

BROKEN PROMISES: TRADE, AGRICULTURE AND DEVELOPMENT IN THE WTO

JORDANA HUNTER*

CONTENTS

- I Introduction
- II Accommodating Development in the Pre-WTO Legal Regime
 - A Contested Understandings of Development
 - B The Development of Special and Differential Treatment in the GATT
 - C The Impetus for Change
- III Developing Countries and the *Agreement on Agriculture*
 - A The Significance of the Agreement in the Multilateral Trading System
 - B The Current Framework for Liberalisation
 - C Agriculture and Development
 - 1 The Provision of Special and Differential Treatment
 - 2 Falling Short of Meaningful Liberalisation
 - 3 Specific Provisions for Least-Developed and Net Food-Importing Developing Countries
- IV The Doha Development Round
 - A The Doha Declaration
 - B Making Trade Work for Development in the Doha Round
 - 1 Special and Differential Treatment for Developing Countries
 - 2 Liberalising Trade in Agriculture
- V Conclusion

I INTRODUCTION

The relationship between developing countries and the *General Agreement on Tariffs and Trade* ('GATT')¹ and World Trade Organisation ('WTO') multilateral trade regime is marked by a troubled history. Following decades of virtual non-participation in trade negotiations, developing countries took a seat at the negotiating table at the Uruguay Round of trade negotiations. There is a growing sense that by accepting the outcome of the Uruguay Round, developing countries paid a very high price for the promise of liberalisation of the agricultural and textile sectors in the North — a promise most developing countries now consider broken.² The failure to launch a new trade round at Seattle in 1999 demonstrated how seriously developing countries were

* LLB (Hons) graduand, DipModLang (Indonesian) graduand, BCom (Hons) candidate, The University of Melbourne.

¹ *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995), annex 1A (*General Agreement on Tariffs and Trade*) 1867 UNTS 190 ('GATT').

² See, eg, Ernest Preeg, 'The South Rises in Seattle' (2000) 3 *Journal of International Economic Law* 183, 184; South Centre, 'No Consensus on New Trade Round' (2001) 16 *South Bulletin* <<http://www.southcentre.org/info/southbulletin/bulletin16/bulletin16.htm>> at 1 May 2003.

committed to rectifying the ‘imbalances and inequities’ of past agreements.³ That the new round of WTO negotiations, launched in 2001 in Doha, Qatar, has been dubbed the ‘Development Agenda’ points to a recognition that development issues will be fundamental to the round’s success.⁴ More than a change in rhetoric will be required, however, to achieve the reordering of the multilateral trading system now demanded by many developing countries.

This commentary explores this troubled history by examining the way in which the multilateral trading system has accommodated development under the *GATT* and WTO. The commentary focuses on the *Agreement on Agriculture*⁵ because it highlights a number of concerns about the relationship between the North and South in the WTO. The *Agreement on Agriculture* in its current form stops well short of liberalising the agricultural sector. The history of agricultural protectionism in the North and agriculture’s virtual exclusion from the *GATT* prior to 1995 demonstrates the highly political nature of this sector. However, given the importance of agricultural reform to the growth and prosperity of many developing countries, the WTO’s treatment of agriculture can be seen as a test of its credibility and survivability.⁶ Whether the regime can maintain its ideological commitment to liberalisation and free trade when this conflicts with the interests of the North is likely to determine whether the WTO can survive in the face of developing country expectations to participate in, and benefit from, global trade.

Part II of this commentary considers the contested understandings of development that underpinned the provision of different and more favourable treatment for developing countries in the *GATT*. The marked shift in understandings of development that followed the failure of import substitution policies and prompted greater developing country involvement in the multilateral trading system is also explored.

Part III examines the Uruguay Round *Agreement on Agriculture*. It begins by considering the political and economic significance of the *Agreement*, to both developed and developing country members. Part III analyses the *Agreement on Agriculture*’s framework for liberalisation and the provision of special and differential treatment for developing countries. The commentary argues that far from meeting the interests of developing countries, the *Agreement on Agriculture* in its current form has done little to liberalise agricultural trade and has contributed to the further institutionalisation of inequality between the North and South.

Part IV examines the developments to date under the Doha Round negotiations relating to the further reform of the *Agreement on Agriculture* and measures contemplated to assist developing countries. It suggests that real

³ South Centre, above n 2.

⁴ See, eg, World Trade Organisation, *Negotiations, Implementation and Development: The Doha Agenda*, <http://www.wto.org/english/tratop_e/dda_e/dda_e.htm#implementworkprogramme> at 1 May 2003.

⁵ *Marrakesh Agreement Establishing the World Trade Organization*, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995), annex 1A (*Agreement on Agriculture*) 1867 UNTS 190.

⁶ Rubens Ricupero, Secretary-General of the UN Conference on Trade and Development, (Speech delivered at the Food and Agricultural Organisation Symposium on Agriculture, Trade and Food Security, Geneva, Switzerland, 23 September 1999) <<http://www.fao.org/News/1999/991002-e.htm>> at 1 May 2003.

participation by the South in the multilateral trade regime will require the North to make a more serious commitment to technical and financial assistance in addition to accepting meaningful liberalisation of agricultural trade. Part IV also considers the debate surrounding the ‘multifunctionality’ of agriculture. It suggests that to make allowances for multifunctionality in the agreement on the terms proposed by some developed countries would constitute a backward step for the South.

II ACCOMMODATING DEVELOPMENT IN THE PRE-WTO LEGAL REGIME

A *Contested Understandings of Development*

The original *GATT* was adopted in 1947 in the context of a general belief that economic prosperity was an important ingredient for peace.⁷ Since then, much energy has been devoted to formulating economic models that attempt to explain the causes of poverty and the growth phenomenon. Now, as then, it is generally accepted that reductions in absolute poverty will best be effected by the pursuit of economic growth through development.⁸ However, despite more than five decades of multilateral efforts to regulate the international trading system, economic prosperity appears to have eluded many states in the South, while blessing many times over the states of the North.

In the North, the development project has largely been conceived as an attempt to rectify the ‘condition’ of underdevelopment. Dominant explanations of underdevelopment and growth have focused on the idea of linear stages of development,⁹ which sees the developing country ‘graduate’ from adolescence to maturity.¹⁰ This narrative assumes that the causes of underdevelopment (be they the existence of an agrarian, as opposed to industrial-based, economy; poorly functioning markets and weak institutional, legal and infrastructural capacities; or low levels of human capital and productivity)¹¹ are mostly endogenous. The narrative thus legitimises the exclusion of past colonial histories or present global power dynamics from an analysis of the existence of underdevelopment and its ‘cure’. Although the content of policy prescriptions has changed over time, these basic understandings of development have shaped the way in which the original *GATT* and the Uruguay Round agreements account for development and the particular circumstances of developing country members.

⁷ Rosa Maria Lastra, ‘The International Monetary Fund in Historical Perspective’ (2000) 3 *Journal of International Economic Law* 507, 508.

⁸ However, the policies that should be adopted to promote economic growth continues to be debated: see, eg, Ravi Kanbur, ‘Economic Policy, Distribution and Poverty: The Nature of Disagreements’ (2001) 29 *World Development* 1083; Paul Krugman and Maurice Obstfeld, *International Economics: Theory and Policy* (5th ed, 2000) 254–71.

⁹ For example, according to Rostow’s ‘stages-of-growth’ model of development, ‘[i]t is possible to identify all societies, in their economic dimensions, as lying within one of five categories: the traditional society, the preconditions for take-off, the take-off, the drive to maturity, and the age of high mass-consumption’: W W Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (2nd ed, 1971) 4.

¹⁰ Daniel Tarullo, ‘Logic, Myth, and the International Economic Order’ (1985) 26 *Harvard International Law Journal* 533, 545–9.

¹¹ While by no means complete, this list of problems faced by developing countries highlights a number of characteristics often mentioned by economists: see, eg, Krugman and Obstfeld, above n 8, 682–3, 703–4.

