interest in swift vindication of its rights.

Beyond those technical issues lies the more fundamental question of what form enforcement should take. Here, on this basic level, is where the real weakness of the current dispute settlement mechanism is to be found. The most serious problem with the current procedures is their reliance on trade sanctions as the ultimate remedy, a reliance that stems from the "exports good, imports bad" misconception of the reciprocity model of trade agreements. Resort to trade sanctions perverts dispute settlement into a process of raising trade barriers rather than eliminating them; furthermore, it needlessly heightens tensions between trading partners and thus undermines support for the WTO system. Alternatives to trade sanctions will have to be found if the effectiveness of WTO dispute settlement is to be maximized.

The first problem with trade sanctions is that they punish the complaining country as much as or more than the country in the wrong. Trade sanctions mean raising tariffs against imports from the targeted country; those increased tariffs hurt the complaining country's businesses and consumers who would otherwise import those products just as surely as they hurt the offending country's companies that export them. It is only through the distorted lens of mercantilist thinking that it is possible to view trade sanctions as a way of favoring one country over another. Regrettably, such thinking is engrained in the language of the WTO, in which the self-inflicted wounds of protectionism are referred to officially as a "suspension of concessions"—as if open markets were a favor we do to other countries contingent on good behavior.

More fundamentally, trade sanctions are an inappropriate remedy because they run counter to the whole purpose of WTO dispute settlement. That process exists to *eliminate* trade barriers around the world, but the availability of trade sanctions as a remedy means that every resort to WTO dispute settlement runs the risk of ending with a net *increase* in trade barriers. Trade sanctions support the mission of the WTO only as a bluff; when they are actually used, they are counterproductive. An enforcement remedy that should never be used is not a good remedy.

But what is the alternative? Granted that sanctions are flawed, what other remedies are available? Actually, current WTO rules already contemplate a much better option: "compensation," or liberalization by the offending country of some other trade barriers. If a country is found to violate its obligations under the WTO, and then refuses to bring the policies in question into conformity with WTO requirements, it should be required to offer "compensating" liberalization in some other area.

Compensation offers all the advantages of trade sanctions without any of the disadvantages. Trade sanctions are a potent threat because they create a constituency within the offending country in favor of implementing the WTO ruling—namely, those exporters

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whose products are targeted by the sanctions. Compensation does precisely the same thing, but here the constituency is import-competing interests exposed to additional foreign competition through the lowering of barriers.

There are good reasons for believing that compensation generally will be more effective than sanctions in pressuring offending countries to implement adverse rulings. With sanctions, the offending country is being injured by the actions of the other country; accordingly, it is possible for the offending country's government to deflect some of the pressure for compliance by whipping up nationalist sentiments and shifting the blame for the whole problem to the sanctioning country. With compensation, on the other hand, there is no foreign scapegoat; the import-competing industries that are injured by compensating liberalization have only their own government to blame for their predicament.

Meanwhile, if trade sanctions ultimately fail to pressure the offending country into compliance, the perverse result is that the original uncured WTO violation is compounded by the raising of trade barriers elsewhere. By contrast, when compensation is the remedy, if it fails to achieve compliance, at least some other trade barriers in the offending country have fallen.

As mentioned above, compensation is already an option under current WTO rules. Article 22:1 of the DSU now states: "Compensation and suspension of concessions [that is, trade sanctions] are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time." Thus, at present, compensation and sanctions are formally given equal status as alternative remedies. Compensation, however, is completely voluntary. The offending country is under no obligation to offer it, the complaining country is under no obligation to accept anything offered, and there are no procedures available for determining impartially what constitutes "due" compensation (i.e., what kind of liberalization and what level thereof are sufficient to offset the injury suffered by the complaining country by reason of the underlying uncured violation). Consequently, the compensation option can easily be bypassed.

The DSU should be revised to make compensation mandatory. Although there are many different ways in which this remedy could be structured, one possible arrangement would work as follows. Any country that refused to implement an adverse ruling would be required to make three alternative compensation offers, each providing offsetting liberalization equivalent in commercial value to the uncured violation. The complaining country would then be entitled to choose one of the three alternatives. The complaining party could reject all the offers, but only on the ground that they were not of sufficient commercial value. If the offending party disagreed, the matter could be settled by independent arbitration. Of course, any compensation would have to be consistent with the rights of other WTO members.

What would happen if the offending party refused to offer compensation, or if (in a far-off, free-trade future) no compensation of comparable value could be identified? Other penalties not involving trade sanctions can easily be imagined. For example, failure to implement rulings could lead to the suspension of certain rights of WTO membership, including use of the dispute settlement mechanism or even participation in new negotiations. Those penalties would be based on the sound principle that any member of an organization that does not meet fully its obligations of membership should not enjoy all the benefits that come with it. At the same time, though, such penalties would avoid the perverse outcome of authorization by the WTO of new trade barriers.

