



Cordell Hull Institute

Trade Policy Analyses

Vol. 1, No. 5

September 1999



The Cordell Hull Institute's Trade Policy Roundtable focused at a meeting on September 13, 1999, on the "implementation problems" of developing countries in fulfilling the obligations they undertook in the Uruguay Round negotiations of 1986-94.

The discussion was based on a paper by Michael Finger, then a senior economist at the World Bank (pictured above), now a resident fellow at the American Enterprise Institute, Washington, DC.



Reproduced here, with permission, is the paper as revised for publication as J. Michael Finger (above) and Philip Schuler, "Implementation of Uruguay Round Commitments: the Development Challenge", *The World Economy*, Oxford and Boston, April 2000.

A WORLD BANK PERSPECTIVE...

Implementation Problems in the Uruguay Round Agreements

J. Michael Finger and Philip Schuler

THE URUGUAY ROUND agreements were a monumental achievement. Tariff reductions covered a larger share of world imports than did the Kennedy or Tokyo round agreements. Based on 1997 trade flows, they will save importers some \$50 billion a year.¹ The Uruguay Round negotiations eliminated non-textile "voluntary" export restraints (VERs) and substantially all non-tariff barriers on imports of agricultural products. The agreement to eliminate the Multi-fiber Arrangement (MFA) and its associated restrictions on textiles and clothing exports of developing economies is by itself a major achievement. Besides these market access accomplishments, the Uruguay Round is also celebrated for the innovations it represents: coverage extended to trade in services and intellectual property rights, greater detail on the rules of trade policy-making and trade administration and a new and unified organization to administer the agreements.²

The Uruguay Round negotiations also marked the coming-of-age of many developing countries as full partners in the governance of the multilateral trading system – in parallel with their economic successes, which have advanced them to be full commercial partners. However, while many developing countries have successfully used international trade as a vehicle for development and have become capable members of the WTO system, a number of others have been left behind. The WTO ministerial declarations of 1996 and of 1998 expressed concern over this "marginalization" of "least-developed countries and certain small economies" in the multilateral trading system and asked the international community to make a particular effort to help them take advantage of the opportunities offered by the trading system.

What I have to say here is primarily about these, the "marginalized" or least-developed countries. For the most part, I use the term "least developed" in the general sense, not in reference to the official United Nations list of least-developed countries.

About the Author

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Dr Finger was the World Bank's initial coordinator for the "integrated framework for least-developed countries (see the note below).

In addition, Dr Finger has held key posts at the U.S. Treasury and the United Nations Conference on Trade and Development, Geneva; and he has also taught at a variety of higher learning institutions. He is well known for his work on the functioning of GATT-WTO system and how the system relates to development.

Trade Policy Roundtable

The Cordell Hull Institute's Trade Policy Roundtable is sponsored by seven international law firms with offices in Washington, DC: namely Akin Gump Strauss Hauer & Feld, Arnold & Porter, Hogan & Hartson, O'Melveny & Myers, Sidley Austin Brown & Wood, Steptoe & Johnson and Wilmer Cutler & Pickering.

Developing and developed countries alike took on, in the Uruguay Round negotiations, unprecedented obligations to reduce trade barriers. They also agreed to significant disciplines on both trade procedures (e.g., import-licensing and customs-valuation procedures) and many areas of regulation that establish the basic business environment in the domestic economy (e.g., technical, sanitary and phytosanitary standards and intellectual property law).

Several of the agreements on these disciplines allow for delayed implementation by developing countries. The agreements on customs valuation and the intellectual property rights, for example, allow developing countries to delay their application for five years. The customs-valuation agreement has four other provisions allowing for delayed or reserved application of specific provisions. Least-developed countries may delay application of the intellectual property rights agreement for ten years, and they may request further extensions.

As the agreements went into effect for most countries on the first day of 1995, the delay periods are about to expire and, as the WTO prepares for its third Ministerial Conference, to be held in Seattle, many members are concerned that a lot of developing countries will not meet the postponed deadlines. Fifty-three developing countries have notified the WTO that they wish to take advantage of the five-year delay; and this number likely understates the number of countries that will be pressed to meet the deadline. Of the 29 least-developed countries³ who are WTO members, fifteen have notified application of the five-year delay. The other fourteen, however, have made no notification – neither that they will take advantage of the delay provision, nor of their valuation regulations. In all, 34 developing countries have made no notification on customs valuation.⁴

Goodwill: There is considerable goodwill to assist developing countries with this implementation as part of the preparations for the Seattle ministerial meeting.⁵ Much of the discussion relates the issue to the need for coherence between the WTO and the World Bank. Contributions so far have taken up the implementation issue from that perspective. In this paper I will look at the issue from the perspective of the World Bank. Implementation of WTO commitments on customs valuation, technical and sanitary standards and intellectual property rights have important dimensions on which the World Bank's experience is relevant.