B *The Development of Special and Differential Treatment in the GATT*

The conventional wisdom at the time of the *GATT*'s inception amongst economists from both the North and South was that economic growth and development would best be secured by a push towards industrialisation through the inward-looking, import substitution ('IS') development model.¹² The model called for rapid industrialisation through the promotion of key domestic industries that would be shielded from international competition, at least during their infancy. By encouraging diversified production, countries would progress along the value-added chain until, eventually, they 'caught up' with the developed world.¹³

The IS development model appears at odds with the free trade, liberalisation agenda of the *GATT*. Nonetheless, it was implicitly acknowledged within the *GATT* and forms the conceptual basis for exempting developing countries from several *GATT* disciplines. Explanations for this anomaly may extend further than an altruistic willingness on the part of the North to accommodate development programs in the South. Indeed, developing countries' adoption of IS strategies had little effect on Northern states' economic interests. This was due to two related factors. First, developing countries accounted for only a minor proportion of the North's export trade and thus the adoption of protectionist policies had a minimal effect on their export markets. Second, developing countries' unwillingness to participate in trade negotiations meant there was little pressure on the North to liberalise its own highly protected sectors, in particular agriculture and textiles, which would otherwise have been of key interest to developing countries had they adopted outward-oriented development strategies.¹⁴

Although the original *GATT* made no explicit reference to developing countries as a class, the art XII exception to the general prohibition on the use of quantitative restrictions accommodated the IS development model by permitting the use of restrictions in the event of balance of payments difficulties.¹⁵ By recognising that a country may experience balance of payment difficulties arising from a high demand for imports 'as a result of domestic (development) policies',¹⁶ the *GATT* implicitly endorsed the IS model, despite its trade distorting effects.¹⁷

Further amendments to the prohibition on quantitative restrictions were adopted at the 1954–55 *GATT* review session. These targeted developing countries as a group and introduced the concept of 'special and differential

¹² Michael Todaro, *Economic Development* (7th ed, 2000) 498, 504–9.

¹³ *Ibid* 498. In part, the IS development model was a response to fears that reliance on the free market and static comparative advantage would, through the process of international specialisation, restrict developing economies to agriculture and primary production, which were characterised by variable prices and declining terms of trade.

¹⁴ Arvind Panagariya, 'Millennium Round and Developing Countries: Negotiating Strategies and Areas of Benefit' (Paper presented at the Conference on Developing Countries and the New Multilateral Round of Trade Negotiations, Harvard University, 5–6 November 1999) 1 <http://www1.worldbank.org/wbi/trade/papers_2000/G-24-WTO.pdf> at 1 May 2003.

¹⁵ The general prohibition is found in *GATT*, above n 1, art XI.

¹⁶ *Ibid* art XII(3)(d).

¹⁷ Article XII(3)(d) provides that a contracting party 'shall not be required to withdraw or modify [quantitative] restrictions on the ground that a change in those policies would render unnecessary restrictions which it is applying under the Article'.

treatment'. As a result of these amendments, the preamble in art XVIII identifies particular economies 'which can only support low standards of living and are in the early stages of development'.¹⁸ It further provides that in the context of development policies 'designed to raise the general standard of living', 'protective or other measures affecting imports' are 'justified in so far as they facilitate the attainment of the objectives of [the] *Agreement*'.¹⁹ By permitting policies designed to foster selected industries, these exemptions for quantitative restrictions are clearly grounded in the IS model.²⁰ The provisions, which represent a large deviation from the principle of free trade, can be located within the conceptual framework of linear development and graduation — which holds that states that are at an 'early stage of development' are 'abnormal' and should be encouraged to develop towards 'normalcy'.²¹

Despite these provisions, developing countries remained dissatisfied with the *GATT*'s response and enlisted the support of the United Nations Conference on Trade and Development ('UNCTAD') to press for a better accommodation of their development needs.²² As a result of this pressure, part IV was appended to the *GATT* in 1965. Part IV acknowledges the 'wide gap between standards of living in less-developed countries and in other countries'²³ and the need for 'positive efforts' to ensure these countries 'secure a share in the growth in international trade commensurate with the needs of their economic development.'²⁴ It also recognises the importance of export earnings²⁵ while reiterating that developed countries do not expect reciprocity from developing countries in negotiations to reduce trade barriers,²⁶ permitting continued protectionism under the IS model. However, the strength of part IV is diminished by the fact that its three provisions are drafted in the language of 'best endeavours' clauses.²⁷ As such, they are routinely criticised for neglecting to provide any enforceable rights or obligations, a view the *GATT* panels have failed to reject.²⁸ That part IV has retained its aspirational nature despite the

¹⁸ *Ibid* art XVIII(1).

¹⁹ *Ibid* art XVIII(2).

²⁰ See the wording of *GATT*: *ibid* art XVIII(7–21).

²¹ However, recent attempts by the US to restrict the operation of art XVIII coincide with the 'graduation' of a number of developing countries to the position of major export competitors, suggesting that the desire for normalcy is not the only motivating factor at work: see Michael Trebilcock and Robert Howse, *The Regulation of International Trade* (2nd ed, 1999) 370–1.

²² See, eg, *ibid* 377–8 on the relationship between UNCTAD, developing countries and the *GATT*.

²³ *GATT*, above n 1, art XXXVI(1)(c).

²⁴ *Ibid* art XXXVI(3).

²⁵ *Ibid* arts XXXVI(1)(b), XXXVI(4)–(5).

²⁶ *Ibid* art XXXVI(8).

²⁷ Note expressions such as 'accord high priority', 'give active consideration', 'make every effort', 'to the fullest extent possible' and 'have special regard to the trade interests of less-developed contracting parties' used throughout part IV. See also Gustavo Olivares, 'The Case for Giving Effectiveness to *GATT*/WTO Rules on Developing Countries and Least Developed Countries' (2001) 35 *Journal of World Trade* 545, 547.

²⁸ *Ibid* 547.

establishment of the WTO, which is more firmly grounded in legally enforceable rules, should be a source of concern for developing countries.²⁹

The final provision of interest here is the *Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries* adopted by the 1979 Tokyo Round.³⁰ Although the provision did not introduce any binding obligations, it consolidated the concept of differential and more favourable treatment and the treatment of least developed countries as a separate class.³¹ The trade-off for developing countries was to agree to the principle of 'graduation', enunciated in paragraph 7 of the *Enabling Clause*, which provides the basis for the removal of non-reciprocal, preferential treatment as countries 'grow up'.³²

C The Impetus for Change

By the 1980s there was a growing consensus amongst both developed and developing countries that import substitution policies, along with the mandatory high levels of protection they required, had failed to stimulate sustainable, economic growth.³³ This failure necessitated a review of the *GATT's* approach to the accommodation of development needs, which was contingent on ascertaining the correct explanation for the failure of the IS policies. At least two competing explanations were offered. The first, dependency theory, was used to argue that rather than constituting a benign early stage of development, underdevelopment was a condition externally induced and maintained by developed countries and the international capitalist system.³⁴ The condition would persist until there was a fundamental reordering of North–South relations.³⁵ Some dependency theorists further argued that the existence of dualisms, such as the simultaneous coexistence of wealth and poverty among nations, was not accidental and would

²⁹ Despite these deficiencies, part IV did provide the impetus for the establishment of non-reciprocal regimes of trade preferences outside the auspices of the *GATT*, such as the Generalised System of Preferences (GSP): see, eg, Trebilcock and Howse, above n 21, 119; Constantine Michalopoulos, 'Trade and Development in the *GATT* and WTO: The Role of Special and Differential Treatment for Developing Countries' (Working Paper No 2388, Development Economics Research Group on International Trade, World Bank, 2000) 9 <http://www1.worldbank.org/wbiep/trade/papers_2000/MichalopSD.pdf> at 1 May 2003.

³⁰ *GATT Doc L/4903 (1979)* <http://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm> at 1 May 2003 ('*Enabling Clause*').

³¹ Michalopoulos, above n 29, 9.

³² Upon graduation, developing countries 'would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement': *Enabling Clause*, above n 30, [7].

³³ Michalopoulos, above n 29, 11–12.

³⁴ Theotonio Dos Santos, 'The Crisis of Development Theory and the Problem of Dependence in Latin America' (1969) *Siglo* 21, cited in Todaro, above n 12, 92:

Underdevelopment, far from constituting a state of backwardness prior to capitalism, is rather a consequence and a particular form of capitalist development known as dependent capitalism ... Dependence, then, is based upon an international division of labor which allows industrial development to take place in some countries while restricting it in others, whose growth is conditioned by and subjected to the power centers of the world.