Although reforms along the lines suggested here would mark a definite improvement, no enforcement mechanism can be expected to bear too much weight. The WTO can function effectively only if countries by and large live up to their obligations and implement adverse rulings when they go astray. The system is too fragile to be pushed to the limit with regularity. This fact imposes constraints on complaining countries as well as on offending ones. After all, from the bottom-up perspective, the primary benefit of WTO membership lies in

securing open markets at home. That benefit could disappear if the WTO's legitimacy were undermined by too many contentious showdowns like the bananas case. Countries should choose their WTO fights carefully, lest the victories they win be pyrrhic ones.

Finally, it should be noted that the elimination of trade sanctions as an enforcement remedy could yield advantages that transcend the confines of the dispute settlement process. The drive to use the WTO process to impose new international rules on labor, environmental, and other social issues derives in part from the prospect of using trade sanctions to enforce those rules. If, however, sanctions were off the table, the expansion of the WTO into those new areas would no longer open the possibility of blocking imports from countries that did not follow the rules. Interests that now lobby for WTO expansion in the hopes of creating new international authority for protectionism would be out of luck. Consequently, the dangerous momentum of WTO mission creep might lose some of its steam if the dispute settlement process were reformed appropriately.

Trade and Intellectual Property: A Work in Progress

The successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) was heralded by many observers in the developed world as one of the major triumphs of the Uruguay Round. The signing of the TRIPs Agreement in Marrakesh in 1994 was the culmination of a decade-long process, largely driven by the United States. While international infringement of intellectual property rights (IPR) had been a concern of the United States before 1984, it was not until that year that Section 301 of the Trade Act of 1974 designated inadequate protection of intellectual property a violation of U.S. trade laws. The U.S. emphasis on IPR reflected the strong competitive position of American knowledge-based industries.[62]

Despite some resistance from other countries, particularly in the developing world, the U.S. government succeeded in multilateralizing intellectual property in the international trading system, primarily for two reasons. First, it was clear that some type of IPR regime for the United States was a deal breaker for the whole round. The second and more important reason was that the world trading community knew that, without some type of multilateral agreement, the U.S. government would increase its unilateral efforts under "Special 301" to sanction IPR-infringing countries.[63] Developing countries decided to accept an implicit quid pro quo: If they abided by their commitments under the TRIPs Agreement, the U.S. government would resist the imposition of unilateral sanctions if those countries failed to live up to their international obligations.

Is TRIPs Working?

As TRIPs is still a "work in progress," it is difficult to evaluate in any conclusive way the degree to which it is achieving its objectives. Still, despite its origin in U.S. bullying, it is the most comprehensive and best international agreement on intellectual property to date.[64] It is comprehensive in that it has clear provisions on MFN and national treatment clauses, as well as on transparency—three important cornerstones to protecting the rights of intellectual property holders. It is also important in that it greatly extends patent protection for industries critically dependent on strong IPR regimes. For example, before TRIPs was signed in 1994, some 25 developing nations (of the then-98 members of GATT) excluded pharmaceutical products from patent protection.

Far and away the most important benefit of TRIPs, though, is the establishment of multilateral discipline over IPR conflicts through the dispute settlement process.[65] The benefit is twofold. First, the enforcement measures in TRIPs provide for the first time binding international obligations for the effective enforcement of IPR both internally and at the border. Simply put, TRIPs has teeth and bite, as a recent case won by the United States against India suggests.[66] While there is a five-year moratorium on using the dispute settlement

The drive to use the WTO process to impose new international rules on labor, environmental, and other social issues derives in part from the prospect of using trade sanctions to enforce those rules.

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mechanism against indirect violations of TRIPs, the agreement does allow for cases to be brought in some instances. In this case, the WTO found that India violated intellectual property protection rules by failing to implement a so-called mailbox mechanism for the filing of pharmaceutical and agricultural patents, as TRIPs requires. Recently, India announced that it would enact the necessary legislation.

Another important benefit of multilateralizing the dispute settlement process is that it will prevent arbitrary unilateral actions, particularly by the U.S. government. There is compelling evidence that unilateral action, such as the Special 301 law of the United States, is not particularly effective.[67] Such actions inherently raise questions and accusations that sanctions (or the threat of sanctions) are being used to protect special-interest groups at home. Such accusations cannot be leveled credibly at the WTO dispute settlement tribunals, whose judges represent other countries.