³⁵ See, eg, Todaro, above n 12, 91.

not diminish over time.³⁶ On the contrary, they argued, dualisms were likely to increase in magnitude, with the superior element 'pushing down' or cultivating the inferior element. In this way, rich countries would develop the underdevelopment of the South.³⁷

A second and more widely accepted explanation for the failure to develop was provided by a neoclassical critique of IS policies based on the premise that any distortion of domestic prices or insulation of industries from international competition would reduce growth.³⁸ According to this theory, trade barriers erected to protect key industries, as prescribed by the IS model, encouraged inefficient and wasteful practices at significant cost to consumers and the public purse. In addition, the fixed exchange rates designed to keep the cost of the required capital imports low resulted in artificially expensive exports and increased the vulnerability of foreign exchange reserves to external shocks. These factors significantly disadvantaged the development of potential exporting sectors, including agriculture. This explanation seemed especially convincing in the face of the impressive growth rates of the considerably more outward, export-oriented, newly industrialising countries of Asia.³⁹

A further explanation for the shift in thinking about the focus of special and differential treatment is that developing countries realised that by not participating in trade negotiations they had failed to achieve liberalisation in areas of interest to them. They had been further disadvantaged by the North's use of trade sanctions, customs unions and protectionism.⁴⁰ In addition, for many developing countries the decision to liberalise and attempt to engage more fully in the *GATT* system was likely reinforced by the imposition of structural adjustment programs, including tariff reductions, as a debt reduction measure at the behest of the International Monetary Fund.⁴¹

Of these two competing theories, the neoclassical explanation triumphed. Under the new development paradigm, developing countries would participate actively in trade negotiations to secure greater access to developed country markets by trading reciprocal obligations to liberalise their own economies.⁴² While it was acknowledged that developing countries continued to be significantly disadvantaged within the trading system, special and differential treatment would focus on the flexible application of reciprocal obligations and technical and financial assistance to build institutional capacity, rather than exemptions from market disciplines.⁴³

³⁶ Compare this with the theory promulgated by convergence theorists that the growth and development of all states will eventually converge to the same level. For an introduction to the theory of convergence, see David Miles and Andrew Scott, *Macroeconomics: Understanding the Wealth of Nations* (2002) 98–9.

³⁷ The theory of dualism is discussed in Todaro, above n 12, 93–4.

³⁸ Michalopoulos, above n 29, 11–12.

³⁹ *Ibid* 12.

⁴⁰ Trebilcock and Howse, above n 21, 368.

⁴¹ Aileen Kwa, 'WTO Agricultural Negotiations: Arrogance and Hypocrisy on Parade' (2001) 16 *South Bulletin* <<http://www.southcentre.org/info/southbulletin/bulletin16/bulletin16-02.htm>> at 1 May 2003.

⁴² Michalopoulos, above n 29, 13.

⁴³ *Ibid* 16.

III DEVELOPING COUNTRIES AND THE *AGREEMENT ON AGRICULTURE*A *The Significance of the Agreement in the Multilateral Trading System*

The *Agreement on Agriculture* is one of the most significant and contentious agreements negotiated at the Uruguay Round. The *Agreement on Agriculture* and the ongoing negotiations for further reform, originally under the auspices of the art 20 mandate and now pursuant to the *Doha Declaration*,⁴⁴ establish a framework for the liberalisation of a sector that was largely excluded from the *GATT* on the basis that reform was too economically and politically difficult for the North to countenance.⁴⁵ Despite the adoption of the *Agreement on Agriculture*, the treatment of agriculture continues to threaten the credibility of the WTO⁴⁶ and is proving a major challenge in the current Doha Round negotiations.⁴⁷

Many developed countries with strong agricultural lobbies, in particular the United States, Japan and the European Union, resisted the inclusion of agriculture under *GATT* strictures. These countries have traditionally pursued a number of policy objectives, ranging from food security to the maintenance of rural employment, lifestyles and landscapes, through to the use of domestic subsidies and import restrictions that significantly distort national and international trade. These policies tend to overstimulate production and result in an excess supply of agricultural goods. The surplus is commonly dispersed through the provision of food aid or export subsidies that further distort international markets.⁴⁸ Before the Uruguay Round, agricultural reform in these countries seemed almost impossible. If and when a *GATT* panel did find a developed country in breach of an obligation in the agricultural sector, adoption of the panel's report was often blocked.⁴⁹ In 1952, for example, a panel's finding that the US improperly used quantitative restrictions to limit the import of dairy products evoked a threat from the US to withdraw from the *GATT*. The threat

⁴⁴ *Ministerial Declaration*, WTO Doc WT/MIN(01)/DEC/1 (14 November 2001) ('*Doha Declaration*').

⁴⁵ For a concise discussion of *GATT* provisions pertaining to agriculture before the adoption of the *Agreement on Agriculture*, see Robert Hudec, 'Does the *Agreement on Agriculture* Work? Agricultural Disputes after the Uruguay Round' (Working Paper No 98-2, International Agricultural Trade Research Consortium, 1998) 7-23 <<http://iatrcweb.org/Publications/workpap.html>> at 1 May 2003.

⁴⁶ See, eg, Chakravarthi Raghavan, *Agriculture Major Test of WTO Credibility, Says Ricupero* (1999) <<http://www.twinside.org.sg/title/ricu-cn.htm>> at 1 May 2003.

⁴⁷ See, eg, Bhagirath Lal Das, *Agriculture Talks Must First Set Right UR Inequities* <<http://www.twinside.org.sg/title/inequities.htm>> at 1 May 2003.

⁴⁸ The effect of Common Agricultural Policy in the EU has been to create enormous surpluses that are now distributed through the use of rebates on export sales. The effect of these policies is not only to hamper the ability of foreigners to export to the EU but also to compete with EU products exported to third countries: see Brent Borrell and Lionel Hubbard, Institute of Economic Affairs, *Global Economic Effects of the EU Common Agricultural Policy* (2000) 18 <http://www.openrepublic.org/policyanalyses/Agriculture/IEA_REFORMING_THE_CAP/20000601_GLOBAL_EFFECTS_OF_CAP_IEA.pdf> at 1 May 2003.

⁴⁹ Trebilcock and Howse, above n 21, 248.

was only resolved with the grant of a non-time-limited waiver from art XI.⁵⁰ While the adoption of the *Agreement on Agriculture* represented some preparedness on the part of developing countries to reform the sector, liberalisation to date has been modest. Furthermore, references by several influential members during the current negotiations to the need to accommodate ‘non-trade concerns’ within the *Agreement on Agriculture* suggest continued reluctance to countenance meaningful reform.⁵¹

It is generally accepted that developing countries, with their high levels of low-skilled, low-waged labour, would benefit most from greater liberalisation of the agricultural sector.⁵² Compared to their industrialised counterparts, the sector plays a much more significant role in their economies. For developing countries, the domestic agricultural sector is instrumental to the alleviation of poverty and food security concerns, the promotion of rural development and employment and the pursuit of export-oriented growth.⁵³ However, developed country agricultural policies have resulted in the flooding of world markets with artificially cheap agricultural products. This has depressed world prices and diminished the growth and viability of producers in developing countries who would otherwise enjoy a comparative advantage in domestic and international markets.⁵⁴ Many developing countries believe the *Agreement on Agriculture* falls far short of meaningful liberalisation of the sector and that they were, to some extent ‘fobbed off’ by the North.⁵⁵ The treatment of agriculture is now one of the key issues of concern to developing countries.⁵⁶ Consequently, the agricultural negotiations occupy a very high profile in the Doha Round.

⁵⁰ *Waiver Granted to the United States in Connection with Import Restrictions Imposed under Section 22 of the United States Agricultural Act (of 1933), As Amended*, GATT BISD, 3rd Supp, 32 (1955) (Decision of 5 March 1955). See, eg, Hudec, above n 45, 13.

⁵¹ See, eg, Committee on Agriculture, *EC Comprehensive Negotiating Proposal*, WTO Doc G/AG/NG/W/90 (14 December 2000); Committee on Agriculture, *Negotiating Proposal by Japan on WTO Agricultural Negotiations*, WTO Doc G/AG/NG/W/91 (21 December 2000).

⁵² Preeg, above n 2, 184.

⁵³ Although some developed countries have argued that their agricultural sectors play an equally important role for the same reasons, empirical analysis suggests this is not in fact the case. For example, the agricultural sector is often claimed to be essential for ensuring rural employment in developed countries. However, research indicates that the largest proportion of household income on the majority of European farms comes from non-farm activities: Fran Freeman and Ivan Roberts, ‘Multifunctionality: A Pretext for Protection?’ (1999) 99.3 *ABARE Current Issues* 1, 3. Moreover, the share of employment attributable to the agricultural sector in predominantly rural areas is only six per cent in the US, two per cent in Germany, eight per cent in Norway and 14 per cent in Japan: Mary Bohman et al, *The Use and Abuse of Multifunctionality* (1999) [19] <<http://www.gtap.agecon.purdue.edu/resources/download/1265.pdf>> at 1 May 2003.

⁵⁴ Melaku Geboye Desta, ‘Food Security and International Trade Law: An Appraisal of the World Trade Organization Approach’ (2001) 35 *Journal of World Trade* 449. See also Mike Moore, Director-General of the WTO, ‘Agriculture’s Stake in WTO Trade Negotiations’ (Speech delivered at the Agricultural Outlook Forum 2001, Washington DC, US, 22–23 February 2001) <http://www.wto.org/english/news_e/spmm_e/spmm53_e.htm> at 10 April 2003.

⁵⁵ Mike Moore, Director-General of the WTO, ‘WTO Negotiations: Agriculture and Developing Countries’ (Speech delivered in Paris, France, 6 December 2000) <http://www.wto.org/english/news_e/spmm_e/spmm47_e.htm> at 1 May 2003.