Agenda for the New Round

Despite this positive view of TRIPs, it is clear that a "significant number of developing countries have not been able to adapt their legislation to the Agreement's minimum standards yet."[68] This is largely a consensus assessment, based mostly on anecdotal evidence and personal observations; no systematic review of countries or TRIPs overall has yet taken place. It seems unwise to offer blanket condemnations or accolades of TRIPs, given that reviews built into the TRIPs agenda have not yet occurred. Specifically, there is a country-by-country review to be conducted in the year 2000. In that year there is also to be a review of contentious biotechnology issues (such as patenting of life forms) as well as an overall review of implementation of the agreement. Individual countries have also announced that they will conduct their own reviews. The U.S. Trade Representative's office, for example, announced that it will initiate a review in December 1999 (conveniently after the agenda-setting Seattle meeting) and publish its findings along with any proposed actions.[69]

In light of the fact that formal reviews by countries, much less by the WTO itself, have yet to take place, TRIPs should not be included formally in any trade negotiations in the near future—at least not until 2002. The primary reason, as the U.S.-based Intellectual Property Committee notes, is that "the built-in agenda presents a challenge on how to negotiate improved protection without putting into question the yet uncompleted implementation of the TRIPs Agreement."[70] Put differently, powerful interest groups in both developed and developing countries want to have TRIPs on the agenda but face a dilemma: developed countries want to hold negotiations to strengthen TRIPs but are fearful that doing so will open a Pandora's Box that will allow developing countries to weaken protections already established in the Uruguay Round.

Countries such as Hungary (on behalf of nine other Central European WTO members), for example, are requesting that the time period for implementation of TRIPs obligations be extended, a position that has found a sympathetic ear among some Canadian and EU officials. Other countries such as Cuba and Argentina are advocating the revocation of certain patent protections and are questioning the validity of invoking the dispute settlement process for cases of IPR infringement. Similarly, India released a paper saying that the TRIPs Agreement should be revised to reflect its original objective with respect to the transfer and dissemination of technology. African countries have also proposed comprehensive changes in the TRIPs Agreement.

Still other countries have questioned the degree to which TRIPs conflicts with other international agreements or the goals of other international institutions, which has implications for particular industrial sectors like chemicals and pharmaceuticals. Some countries feel that TRIPs conflicts with the Biodiversity Convention negotiated under the auspices of the United Nations. Others are calling for TRIPs to focus more heavily on "public health" and claiming that Article 27.1 should exclude the patentability of "essential medicines" as defined by the World Health Organization.

Faced with this barrage of calls to renegotiate original provisions of the TRIPs Agreement, interest groups in the United States in favor of strengthening TRIPs have largely backed down. Instead of calling for the negotiation of stronger IPR protections in TRIPs, U.S. trade officials are in favor of a more modest agenda of implementing the current TRIPs in a "full and effective manner" and "deferring any negotiations in the WTO to improve the TRIPs Agreement until we all digest what needs to be implemented for now."[71]

Making TRIPs Work Better

Even if TRIPs is not included in upcoming trade negotiations, contentious issues remain that will have to be resolved by the TRIPs Council. One in particular concerns the ability of the U.S. government to invoke the dispute settlement process against IPR-infringing countries. In a speech in Washington, D.C., in May 1999, U.S. Trade Representative Charlene Barshefsky made clear that, since the five-year moratorium is over, the U.S. government is "prepared to file cases against those which refuse to meet their obligations."[72] The problem is that Articles 64.3 says that the WTO TRIPs Council should "examine the scope and modalities" of impairment cases. So far, however, there is little agreement about the meaning of "examine." Developed countries hold that an examination of "implementation" is called for, while developing countries contend that the examination opens the possibility of revising the text of TRIPs itself.

A variety of other contentious issues remains unresolved as well, such as the patenting of biotechnology, the international exhaustion of IPR protection,[73] and ambiguity on certain enforcement issues. For example, there is some ambiguity surrounding Article 42, which establishes only that countries need to have "fair and equitable procedures" for dealing with IPR infringers, even though such terms are inherently subjective. As one U.S. trade official lamented, "It's up to the judge to implement [criminal and civil remedies] on a case-by-case basis . . . and you have cases where there is concern among right holders that judges might not take seriously these provisions, that they might just slap peoples' wrists."[74]

Resolving these contentious issues should keep the TRIPs Council busy enough over the next few years. Although areas exist where TRIPs should be strengthened, the political climate is not conducive to such negotiations at this time. Perhaps in the future (e.g., after the 2002 overall implementation review), the climate will be more hospitable to revisiting TRIPs with the overall goal of strengthening it. One reason this might be so is the growing empirical evidence that stronger IPR protection is positively correlated with economic growth and development—even in poorer countries.[75]

While imperfect, TRIPs still is a strong document that will likely help bring about important economic benefits for the developed and developing world, particularly over the long term. To be sure, those economic benefits will vary from country to country, and it is important to acknowledge openly that compliance with TRIPs provisions will entail short-term costs. To revisit TRIPs now, in the current political climate, will invite countries to try to weaken important provisions already agreed upon in the Uruguay Round. It is the contention here that such an action is not in the long-term interests of even developing countries.

Advocating a position of "not tinkering with TRIPs," however, does not mean that the position of the more affluent developed countries is more enlightened. It is true that developing countries should reconsider their position in light of recent economic data indicating that stronger IPR protection tends to have positive long-term economic benefits, even for the developing world.[76] It is also true, however, that developed countries are following a poor strategy politically. The wealthier countries in the developed world should recognize the need to lead by example—this means repealing protectionist provisions in their own laws (such as antidumping laws) and granting increased market access to developing countries in sectors such as agriculture and textiles, as discussed above.

By avoiding the use of protectionist mea-

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sures at home, the developed world will achieve two important goals. First, it will blunt the powerful (if still self-defeating) argument of developing countries that the developed world is hypocritical. There was a clear tradeoff in the Uruguay Round whereby developed countries in the north (by and large) "got TRIPs" in exchange for granting developing countries in the south increased access to northern markets. To the extent that countries in the north, including the United States, have not lived up to that quid pro quo, developing countries feel less enthusiastic about fulfilling their TRIPs obligations. Second, and more important, breaking down protectionist barriers in the north will afford poorer countries the positive economic benefits of increased export opportunities. In light of the data showing that countries adopt stronger IPR regimes as they advance economically,[77] it seems reasonable to conclude that increasing the wealth of poorer countries will do more to bring about a positive change in IPR regimes than will threats of sanctions.

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Another Try at a Multilateral Agreement on Investment?

Should the new round of WTO talks include a renewed effort to negotiate a multilateral agreement on foreign investment? At first glance, the answer from a free-trade perspective seems an obvious yes. Investment and trade liberalization complement each other and raise similar policy issues, such as nondiscrimination against foreign producers. But adding investment to the WTO agenda now would probably provoke resistance far out of proportion to the modest gains such a treaty could deliver.

The 1994 Uruguay Round Agreement managed to codify a few generally accepted rules governing Trade-Related Investment Measures. The TRIMs agreement bars countries from adopting investment rules that undermine basic provisions of the 1994 GATT charter, specifically the ban on quantitative restrictions and the requirement that a country's domestic regulations not discriminate against foreign products.

Members of the OECD tried to negotiate among themselves a more ambitious Multilateral Agreement on Investment, but the effort died last year in the face of internal disagreements and the sometimes hysterical opposition of anti-trade nongovernmental organizations. There is little reason to believe that a similar effort under the sponsorship of the WTO would meet a different fate.

A comprehensive MAI may be unnecessary, given the ongoing global trend toward investment liberalization. As does trade liberalization, investment liberalization brings its own rewards. Nations that provide a hospitable climate for foreign investment, including adequate legal protections for private property, have reaped the rewards of a larger capital base, new technology, higher wages, and faster growth.[78]

As a consequence, nations have moved unilaterally and bilaterally to liberalize their treatment of foreign investment. According to the United Nations Conference on Trade and Development, "Of a total of 151 regulatory changes made in 1997 by 76 countries, 89 percent were in the direction of creating more favorable conditions for FDI [foreign direct investment], and 11 percent were in the opposite direction. . . . During the period 1991–97 as a whole, 94 percent of FDI regulatory changes were in the direction of creating a more favorable environment for FDI."[79]

By the end of 1997, 169 countries had signed a total of 1,513 bilateral investment treaties with each other (including 44 involving the United States).[80] Those treaties typically offer the same protections as the proposed MAI, albeit bilaterally.

The bilateral investment treaties signed by the U.S. government, for example, guarantee that foreign-owned affiliates will be treated the same as their domestic competitors; that property will not be expropriated without due process and just compensation; that multinational companies will be allowed to repatriate profits without hindrance; that foreign affiliates will be allowed to choose their top management; that no trade-distorting "performance requirements" will be imposed, such as provisions mandating local content or mini-

mum exports; and that disputes with a host government can be submitted to international arbitration.

Each of those provisions provides a reasonable guarantee of basic rights that all investors should have so they can control their property. Less-developed countries that commit to protect those rights find it easier to attract foreign capital and are, as a consequence, reaping the rewards of more rapid development. This rising, bottom-up tide of investment liberalization will likely continue whether the WTO concludes a multilateral agreement on investment or not.

Ideally, an investment treaty agreed to by all members of the WTO would set a uniform standard of minimum protections and save the transaction costs of negotiating a few thousand more bilateral treaties. But the ongoing trend toward investment liberalization makes the case for a WTO accord less compelling at this time. Pursuing such an agreement at this point will only detract from the more realizable goals of liberalizing trade in goods and services.

Avoiding the Labor and Environment Thicket

Negotiators for the United States and the EU are expected to lead a renewed effort to graft labor and environmental issues onto the multilateral trade agenda. The ultimate aim of this effort is to "harmonize" upward the labor and environmental laws of WTO members to some basic standard.