⁵⁶ It should be remembered, however, that the interests of developing countries are not homogenous. Many net food-importing developing countries (‘NFIDC’) have expressed concerns that liberalisation will push up world prices as artificially induced surpluses in developed countries dry up, reducing the availability of subsidised exports of foodstuffs and

B The Current Framework for Liberalisation

The *Agreement on Agriculture* aims ‘to establish a fair and market-oriented agricultural trading system’⁵⁷ by ‘correcting and preventing restrictions and distortions in world agricultural markets’.⁵⁸ This aim is to be achieved by applying disciplines to import restrictions, domestic support and exports and providing a built-in mandate for further reform.⁵⁹

Under the *Agreement on Agriculture*, non-tariff barriers that restrict market access are to be converted into tariffs, regardless of their legality or otherwise under the *GATT*⁶⁰ and, unless specifically permitted, members are generally prohibited from introducing new non-tariff barriers.⁶¹ The resulting tariff levels for each product are bound in the Member Schedules and subject to an overall reduction commitment of 36 per cent, with a minimum 15 per cent reduction on each product category, to be implemented over six years.⁶² The market access opportunity (‘current access’) for each product following the tariff reduction process must be at least equivalent to access in the base period (1986–88).⁶³ Market access is to be maintained through the use of tariff quotas, which provide for the importation of the required volume of the product at a non-prohibitive tariff rate.

With regard to domestic support, the *Agreement on Agriculture* requires members to quantify the value of their domestic support measures in the base period (1986–88) in favour of agricultural producers (the ‘Total Aggregate Measurement of Support’ or ‘Total AMS’), excluding those that fall within art 6 and annex 2.⁶⁴ The Total AMS must be reduced by 20 per cent over the six-year implementation period.⁶⁵ Annex 2 (‘Green Box measures’) exempts domestic support measures from reduction commitments provided that their effects on trade or production are only minimally trade-distorting, they are provided pursuant to a publicly funded government program that does not involve

food aid: see, eg, Committee on Agriculture, *WTO African Group: Joint Proposal on the Negotiations on Agriculture*, WTO Doc G/AG/NG/W/142 (23 March 2001) [19]; Committee on Agriculture, *Comprehensive Proposal by the Arab Republic of Egypt to the WTO Negotiations on Agriculture — Revision*, WTO Doc G/AG/NG/W/107/Rev.1 (21 March 2001).

⁵⁷ *Agreement on Agriculture*, above n 5, preamble [2].

⁵⁸ *Ibid* preamble [3].

⁵⁹ The *Agreement on Agriculture* is supplemented by the *Modalities for the Establishment of Specific Binding Commitments under the Reform Programme*, GATT Doc MTN.GNG/MA/W/24 (20 December 1993) (‘*Modalities*’), which sets out the general rules for each government in determining its specific commitments. Once these commitments were calculated, they were bound in the member’s Schedule. The *Agreement on the Application of Sanitary and Phytosanitary Measures* is also appended to the *Agreement on Agriculture*, but it can be treated as a separate regulatory regime and discussion of its provisions is beyond the scope of this commentary.

⁶⁰ *Modalities*, above n 59, [4]–[5], annex 3.

⁶¹ Non-tariff barriers may be erected in accordance with art 5 and annex 5 of the *Agreement on Agriculture*, above n 5.

⁶² *Modalities*, above n 59, [4]–[5], annex 3.

⁶³ If current access is less than five per cent of domestic base-period consumption, access opportunities must be awarded on a Most Favoured Nation basis so that it is at least equivalent to three per cent in 1995, rising to five per cent in 2000: *Modalities*, above n 59, [5].

⁶⁴ AMS and Total AMS are defined in the *Agreement on Agriculture*, above n 5, art 1(a), 1(h).

⁶⁵ *Modalities*, above n 59, [8], annexes 5–6.

transfers from consumers, and they do not, in effect, provide price support to producers.⁶⁶ Such measures include, for example, research, training and inspection services and some forms of income safety net programs.⁶⁷ Measures exempted from reduction commitments under art 6 include certain types of assistance provided by developing countries under agricultural and rural development programs and direct payments under production limiting programs.⁶⁸ Article 6 also exempts a *de minimis* level of product specific and non-product specific support where its value does not exceed five per cent of the value of production of a specific product or total agricultural production.

Disciplines on exports are primarily contained in art 9.1, which sets out the categories of export subsidies subject to reduction commitments. Under the *Agreement on Agriculture*, members commit to reducing the base period (1986–90) quantity of subsidised products by 21 per cent and the total value of these subsidies by 36 per cent over the six-year implementation period.⁶⁹ Members also agree not to apply subsidies that are not listed in art 9.1 or use non-commercial transactions in a way that would circumvent their export subsidy commitments.⁷⁰

Article 13 (the ‘peace clause’) exempts annex 2 subsidies from countervailing duties or other subsidy action under the *GATT* and the *Agreement on Subsidies and Countervailing Measures*.⁷¹ In contrast, art 6 domestic support measures may be subject to countervailing measures where there is ‘a determination of injury or threat thereof’, although members are required to exercise ‘due restraint’ before initiating countervailing duty investigations.⁷² Under the current *Agreement on Agriculture*, the peace clause will expire at the end of 2003.

Article 20 mandates the continued reform of the agricultural sector by providing that further negotiations are to begin one year prior to the end of the implementation period. These negotiations would take account of the experience to date of the implementation of the *Agreement on Agriculture* and its effect on world agricultural trade, non-trade concerns, special and differential treatment and further commitments necessary to achieve the overall objectives of the *Agreement on Agriculture*. These negotiations, which began in early 2000, are now continuing pursuant to the *Doha Declaration*, which acknowledges the work done under art 20 and sets out a similar mandate for further negotiations.

C *Agriculture and Development*

1 *The Provision of Special and Differential Treatment*

In line with the conceptual shift in understanding of the ‘cures’ of underdevelopment, special and differential treatment in the *Agreement on Agriculture* focuses on the flexible application of reciprocal commitments to liberalise the agricultural sector. The existence of special and differential

⁶⁶ *Agreement on Agriculture*, above n 5, annex 2(1).

⁶⁷ *Ibid* annex 2(2), 2(7).

⁶⁸ *Ibid* art 6(2), 6(5).

⁶⁹ *Modalities*, above n 59, [11], annex 7–8.

⁷⁰ *Agreement on Agriculture*, above n 5, art 10(1).

⁷¹ *Ibid* art 13(a).

⁷² *Ibid* art 13(b)(i).

treatment clauses recognises that developing country members are disadvantaged in the multilateral trade regime due to their limited institutional, technical and financial capacity. Special and differential treatment is intended to compensate for underdevelopment by providing extended implementation periods, less onerous reduction commitments, increased flexibility to accommodate development programs otherwise in contravention of WTO strictures and a limited framework for financial and technical assistance. Despite these provisions, the *Agreement on Agriculture* remains biased towards the interests of developed countries and does very little to address the broader obstacles faced by developing countries to their participation within the multilateral trading system.

Article 15(2) provides developing countries with the 'flexibility to implement reduction commitments' over a 10 year period and exempts least developed countries from all reduction commitments. Developing countries are required to reduce tariffs by only 24 per cent across the board, with a minimum 10 per cent reduction on each product.⁷³ Least developed countries are merely required to bind existing tariffs in their Schedules. Minimum market access opportunities are required to reach five per cent by 2004. By the end of the implementation period, the value of export subsidies must have fallen by 24 per cent and the volume of exports subsidised must have been reduced by 14 per cent, compared to 36 per cent and 21 per cent respectively for developed country members.⁷⁴ In relation to domestic support, the AMS of developing countries must fall by 13 per cent over 10 years, roughly two-thirds of the commitment made by developed countries.⁷⁵ Article 6(4)(b) increases the permissible *de minimis* level of support by developing countries to 10 per cent.

Article 9(4) provides further flexibility by permitting the unrestricted use by developing countries of export subsidies that reduce the cost of marketing agricultural exports⁷⁶ and the cost of internal transport and freight for agricultural products bound for export relative to products intended for domestic consumption.⁷⁷

With regard to domestic support, art 6(2) acknowledges that measures to assist agriculture and rural development are 'integral' to the development programs of many members. Article 6(2) exempts investment subsidies available across the sector and agricultural input subsidies available to low income or resource poor producers from inclusion in a developing country member's calculation of its Current Total AMS. Arguably, this could exempt a very wide range of support measures. Annex 2 also exempts domestic support measures of interest to developing countries from reduction commitments, in particular programs to improve infrastructure, training and advisory services, public stockholding for food security purposes, domestic food aid and developing country programs that guarantee the provision of food at subsidised (but 'reasonable') prices to ensure the food requirements of the poor are met.⁷⁸

⁷³ *Modalities*, above n 59, [15].