At least two broad arguments are made for including labor and environmental standards in any future multilateral trade agreement. One is purely economic: that lower standards in less-developed countries give their industries an "unfair" advantage against industries in advanced economies that must bear the extra cost of higher social standards. Enforcing more uniform standards would thus "level the playing field." The other argument is essentially moral: that it is simply wrong to trade freely with people in nations that do not adequately protect the environment and core worker rights.

Adding enforcement of labor and environmental standards to the WTO's plate would be a mistake. The WTO should focus on aiding the efforts of national governments to lower barriers to trade. It is poorly suited as an institution to police labor and environmental standards within member nations. The use of sanctions as a means of enforcing social standards would undermine the WTO's central mission of trade liberalization.

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Labor and environmental regulations are internal matters that should be left to individual countries to determine. Such regulations can have an impact on the composition of international trade, of course, but the impact is often exaggerated and may be no greater than that of tax and monetary policy, education and health care systems, or subsidies for infrastructure, which are also internal matters not subject to WTO rules.

Advocates of harmonization warn of a destructive "race to the bottom," as advanced nations are forced to weaken labor and environmental standards to compete with less-regulated producers in developing nations. But this theory falsely assumes that lower standards give poorer countries a significant advantage in attracting global capital and gaining export markets. The OECD has found that, in practice, a lack of core labor standards plays no significant role in attracting foreign investment or in enhancing export performance. The OECD did find strong evidence "that there is a positive association over time between sustained trade reforms and improvements in core standards." [81]

In other words, trade liberalization encourages higher standards, not lower standards. If anything, the real race may be toward the top. For reasons of internal efficiency, multinational companies tend to impose higher standards on their overseas production plants than required by local law, thus raising average standards in the host country.

There is nothing morally wrong with nations' choosing different social standards that reflect their various levels of development. Imposing Western-style labor and environmental standards on poor countries could force some of their citizens to choose between clean-

er air and adequate nutrition. Other developing countries may choose to focus resources on cleaner drinking water rather than cleaner air, while more developed countries may choose to make cleaner air a priority. Minimum wages and other labor regulations not justified by rising productivity could create unemployment or force workers into the informal economy where standards would be even lower. Uniform standards imposed through the WTO would force poor countries to adopt regulations that would be politically and economically inappropriate for their stage of development.

Free trade and domestic liberalization—and the faster growth they create—are the best means of encouraging higher standards. As per capita incomes rise in less-developed countries, so does the domestic political demand for higher standards, and the ability of the productive sector to pay for them. Punishing poorer countries with trade sanctions would only cripple their long-term ability to raise domestic labor and environmental standards.

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Labor Sanctions Counterproductive

One proposal that could be on the table at the next round would be to legalize sanctions against WTO members who do not enforce a set of core labor standards. The generally accepted list of core standards includes the freedom to form unions and bargain collectively, elimination of abusive forms of child labor, prohibition of forced labor, and nondiscrimination in employment.

One immediate problem with linking trade and labor standards is defining the standards in a meaningful way. For example, some forms of child labor that are objectionable to Western sensibilities remain necessary for the economic survival of families in less-developed countries. Under certain interpretations, the freedom to form labor unions could include the freedom to form "closed shops" that infringe on the right of workers who choose not to associate with a union.

Making substandard labor regulations an actionable offense under WTO rules could prove to be a double-edged sword for the United States. It is conceivable that the EU and perhaps even Canada, where labor market regulations tend to be even more strict, could accuse the United States of exploiting its lower standards to gain an "unfair" trade advantage.

Finally, tying trade to labor standards would make the WTO process vulnerable to capture by protectionist political forces. Instead of arguing candidly for relief from foreign competition, domestic industries and their unions could claim to be acting on behalf of workers' rights abroad (even though trade sanctions would hurt foreign workers). A labor clause would create yet another loophole, along with antidumping and Section 201 "escape clause" actions, that would allow the erection of new, WTO-consistent barriers against imports.

WTO member nations should stick to the declaration agreed on at the WTO Ministerial Meeting in Singapore in December 1996. The official agreement on labor standards declared:

> We renew our commitment to the observance of internationally recognized core labor standards. The International Labor Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labor standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question.[82]

Any proposals to use sanctions to enforce labor standards should be off the table at the next round of multinational trade negotiations. If nations want to set nonbinding standards for labor-market regulation, the ILO remains the appropriate forum. Entangling the WTO in the effort to harmonize labor standards would be counterproductive, undermining both trade liberalization and long-term progress toward raising labor standards abroad.

No Conflict with Environmental Protection

Environmental issues have already made their way onto the WTO agenda, with the establishment after the Uruguay Round of the Committee on Trade and Environment. In congressional testimony earlier this year, Deputy U.S. Trade Representative Susan G. Esserman said the Clinton administration is committed to

> pursuing trade liberalization in a way that is supportive of high environmental standards. This means, among other things, that the WTO must continue to recognize the right of Members to take science-based measures to achieve those levels of health, safety and environmental protection that they deem appropriate—even when such levels of protection are higher than those provided by international standards.[83]

Some environmental activists complain that the WTO system favors free trade at the expense of environmental protection. But WTO rules place no restraints on the ability of a member government to impose any environmental regulations determined to be necessary to protect its own environment from domestically produced or imported products.

Article XX of the 1994 GATT, the basic charter of the WTO, plainly states that members may impose trade restrictions "necessary to protect human, animal, or plant life or health." The SPS Agreement of the Uruguay Round does require that such restrictions be based on sound scientific evidence—a common-sense requirement necessary to discourage the use of health and safety issues as a cover for protectionism.

WTO members are also free to strike multilateral agreements on a range of environmental issues without running afoul of WTO obligations. Among the major multilateral environmental agreements already in force is the 1973 Convention on International Trade in Endangered Species, which forbids trade in certain animal and plant products, such as ivory; the 1987 Montreal Protocol on Ozone Depleting Chemicals; and the 1989 Basel Convention on the cross-border shipment of hazardous waste. To date, none of the trade provisions in those agreements has been challenged under WTO rules. (This is not to say that environmental agreements should always trump trade agreements. Any effort in the new round to negotiate a blanket WTO exemption to allow for trade sanctions to enforce environmental agreements should be resisted.)

Finally, WTO members, as sovereign nations, are free to simply ignore any adverse WTO rulings against domestic regulations that affect trade. A prominent example is the EU's ban on the sale of beef from cattle treated with growth hormones. The EU has lost repeatedly in the WTO, but it has no plans to lift its ban even though it has produced no scientifically sound evidence that the banned beef poses any hazard to public health. The Clinton administration retaliated in May 1999 against the EU by imposing sanctions on $117 million worth of imports from Europe, but retaliation as a weapon of trade disputes existed long before the WTO.[84]

Anti-trade environmental activists complain that several decisions by the WTO have undercut U.S. environmental regulations. In the so-called shrimp-turtle case, the WTO ruled against a U.S. ban on shrimp from countries the U.S. government judged were not adequately protecting sea turtles from being caught and killed in shrimp nets. In an earlier, similar case, GATT ruled against a U.S. ban on tuna from Mexico that the U.S. government claimed was caught by a process that endangers dolphins. Environmental critics of the WTO point to those two cases as proof of the WTO's hostility to environmental protection.

The fundamental problem is not the WTO, however, but the nature of the U.S. laws under challenge. Both laws targeted a process or production method, not the product itself. If countries were given a green light to place sanctions on every product made in a way determined to be objectionable, trade barriers could proliferate. For example, manufactured imports could be banned because

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pollution emitted at the factory of origin did not meet the domestic standards of the importing country. Or agricultural goods could be barred because the government of the importing country objected to the methods of farming and raising livestock of the producing country.

The shrimp-turtle and tuna-dolphin cases admittedly present more complicated fact patterns than the hypothetical examples above. In those disputes there was a tight and focused connection between the specific production method (harvesting of shrimp or tuna) and a specific environmental goal (saving turtles or dolphins); furthermore, the policies in question concerned not domestic conditions in the exporting countries but rather preservation of animals in international waters. Thus, although those policies may be located on the slippery slope of unilaterally imposing U.S. environmental standards on other countries through trade sanctions, they are far from the bottom of it. Recognizing this special situation, the WTO in the shrimp-turtle case upheld the WTO-consistency of the U.S. law but nonetheless found that it was being applied in an arbitrary and discriminatory way.

One alternative to banning imports on the basis of production methods would be a voluntary system of "eco-labeling," in which consumers were informed of the production method and could then decide for themselves whether to purchase the product. Of course, any labeling required by government would need to be designed to protect importers from unfair discrimination.

A Modest Agenda for the Environment

WTO members could take several positive steps in the next round to enhance the beneficial impact of trade on the environment. Among the proposals that deserve to be part of a final agreement:

- Reduce tariffs to zero on goods and services used for pollution control. Among other beneficial effects, free trade would encourage the transfer of pollution-abating technology and production methods to developing countries, thus reducing the cost of implementing higher environmental standards.
- Eliminate environmentally harmful subsidies and trade barriers in the energy, agriculture, and fishery sectors. Farm protection encourages the overuse of fertilizers, the plowing of marginal land, and other environmentally damaging practices. Coal subsidies discourage the use of other, cleaner-burning alternatives, adding to global carbon dioxide pollution. Fishery subsidies promote overfishing of limited stocks and draw capital to an industry already suffering from overcapacity.[85]
- Accelerate liberalization in manufacturing, including textiles and apparel. Opening the markets of advanced economies further to labor-intensive manufactured goods would encourage capital and resources in less-developed countries to shift from agriculture and resource extraction to sectors that are less environmentally damaging.