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Agreement on Agriculture*, above n 5, art 9(1)(d).

⁷⁷ *Ibid* art 9(1)(e).

⁷⁸ *Ibid* annex 2 [2]–[4], fns 5–6.

These formal and informal special and differential treatment provisions are designed to ease some of the burden of liberalisation. However, they fail to address the problem of systemic shortfalls in institutional and financial capacity necessary to establish regulatory frameworks to monitor and implement commitments or capture the benefits of increased access to Northern markets. These shortfalls are unlikely to be overcome by the extension of the implementation period from six to ten years or the granting of permission to use government subsidies to aid domestic production or the sale of exports. This is particularly the case when many developing countries simply do not have the financial reserves to channel funds into such programs.

2 *Falling Short of Meaningful Liberalisation*

Most developing countries actively participated in the Uruguay Round with the expectation that they would benefit from greater liberalisation accompanied by special and differential treatment.⁷⁹ Agriculture was a key area where benefits were expected to flow strongly in the direction of developing countries. However, implementation has highlighted not only the modesty of the initial liberalisation effort, but also the institutionalisation of inequality between the North and South. Whether or not the political will exists to achieve meaningful liberalisation to correct the inequities has proved a major stumbling block in the art 20 and Doha negotiations.⁸⁰

At the conclusion of the developed countries' implementation period, tariffs on some goods may have remained as high as 85 per cent of their base period level, export subsidies may be as large as 64 per cent of their base period value and domestic support liable to reduction may stand at 80 per cent of its base period value. In conjunction with the effects of 'dirty tariffication', the scheduled reductions are unlikely to significantly diminish trade distortions and permit developing country exports to compete fairly with developed country products.⁸¹

The process of tariffication has reinforced existing inequalities between rich and poor economies. Unlike developed countries, few countries in the South used non-tariff barriers to restrict market access. As a result of the tariffication process, bound tariff levels in members' Schedules are substantially higher for developed countries. As it is from these tariff levels that reductions are made, many tariffs remain prohibitively high even following the full implementation of the *Agreement on Agriculture*. Furthermore, the *Agreement on Agriculture* does nothing to combat tariff escalation, which has seen developing country exports of processed agricultural products subjected to significantly higher tariffs than basic produce or raw materials.⁸² This acts as a powerful disincentive to developing

⁷⁹ South Centre, above n 2, 1.

⁸⁰ See, eg, Chakravarthi Raghavan, *Agri Talks Mark Time, for End of Peace Clause or New Round?* (2001) <<http://www.twinside.org.sg/title/agri.htm>> at 1 May 2003.

⁸¹ Dirty tariffication refers to the practice of inflating the tariff equivalents of non-tariff barriers that were then recorded as the bound tariff levels: see Aileen Kwa and Walden Bello, *Guide to the Agreement on Agriculture: Technicalities and Trade Tricks Explained* (1998) [23] <<http://www.focusweb.org/publications/1998/AOA.pdf>> at 1 May 2003.

⁸² WTO, *Agriculture Negotiations Backgrounder: The Issues and Where We Are Now* (2002) <http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd00_contents_e.htm> at 1 May 2003 ('*Agriculture Negotiations Backgrounder*').

countries to diversify into value-added production as their processed goods face more restrictive import barriers than their exports of primary produce.

Similar concerns exist regarding the regulation of domestic subsidies. Under the *Agreement on Agriculture*, the value of non-exempt (art 6 and annex 2) domestic support that was provided in the base period is bound in each member's Schedule and subject to reduction commitments. If a member's Schedule does not list a Total AMS commitment, that member is prohibited from providing non-Green Box support in excess of the *de minimis* level.⁸³ These provisions have the effect of perpetuating unequal and uncompetitive treatment for developed-country farmers (who already occupy an historically advantageous position) by permitting them to receive high levels of trade-distorting support, while countries that provided no or much lower levels of support in the base period (typically developing countries) are prohibited from providing support above the *de minimis* level. Furthermore, differential application of the peace clause, which provides greater protection for measures in annex 2 over those in art 6, appears biased towards the interests of developed countries. Annex 2 measures, which are protected from countervailing measures by the operation of art 13, include structural adjustment assistance that, given financial considerations, is only likely to be used by developed countries. In contrast, the exemption for the use of subsidies relating to development programs is contained in art 6 and does not share a similar level of immunity.⁸⁴

Liberalisation focuses primarily on the regulation of market access, export subsidies and domestic support. Uneven reform of each area over a long implementation period is likely to reinforce market distortions and inequalities by privileging wealthier members who traditionally use the most trade-distorting policies. Thus, further tariff reductions without meaningful commitments on export subsidies and domestic support may in fact enshrine unfair competition and disadvantage developing countries.⁸⁵

3 *Specific Provisions for Least-Developed and Net Food-Importing Developing Countries*

The *Agreement on Agriculture* recognises least developed and NFIDCs as two distinct categories of 'developing countries'.⁸⁶ The preamble acknowledges that these members may experience 'negative effects' during the 'implementation of the reform program'.⁸⁷ Some of these potential effects are addressed in the 1993 *Ministerial Decision on Measures Concerning the Possible Negative Effects of*

⁸³ *Agreement on Agriculture*, above n 5, art 7(2)(b).

⁸⁴ Bhagirath Lal Das, *Proposed Specific Changes Needed in WTO Agreement on Agriculture* <<http://www.twinside.org.sg/title/speci-cn.htm>> at 1 May 2003.

⁸⁵ *Ibid.*

⁸⁶ *Agreement on Agriculture*, above n 5, art 16(1).

⁸⁷ *Ibid* preamble [6]. It is worth noting that the wording of this paragraph implies that the possibility of negative effects exists only in the short-run, ie, during the implementation period itself.

the Reform Program of Least Developed and Net Food-Importing Developing Countries.⁸⁸

The *Ministerial Decision* predominantly focuses on concerns that liberalisation of the agricultural sector will reduce food security. Economic analysis suggests that liberalisation is likely to lead to decreased agricultural production in the developed world, reducing the quantity of produce sold on the world market at subsidised prices (thus forcing up the world price) or disposed of through food aid or credit arrangements.⁸⁹ The *Ministerial Decision* recognises that liberalisation may have ‘negative effects in terms of the availability of adequate supplies of basic foodstuffs, including short-term difficulties in financing normal levels of commercial imports.’⁹⁰ While the *Ministerial Decision* outlines several strategies to mitigate these negative effects,⁹¹ they are couched in aspirational language and do not appear to create any concrete rights or enforceable obligations. Of the strategies presented, only those concerning appropriate levels of food aid and concessionality⁹² have produced tangible results. Moreover, these were largely achieved through organisations extraneous to the WTO.⁹³

Apart from provisions in art 10 that deal with food aid (but are predominantly concerned with preventing members from circumventing their export subsidy commitments), the only other provision in support of NFIDCs is the weak obligation under art 12(1) of the *Agreement on Agriculture*. This provision requires members to give ‘due consideration’ to the effects of proposed export prohibitions or restrictions on the food security of members that import a food product affected by the restriction. Developing countries, however, are exempt from this requirement unless they are net exporters of the product affected.

The *Decision on Measures in Favour of Least Developed Countries*⁹⁴ makes further provisions for this class of members. It acknowledges the ‘plight’ of these members and ‘the need to ensure their effective participation in the world trading system, and to take further measures to improve their trading opportunities’.⁹⁵ Although the *Decision* recognises the need for ‘substantially increased technical assistance ... to enable them to maximize the benefits from liberalised access to markets’,⁹⁶ obligations are again couched in aspirational language and are largely non-reviewable.

⁸⁸ GATT Doc LT/UR/D-1/2 (1993) (*‘Ministerial Decision’*). Under art 16.1 of the *Agreement on Agriculture*, developed country members are directed to take action as provided in the *Ministerial Decision* and, according to art 16.2, its implementation is to be monitored by the Committee on Agriculture (established by the *Agreement on Agriculture*, above n 5, art 17).

⁸⁹ Removing subsidies, price support and domestic protection will remove the incentives to overproduce, particularly as domestic producers face competition from cheaper imported produce. This in turn will reduce domestic surpluses in formerly protectionist countries and therefore the volume of produce such countries attempt to sell on the international market.

⁹⁰ *Ministerial Decision*, above n 88, [2].

⁹¹ *Ibid* [3](i)–(iii), [4].

⁹² *Ibid* [3](i)–(ii).

⁹³ Desta, above n 54, 457.

⁹⁴ *Decision on Measures in Favour of Least-Developed Countries*, WTO Doc LT/UR/D-1/3 (15 April 1994).

⁹⁵ *Ibid* preamble [1].