Finally, the WTO could help calm the fears of environmental groups by enhancing its transparency. Specifically, the WTO should open all dispute settlement panel and appellate body meetings to observation by all WTO members and interested parties. It should welcome amicus curiae briefs to dispute settlement and appellate bodies, and make all submissions to the WTO public (with the exception of sensitive commercial information). Dialogue and greater transparency are almost always good ideas, of course, but there must also be a constitutional line in the sand: the WTO is an intergovernmental mechanism with governments, not private parties, doing the negotiating and decisionmaking.

In summary, the WTO system is not in conflict with environmental protection and does not require any major reforms to make it environmentally friendly. In fact, by encouraging more economic development and a higher general standard of living, trade liberalization provides the resources and technology needed to reduce pollution.

Competition Policy

Competition policy—or antitrust as it is known in the United States—has attracted significant attention in recent years as a possible new area for WTO expansion. Both the EU and Japan have called for the negotiation of international competition policy rules in the upcoming round.[86] The Clinton administration, meanwhile, opposes such talks. The administration is right, if not always for the right reasons.

Supporters of international rules on competition policy argue that it is not just governments that can restrict trade. Private firms can also engage in anti-competitive practices that decrease consumer welfare. Consequently, they argue, international rules are necessary to ensure that the market access gained by reduction of government barriers is not then lost to private exclusionary behavior.

Even if it is theoretically possible for private companies to close markets, the scale of such "private protectionism" is insignificant in comparison with traditional government market barriers. Indeed, trade liberalization needs competition policy far less than competition policy needs trade liberalization. There is no better and more effective anti-monopoly policy than open borders. If trade liberalization is pursued diligently, the problem of private anti-competitive conduct is greatly reduced. (Of course, there remains the additional and serious problem of government-owned or government-mandated monopolies in such industries as telecommunications, oil, and finance.) As for trade-distorting private anti-competitive activity that persists even when protectionist barriers are eliminated, there is no convincing evidence that the scale of that problem would justify the radical step of expanding the WTO mandate to embrace the direct regulation of private business behavior.

Not only is private monopoly overstated as a trade problem, but the proposed cure would almost certainly be worse than the disease. After all, merely labeling something "competition policy" does not make its effect pro-competitive. The history of the U.S. antitrust laws shows that time and again they have been used to impose anti-competitive restrictions on pro-consumer business conduct.[87] There is a very real risk that WTO competition rules would be similarly misused. Since the purpose of trade negotiations is to reduce government controls over trade and investment flows, not to increase them, there ought to be a very strong presumption against launching talks in any area where the potential for expanding government restrictions is significant. Such considerations weigh heavily against adding private business practices to the WTO's agenda.

WTO negotiations on competition policy are as impracticable as they are inadvisable. There is nothing even approaching an international consensus on the proper scope and application of competition policy. Indeed, there is no such consensus internally here in the United States, where antitrust law dates back more than a century—just witness the dramatic differences between the Reagan and Clinton administrations in antitrust enforcement. In light of such sharp divergences of views, the idea of hammering out rules in the upcoming round is a pipe dream.

Even assuming international competition policy standards could be agreed upon, the WTO is spectacularly ill-suited to enforce them. Determinations concerning allegedly anti-competitive conduct are extremely fact specific and require access to voluminous and often highly sensitive business documents. Will the WTO have subpoena power to compel discovery of such documents? It is virtually unimaginable that member countries would ever consent to such a thing. Yet without the ability to compile a complete factual record, the WTO would be shooting in the dark whenever it had to second-guess the enforcement decisions of national competition policy authorities.

Opposing WTO involvement in this area does not imply that there should be no international coordination on competition policy matters. After all, the existence of different and conflicting national rules—for example, with respect to merger reviews—can impose onerous burdens on companies that operate across political boundaries. In such situations, efforts

There is no better and more effective anti-monopoly policy than open borders. If trade liberalization is pursued diligently, the problem of private anti-competitive conduct is greatly reduced.

by national authorities to harmonize requirements or to specify which rules should govern when (through, for example, mutual recognition agreements) could prove useful. Those kinds of problems ought, however, to be tackled issue by issue, country by country; they provide no warrant for sweeping, one-size-fits-all prescriptions.

The U.S. government has vigorously opposed the negotiation of WTO competition rules. This stance springs in part from the understandable aversion of the U.S. Department of Justice to the idea of the WTO's looking over its shoulder at every turn. In addition, the U.S. government is concerned that competition policy talks would provide a forum for addressing the anti-competitive impact of antidumping laws. Here the U.S. government's motives—to defend current antidumping practice at all costs—are lamentable. Nevertheless, the bottom-line U.S. position is correct: negotiations on competition policy in the upcoming round would be a mistake. Critics of antidumping laws should pursue reforms directly and not get bogged down in an ill-conceived effort to expand the WTO's authority beyond its proper confines.

Even assuming international competition policy standards could be agreed upon, the WTO is spectacularly ill-suited to enforce them.

Conclusion

The second half of the 20th century has witnessed giant strides toward an open global economy free of trade-distorting subsidies and barriers, but much work remains to be done. A new round of multilateral trade negotiations can play an important if limited role in promoting greater prosperity through trade liberalization.

The new round of WTO talks set to begin in Seattle represents, first and foremost, an opportunity to extend the benefits of liberalization to two sectors—agriculture and services—that have largely eluded the discipline of international trade law. If the final results of the new round are to be judged a success, they must include broad and significant commitments to liberalize trade in services and agricultural products.

A successful round should also reduce and eventually eliminate tariffs on a wide range of manufactured goods, including information technology products, and declare cyberspace a permanent tariff-free zone. It should restrict the use of antidumping laws to minimize their abuse for protectionist purposes and reform the dispute settlement mechanism so that further liberalization, not retaliation, becomes the chief method of enforcing WTO decisions. And all this should be achieved within a three-year deadline.

To keep the negotiations on track, such side issues as competition policy and labor and environmental standards should be kept off the agenda. Those danger areas threaten to undermine trade liberalization directly by widening the scope for trade retaliation and indirectly by overloading the WTO as an institution and complicating efforts to reduce trade barriers in other areas. Competition policy and labor and environmental standards are best addressed through other means, such as multilateral environmental agreements, the International Labor Organization, and bilateral cooperation between national competition policy authorities.

The World Trade Organization can play an important role in spurring, facilitating, and codifying the efforts of its members to reap the benefits of trade liberalization. To that end, the U.S. government can and must play a leadership role in helping the new round of WTO negotiations to fulfill its potential.

Notes

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2. EU proposal quoted in Ernest H. Preeg, "Charting a Course for the Multilateral Trading System: The Seattle Ministerial Meeting and Beyond," Group of 30 Occasional Paper 61, 1999, p. 14.

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4. The distinction between liberalization "from above" and liberalization "from below" is made in Razeen Sally, *Classical Liberalism and International Economic Order* (New York: Routledge, 1998).

5. J. Michael Finger, Ulrich Reincke, and Adriana Castro, "Market Access Bargaining in the Uruguay Round: Rigid or Relaxed Reciprocity?" in *Going Alone: The Case for Relaxed Reciprocity*, ed. Jagdish Bhagwati (Cambridge, Mass.: MIT Press, forthcoming).

6. The "bicycle theory" is discussed in I. M. Destler, *American Trade Politics*, 3d ed. (Washington: Institute for International Economics and the Twentieth Century Fund, 1995), pp. 17-18.

7. Timothy Josling, "Agricultural Trade Policy: Completing the Reform," Institute for International Economics, Washington, April 1998, p. 6.

8. A tariff rate quota applies a relatively low or even zero tariff to an initial quantity of imported goods and then a steeper, sometimes prohibitive tariff to imports above the initial quantity.

9. Organization for Economic Cooperation and Development, *Agricultural Policies in OECD Countries: Monitoring and Evaluation* (Paris: OECD, 1999), p. 22.

10. Australian Department of Foreign Affairs and Trade, "Global Trade Reform: Maintaining Momentum," 1999, p. 10, http://www.dfat.gov.au.

11. Ibid., Table 1, p. 28. In recent years Japan has made some progress in reducing barriers to agricultural imports; remaining protection is concentrated in rice, sugar, and beef. Despite continuing barriers, Japan is the world's no. 1 importer of U.S. agricultural products.

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13. U.S. International Trade Commission, *The Economic Effects of Significant U.S. Import Restraints: Second Update 1999*, investigation no. 332-325 (Washington: USITC, May 1999), pp. 45-83.

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18. Barshefsky, "America's Agricultural Trade Agenda."

19. Organization for Economic Cooperation and Development, *Agricultural Policies in OECD Countries*, p. 21.

20. Kym Anderson, "Agriculture, WTO, and the Next Round of Multilateral Trade Negotiations," University of Adelaide, Australia, November 1998.

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22. World Trade Organization, *International Trade* (Geneva: WTO, 1997), vol. 1. Cited in Sherry M. Stephenson, *Approaches to Liberalizing Services*, written for the Development Research Group of the World Bank, 1999.

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27. Bernard Hoekman and Carlos A. Primo Braga, "Protection and Trade in Services," Policy Research Working Paper no. 1747, World Bank, April 1997, p. 11.

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