⁹⁶ *Ibid* [2](v).

On the whole, these additional provisions for the least developed countries and NFIDCs fail to create any concrete, reviewable obligations or enforceable rights, leaving these members with little more protection than that generally provided by the *Agreement on Agriculture*.

IV THE DOHA DEVELOPMENT ROUND

A *The Doha Declaration*

Given this troubled history and the disappointed expectations of most developing countries that participated actively in the Uruguay Round and the Third Ministerial Conference in Seattle, the pressure was squarely on the North to propose a pro-development liberalisation agenda to ensure that the Doha Round was launched. The then Director-General, Mike Moore, hailed the launch as 'extraordinarily successful'.⁹⁷ While other commentators and developing country representatives have been more circumspect in their praise,⁹⁸ the launch of the Doha Round two years after the Seattle failure has granted the multilateral trading system a reprieve. Nonetheless, the successful completion of the Round by the target date of 1 January 2005 is by no means guaranteed.

On paper at least, the development credentials of the current Round are clearly evident. The *Doha Declaration* uses explicit language to express its support for liberalisation and makes frequent reference to the importance of recognising the needs and interests of developing countries. In the opening two paragraphs of the *Doha Declaration*, members 'reject the use of protectionism'⁹⁹ and state that the 'needs and interests' of developing countries, including the need for financial and technical assistance, are at 'the heart' of the *Doha Declaration's* Work Program.¹⁰⁰ The development focus is also strongly expressed in two additional agreements adopted by the Conference: the *Decision on Implementation-Related Issues and Concerns*,¹⁰¹ which addresses developing country concerns with the implementation to date of the Uruguay Round agreements; and the *Declaration on the TRIPS Agreement and Public Health*,¹⁰² which emphasises that the protection of patent rights for medicines by the *Agreement on Trade-Related Aspects of Intellectual Property Rights*¹⁰³ should not be used to prevent measures being adopted to protect public health during a public health emergency.

⁹⁷ Mike Moore, Director-General of the WTO, 'WTO and the New Round of Trade Talks' (Speech delivered at the Fourteenth General Meeting of the Pacific Economic Cooperation Council, Hong Kong, 28 November 2001) <http://www.wto.org/english/news_e/spmm_e/spmm73_e.htm> at 1 May 2003; see also Inaamul Haque, 'Doha Development Agenda: Recapturing the Momentum of Multilateralism and Developing Countries' (2002) 17 *American University International Law Review* 1097, 1100.

⁹⁸ See, eg, Chakravarthi Raghavan, *An 'Everything but Development' Round from Doha* (2001) <<http://www.twinside.org.sg/title/twe268a.htm>> at 1 May 2003; Gustavo Capdevila, *New WTO Round Favours Industrialised Countries* (2001) <<http://www.twinside.org.sg/title/twe268d.htm>> at 1 May 2003.

⁹⁹ *Doha Declaration*, above n 44, [1].

¹⁰⁰ *Ibid* above n 44, [2].

¹⁰¹ WTO Doc WT/MIN(01)/17 (20 November 2001).

¹⁰² WTO Doc WT/MIN(01)/DEC/2 (20 November 2001).

¹⁰³ Opened for signature 15 April 1994, 1869 UNTS 299 (entered into force 1 January 1995) ('*TRIPS*').

The *Doha Declaration* subsumes the negotiations with respect to art 20 of the *Agreement on Agriculture*, which began in early 2000. The *Doha Declaration* mandates comprehensive negotiations to improve market access, reduce or phase out export subsidies, and reduce trade-distorting domestic support. Further, it explicitly provides that special and differential treatment for developing countries will be integral to the final agreement on agricultural trade rules. It also provides that non-trade concerns will be taken into account in the negotiations as provided for in the *Agreement on Agriculture*.¹⁰⁴

While the successful conclusion of the negotiations remains far off, the fact that the 142 members, over 75 per cent of which are developing countries, could agree on a mandate and timetable for negotiations to further liberalise international trade is a positive step. However, whether the outcome of the negotiations will actually benefit developing countries depends on how this opportunity is handled in the coming years. Outstanding developing country concerns regarding the outcome of the Uruguay Round trade negotiations are unlikely to be assuaged by references to the integral nature of special and differential treatment, 'best endeavours' commitments to technical and financial assistance, or rhetorical affirmations of the merits of freeing trade. Rather, concrete commitments are needed to liberalise sectors of key interest to developing countries and facilitate beneficial developing country engagement with the multilateral trade regime.

B *Making Trade Work for Development in the Doha Round*

1 *Special and Differential Treatment for Developing Countries*

The primary instrument through which the Uruguay Round agreements, including the *Agreement on Agriculture*, accommodated the needs and interests of developing countries was the provision of special and differential treatment in the form of less onerous tariff reduction commitments and longer implementation periods. As noted above, this reflected the change in emphasis from non-reciprocity between developed and developing country members that prevailed in the pre-Uruguay Round era, to reciprocity with the proviso that disciplines should be flexibly applied to developing countries in recognition of their special circumstances. The rationale behind the new measures is that while market liberalisation to facilitate trade is the best policy option to achieve development, liberalisation requires institutional and technical capacity that may be lacking in some developing countries. Liberalisation may also require painful structural adjustment that, if done rapidly, may impose social costs that developing countries cannot afford to alleviate.

While it is clear from the *Doha Declaration* that measures providing special and differential treatment for developing countries will remain a prevalent feature of trade rules negotiated during this Round, it is not yet certain what form these measures will take.¹⁰⁵ However, negotiations to date in the area of

¹⁰⁴ *Doha Declaration*, above n 44, [13].

¹⁰⁵ Peter Lichtenbaum, 'Reflections on the WTO Doha Ministerial: "Special Treatment" vs "Equal Participation": Striking a Balance in the Doha Negotiations' (2002) 17 *American University International Law Review* 1003, 1025–6.

agriculture indicate that there is significant support among members to exempt least-developed countries from all reduction commitments and that all other developing countries should again be given longer implementation periods.¹⁰⁶ This suggests that similar special and differential treatment provisions as adopted under the Uruguay Round are likely to be maintained.

While some flexibility in the implementation of reciprocal trade obligations for developing countries is necessary, this form of special and differential treatment has the potential to reduce the benefit developing countries can derive from the multilateral trade system. Trade liberalisation brings benefits not only through greater market access for a country's exports, but also by enhancing competitiveness and efficiency in domestic markets and reducing prices paid by domestic consumers. Less liberalisation over longer phase-in periods means these benefits of freer trade take longer to accrue. It also means that opportunities for greater trade between developing country members are postponed.¹⁰⁷

The other difficulty with special and differential treatment of this nature is that it does not address the reasons why developing countries require flexibility in the implementation of trade disciplines. In the post-Uruguay Round period, the neo-liberal development prescription appeared to be tempered somewhat (at least at the rhetorical level) by a growing acceptance that developing countries require more than domestic liberalisation and improved market access in the North to reap the benefits of integration within the multilateral trading system.¹⁰⁸ The neo-liberal formula for poverty reduction through trade-driven development, which emphasises the 'law of the market', assumes the existence of a number of economic prerequisites, including functioning factor markets, strong financial and banking systems, appropriate institutional and technical capacity, efficient distribution networks, existence of property rights, and the ability to implement and enforce regulatory frameworks. When these prerequisites are absent, as is undoubtedly the case in many developing countries, markets are unlikely to behave as the neo-liberal theories predict.

The growing criticisms of the development prescription, while still grounded in the free-market paradigm, focus on the relationship between development, empowerment and participation on the one hand, and institutional, infrastructural

¹⁰⁶ Chairperson of the WTO Committee on Agriculture, *Negotiations on Agriculture: Overview*, WTO Doc TN/AG/6 (18 December 2002) [9], [46] <http://www.wto.org/english/tratop_e/agric_e/negoti_modoverview_e.htm> at 1 May 2003.

¹⁰⁷ Mike Moore, Director-General of the WTO, 'To Doha and Beyond: A Roadmap for Successfully Concluding the Doha Development Round' (Speech delivered at the Evian VII Plenary Meeting, 'A Second Wind for the 3rd Millennium: Post-Doha Global Economic Agenda', Montreux, Switzerland, 12 April 2002) <http://www.wto.org/english/news_e/spmm_e/spmm83_e.htm> at 1 May 2003. The benefits to developing countries of reforming their own protectionist policies were emphasised in Kym Anderson et al, 'The Cost of Rich (and Poor) Country Protection to Developing Countries' (Discussion Paper No 0136, Centre for International Economic Studies, The University of Adelaide, 2001) 26 <<http://www.adelaide.edu.au/cies/0136.pdf>> at 1 May 2003. The study estimated that post-Uruguay Round protection in industrial countries cost developing countries as a group A\$43 billion each year, while their own protectionism cost developing countries as a group A\$65 billion each year.

¹⁰⁸ See, eg. Michalopoulos, above n 29, 16.

and technical capacity on the other.¹⁰⁹ Technical and financial assistance and capacity building were at the centre of the WTO's *Plan of Action for Least-Developed Countries*,¹¹⁰ adopted after the WTO Ministerial Conference in Singapore at the end of 1996. The *Plan of Action* resulted in the development of the Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries ('Integrated Framework')¹¹¹ which involves six international agencies.¹¹² It aims to remedy shortcomings in technical and institutional capacity by addressing failures in the coordination of assistance from the various agencies, and increasing developing countries' involvement in program design.

Developing countries were initially unsatisfied with the implementation of the Integrated Framework. They had expected the program to lead to increased levels of financial and technical assistance, in addition to improvements in the delivery of existing funds.¹¹³ The agencies, however, had focused on improving coordination, synergies and consensus decision-making amongst themselves. This slowed the process of implementation and diverted their attention from following up potential donors after round-table discussions.¹¹⁴ In response to implementation concerns, the Integrated Framework was overhauled in 2000 to improve its governance and establish a trust fund to finance the mainstreaming of trade reform into countries' development programs. The Integrated Framework has been implemented as a pilot program in three least-developed countries and is currently being extended to another 11 countries. The program is now focused on identifying barriers to the integration of least-developed countries into the multilateral trading system and prioritising policy reform and technical and financial assistance to overcome these barriers. It is expected that the program's findings will be considered by donor agencies in determining the distribution of assistance.¹¹⁵

The shortfall in the capacity of developing country members to implement WTO decisions or take advantage of greater trade liberalisation has remained an important concern of these members since the Uruguay Round. This concern was clearly acknowledged in the *Doha Declaration* and the *Decision on Implementation-Related Issues and Concerns*.¹¹⁶ In the *Doha Declaration*, members 'confirm that technical cooperation and capacity building are core elements of the development dimension of the multilateral trading system'.¹¹⁷

¹⁰⁹ A good example of this is the equation of 'empowerment' and 'participation' with 'market opportunity' in terms of their importance in reducing poverty in developing countries: World Bank, *World Development Report 2000/2001: Attacking Poverty* (2000) <<http://www.worldbank.org/poverty/wdrpoverty/report/index.htm>> at 1 May 2003.

¹¹⁰ WTO Doc WT/MIN(96)/14 (7 January 1997) ('*Plan of Action*').

¹¹¹ See Sub-Committee on Least-Developed Countries, *Integrated Framework for Trade-Related Assistance to Least-Developed Countries: The Process to Date, Concerns, and Suggested Improvements*, WTO Doc WT/COMTD/LDC/W/18 (25 January 2000) [9].

¹¹² The agencies are the International Monetary Fund, International Trade Centre, UNCTAD, UN Development Programme, World Bank and WTO.

¹¹³ Sub-Committee on Least-Developed Countries, above n 111, [9].

¹¹⁴ *Ibid.*

¹¹⁵ See Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries <<http://if.wto.org>> at 1 May 2003.

¹¹⁶ WTO Doc WT/MIN(01)/17 (20 November 2001).

¹¹⁷ *Doha Declaration*, above n 44, [38].

The rationale for technical assistance is explicitly stated: support is provided to assist developing countries to ‘adjust to WTO rules and disciplines, implement obligations and exercise the rights of membership, including drawing on the benefits of an open, rules-based multilateral trading system’.¹¹⁸

It is not the first time that WTO members have expressed these sentiments, which mean very little unless they result in enforceable commitments by developed countries. Nonetheless, it is encouraging that these issues have been recognised so explicitly in the mandate for the negotiations of new trade rules. It is also promising that the *Doha Declaration* requests the Director-General to report to the Fifth Session of the Ministerial Conference on the adequacy and implementation of the commitments on technical cooperation and capacity building within the *Doha Declaration*.¹¹⁹ The rationale for the provision of technical assistance should be kept firmly in mind when additional special and differential treatment measures are designed. This would ensure that these measures strike an appropriate balance between flexibility in implementation and engagement through liberalisation.

2 *Liberalising Trade in Agriculture*

The sense of disappointment amongst most developing countries with the Uruguay Round’s failure to meaningfully discipline the treatment of agriculture is pervasive. It is now widely acknowledged by many international institutions and officials that liberalising trade in agriculture is critical to the development prospects of most countries in the South.¹²⁰ Furthermore, the treatment of agriculture in the current Round is likely to be a litmus test for the future of the multilateral trade regime. If developing country members fail to get an outcome that addresses their concerns despite their concessions in the Uruguay Round and those currently being asked of them, their faith in multilateral trade negotiations will be sorely tested.¹²¹ Given this context, the tenor of the negotiations to date raises a number of concerns.

During the first phase of agricultural negotiations, which ended in March 2001, 45 proposals were submitted on behalf of 126 member countries.¹²² The

¹¹⁸ Ibid.

¹¹⁹ Ibid [41]. Further promising signs include the launch of the Doha Development Agenda Trade-Related Technical Assistance and Capacity Building Database which should help strengthen the coordination of aid to developing countries: <<http://tcbdb.wto.org>> at 1 May 2003. See also WTO, *WTO Technical Assistance Plan for 2003* (2003) <http://www.wto.org/english/tratop_e/devel_e/teccop_e/tct_e.htm> at 1 May 2003. The objectives of the plan are to provide technical assistance and capacity building for effective participation in the WTO negotiations, implementation of the trade rules and trade integration.

¹²⁰ For example, WTO Director-General Supachai Panitchpakdi has stated that ‘trade liberalization in agriculture is probably the single most important contribution the multilateral trading system can make to help developing countries, including the poorest among them, to trade their way out of poverty’: Supachai Panitchpakdi, ‘Agriculture and the Doha Development Agenda’ (Speech delivered at the World Food and Farming Congress, London, UK, 25 November 2002) <http://www.wto.org/english/news_e/spsp_e/spsp06_e.htm> at 1 May 2003.

¹²¹ In particular, developing countries are being asked to make considerable concessions with regards to negotiations of rules governing the so-called Singapore issues of investment, competition policy, transparency in government procurement and trade facilitation: *Doha Declaration*, above n 44, [20], [23], [26]–[27].

¹²² WTO, *Agricultural Negotiations Backgrounder*, above n 82, [12].

proposals covered a wide range of positions, reflecting the strong divergence of interests between members and indicating the political sensitivity of agricultural reform in many countries.¹²³ During the second phase of negotiations, members discussed their positions informally in an attempt to reach consensus. As the Chairperson of the Committee on Agriculture noted in his overview paper released in December 2002,¹²⁴ almost two years after the negotiations began, 'wide gaps' in positions remained regarding even 'fundamental aspects' of the reform program, including the 'level of ambition' for agricultural liberalisation envisaged by the *Doha Declaration*.¹²⁵ Negotiating parties have not succeeded in sufficiently narrowing these gaps in recent months. Just days prior to the missed March 2003 deadline for the establishment of modalities for further commitments,¹²⁶ the EU continued to complain of 'severe imbalances'¹²⁷ in the Chairperson's revised draft of *Modalities* and implored for 'realism' to prevail over 'unrealistic expectations in Geneva'.¹²⁸ The continued lack of progress will need to be quickly turned around if deadlines coinciding with the Fifth Ministerial Conference in September 2003 and the ultimate deadline for the conclusion of the Round by 1 January 2005 are to be achieved.

Two related issues stand out as significant hurdles to the efforts to negotiate a pro-development agreement that is strong enough to deliver tangible liberalisation of the agricultural sector. The first is whether members are prepared to accept sufficient, coordinated market disciplines. With respect to market access, reforms addressing tariff escalation and tariff peaks will be necessary in order to ensure that trade in products of interest to developing countries is not shielded from disciplines by the ability to average reduction commitments across a number of products. It is also vital that market access liberalisation is accompanied by strong disciplines on export subsidies. Without this, agricultural markets will remain highly distorted and there is a risk that otherwise competitive developing country farmers could lose domestic market share to artificially cheap imported produce as tariff barriers fall.

The second issue is the treatment of non-trade concerns, which essentially relates to the use of domestic support to boost agricultural production to ensure sufficient quantities of agriculture's so-called 'non-trade' outputs are produced.

A number of members, in particular Japan, Norway, Poland, South Korea and the EU, have argued that the *Agreement on Agriculture* should recognise the

¹²³ For a summary of the various negotiating positions: see *ibid*.

¹²⁴ Chairperson of the WTO Committee on Agriculture, above n 106.

¹²⁵ *Ibid* [9].

¹²⁶ WTO, 'Farm Talks Miss Deadline; But "Work Must Go On", Says Supachai' (Press Release, 31 March 2003) <http://www.wto.org/english/news_e/pres03_e/pr336_e.htm> at 1 May 2003.

¹²⁷ See *Negotiations on Agriculture: First Draft of Modalities for the Further Commitments (Revision)*, WTO Doc TN/AG/W/1/Rev.1 (18 March 2003) <http://www.wto.org/english/tratop_e/agric_e/negoti_mod2stdraft_e.htm> at 1 May 2003.

¹²⁸ 'WTO Agriculture Talks: Harbinson 2 Does Not Bring WTO Members Closer' (2003) 40 *Agriculture News Digest* <<http://europa.eu.int/comm/agriculture/newsdigest/2003/40.htm>> at 1 May 2003. In contrast, the US and Australia criticised the revised draft for lacking ambition: see 'Agriculture: Only Minor Modifications in Harbinson's Revised Modalities Draft' (2003) 7(10) *Bridges Weekly Trade News Digest* <<http://www.ictsd.org/weekly/03-03-20/story1.htm>> at 1 May 2003.

concept of multifunctionality.¹²⁹ Agriculture is multifunctional, it is suggested, because domestic agricultural production is inextricably linked to a number of non-trade concerns, such as food security, food safety, poverty alleviation, rural development, environmental protection and animal welfare.¹³⁰ Countries advocating this view have argued in their negotiating proposals that the inclusion of ‘non-trade concerns’ in the art 20 mandate provides a basis for incorporating allowances for the multifunctionality of agriculture.¹³¹ The necessity for allowances rests on the fear that without government intervention into agricultural markets and the use of production-linked payments, domestic agricultural production will fall and agriculture’s non-trade outputs will be undersupplied.¹³² This in turn would frustrate members’ ability to realise important societal goals.¹³³ It has been suggested that recognition of agriculture’s multifunctionality could take the form of greater flexibility in commitments to liberalise market access and reduced disciplines on domestic support.¹³⁴

The economic basis for this argument is not persuasive.¹³⁵ Research commissioned by the OECD suggests that most non-trade concerns that have been identified by members may be met more effectively by targeting the externality directly using a minimally trade-distorting measure, rather than using policies designed to increase agricultural production overall.¹³⁶ On this basis, some WTO members, in particular those in the Cairns negotiating group, have argued that recognition of multifunctionality would institutionalise inefficient agricultural production and give farmers in rich countries an unfair competitive advantage over unsubsidised farmers.¹³⁷

Multifunctionality is not unique to the agricultural sector. It could be argued that all forms of production generate multiple outputs or externalities, some of which may be considered ‘valued societal goals’.¹³⁸ It is therefore not clear why

¹²⁹ Japan provides a concise definition of multifunctionality in its negotiating proposal: Committee on Agriculture, *Negotiating Proposal by Japan on WTO Agricultural Negotiations*, WTO Doc G/AG/NG/W/91 (21 December 2000) [4].

¹³⁰ ‘[A]griculture is an economic activity that not only produces food and fiber but also creates both tangible and intangible values’: *ibid.*

¹³¹ See, eg, Committee on Agriculture, *EC Comprehensive Negotiating Proposal*, above n 51, [15].

¹³² See, eg, Bohman et al, above n 53, 13–21; European Commission, Directorate-General of Agriculture, *Info Paper: Contribution of the European Community on the Multifunctional Character of Agriculture* (1999) <http://europa.eu.int/comm/agriculture/external/wto/document/ip2_en.pdf> at 1 May 2003; Committee on Agriculture, *WTO Agricultural Negotiations — Proposal by Norway*, WTO Doc G/AG/NG/W/101 (16 January 2001) [34], [45]–[48].

¹³³ See, eg, Committee on Agriculture, *WTO Negotiations on Agriculture — Proposal by Switzerland*, WTO Doc G/AG/NG/W/94 (21 December 2000) [3].

¹³⁴ See, eg, Committee on Agriculture, *EC Comprehensive Negotiating Proposal*, above n 51, [10]; Committee on Agriculture, *Negotiating Proposal by Japan on WTO Agricultural Negotiations*, above n 129, [50].

¹³⁵ OECD, *Multifunctionality: Towards an Analytic Framework* (2001) <<http://www1.oecd.org/publications/e-book/5101041E.PDF>> at 1 May 2003.

¹³⁶ Cairns Group, *Multifunctionality: Fact Sheet by Australia* (1999). <http://www.cairnsgroup.org/papers/paper_9901_multifunctionality.html> at 1 May 2003.

¹³⁷ See, eg, Committee on Agriculture, *Statement by Australia Introducing the Cairns Group Proposal on Domestic Support*, WTO Doc G/AG/NG/W/40 (5 October 2000).

¹³⁸ Cairns Group, *Multifunctionality: Fact Sheet by Australia*, above n 136.

agriculture presents a special case warranting particular allowances while other sectors do not.

The many developing countries and exporters of agricultural products could be forgiven for suspecting that the current fixation on the multifunctionality of agriculture and non-trade concerns is a pretext for protection. This is particularly so given that it was not raised in the context of negotiations over liberalisation likely to shift the balance of trade in the developed world's favour. Their suspicions can only be strengthened by the fact that most of the members promoting multifunctionality are those whose protectionist policies are constrained by reduction commitments in relation to 'Amber Box' distortionary domestic support.¹³⁹ Several developing country members have argued explicitly that accommodating the multifunctional agenda would threaten their ability to pursue their own non-trade concerns.¹⁴⁰ For example, Argentina has stated that its principal non-trade concern is improving human welfare through the alleviation of rural poverty, unemployment and environmental destruction. It argues that the best way to achieve this is by 'correcting and preventing restrictions and distortions to trade in agriculture',¹⁴¹ which is a restatement of the liberalisation objective set out in the *Agreement on Agriculture*. It is clear that there is a qualitative difference between such concerns of developing countries and the non-trade concerns highlighted by some developed countries in the current negotiations.

To date, negotiations have failed to resolve these competing views.¹⁴² If members advocating the recognition of multifunctionality refuse to compromise their position, it is difficult to see how an outcome can be achieved that will guarantee liberalisation sufficient to deliver tangible results for developing countries. Economic theory and analysis is fairly certain in its prediction that greater competition following liberalisation will benefit domestic agricultural sectors in developing countries at the expense of most high-wage, capital-intensive agricultural sectors in the North. From a national perspective, however, the losses experienced by domestic farmers should be outweighed by the benefits that will accrue to consumers and the national economy as a whole as market distortions are removed. How these economic benefits are eventually distributed remains a political question for each member to determine for itself. The other factor that should weigh heavily on the minds of members pursuing the multifunctionality argument is that the inconsistencies in their approach to the liberalisation of agriculture compared to most non-agricultural sectors is well appreciated by developing country members and threatens the integrity of the entire multilateral trading system.

V CONCLUSION

In principle, the WTO has a lot to offer developing countries. It offers a rule-based system with a strong dispute settlement mechanism and a forum for countries to negotiate a broad agenda of trade liberalisation to produce outcomes

¹³⁹ Bohman et al, above n 53, 2.

¹⁴⁰ Chairperson of the WTO Committee on Agriculture, above n 106, [9].

¹⁴¹ Committee on Agriculture, *Legitimate Non-Trade Concerns — Technical Submission by Argentina*, WTO Doc G/AG/NG/W/88 (30 November 2000) 1.

¹⁴² Chairperson of the WTO Committee on Agriculture, above n 106, [9].

of mutual benefit. So far, however, the WTO appears not to have lived up to its promise.

The free trade rhetoric of states in the North has been challenged by developing countries' insistence that sectors of interest to them, such as agriculture, be put on the negotiating agenda. To date, negotiations have failed to secure meaningful liberalisation. Efforts to meet the development needs of the South, particularly in the form of technical assistance, have also been disappointing. Perhaps most disturbingly, the existing text of the *Agreement on Agriculture* contains a number of provisions that appear to further institutionalise inequality between the North and South.

The stated aim of the Doha Development Agenda is to facilitate poverty reduction through the use of trade. Achieving this aim will require a strong commitment from the North to liberalise its domestic agricultural markets, along with other markets of key interest to the South, and provide assistance to help connect developing countries to trade through technical cooperation and capacity building. Failing to conclude the Doha Round with an agreement that provides such tangible benefits to developing countries could signal the demise of the multilateral trading system. Given the troubled history of developing countries and the WTO, reinforced by the Uruguay Round's broken promises and the failure to launch a new round in Seattle, it seems likely that further disappointment will strongly discourage developing countries from pursuing a multilateral approach to liberalisation. Yet without a strong multilateral trading system, it is difficult to see how the necessary reforms to politically sensitive sectors such as agriculture, which are instrumental to the development aspirations of many countries, will be secured.