Opportunities: Losses from ineffective or corrupt customs-valuation procedures are deadweight losses. Hence it is very likely that developing countries would benefit from reforms. Likewise, the SPS agreement provides an opportunity to use the WTO to defend the market-access rights of exporters who meet the standards. As moving into the export of fresh fruits and vegetables and processed foods is a likely next step up the value added

Integrated Framework for Least-developed Countries

The World Bank is a partner in the Integrated Framework for the Least Developed Countries. The Bank's contribution to the least-developed countries is in large part support for trade-related infrastructure, institutions and capacity building – both human and enterprise – to produce tradable goods and services.

chain for countries that at present export bulk commodities, implementing SPS standards could also offer attractive possibilities. Implementation of the TRIPs agreement is likely to increase the least-developed countries' import bill immediately, but it is likely to be several years before implementation would provide benefits.⁶

INTEGRATING DEVELOPING COUNTRIES INTO THE WORLD ECONOMY

The Bank has long recognized trade as an important vehicle for development and has actively supported the effective use of this vehicle by its client countries.

Support for Trade Policy Reform

From the beginning of World Bank policy-based lending (1981) until the end of the Uruguay Round negotiations (1994), the Bank made 238 loans, totaling over \$35 billion of lending, that included conditions for disbursement related to trade or foreign exchange-rate policy. These loans, made to 75 different countries, specified over 2000 trade or foreign exchange-rate policy reforms; and about 80 percent of these reforms have been substantially implemented.

These reforms affected imports of over \$500 billion in 1993 values. In the Uruguay Round negotiations, developing countries agreed to tariff reductions that will affect 32 percent or \$393 billion of their total merchandise imports (likewise in 1993 values).⁷

Capacity to Exploit Opportunities

Since 1995, fifty-four additional IBRD and IDA adjustment operations (65 percent of all adjustment operations) have supported exchange-rate and trade-policy reforms. Bank investment lending for trade-related activities accounted for around 26 percent of the Bank's total lending from 1994 to 1999 – involving, to date, some \$26 billion of disbursements. It included support for construction of trade-related infrastructure facilities such as ports, telecommunications and export corridors, private enterprise capacity to produce tradable goods and services.

A considerable number of Bank projects involve development and modernization of institutions. Examples: the International Standards Organization recently commented that "during the past fifteen years, the World Bank has managed more [standards and quality-related] technical assistance programs than any other national, regional or international agency". Customs reform is included in a number of institutional or trade reform projects, food-safety projects involve application of sanitary and phytosanitary measures.

Support for Trade Reform

A program of research, dissemination and capacity building is under way in the World Bank, designed to assist developing countries in formulating objectives and priorities for trade policy and to provide analytical tools to help them formulate effective policies. The analytical work is being done in partnership with analysts from the WTO and a range of national and international institutions.

There are currently two closely-related projects. The first covers the whole range of trade issues confronting the developing economies, while the second focuses particularly on the problems arising in agricultural trade negotiations. Both projects have followed a very similar structure. First, scholars working in developing countries prepared region or country specific papers that they presented to academics and policymakers at several workshops in June and July 1999.⁸ The second phase involves policy papers that build on the findings of the regional meetings.

A key set of these papers was presented at conferences in Geneva on September 20-21, 1999, for the general trade issues, and October 1-2, 1999, for the agricultural issues. Meetings and workshops in developing countries for policy advisors and senior policy makers, complemented by outreach activities for the press, chambers of commerce and relevant NGO's are also part of the program. The Bank will also distribute the results of this analysis in the form of handbooks. The first of these, entitled *Development, Trade and the WTO*, provides 55 topic essays, while appendices provide data sets on trade flows and on trade restrictions. The handbook is available for sale in hard copy, and many be downloaded without charge in PDF format.⁹

An important dimension of this project has been to build analytical capacity in developing countries. A key objective is that developing-country governments be able to turn to their own universities and research institutions for support.

Another significant dimension of the work is that it focuses on identifying good economic policy for development, rather than on support for negotiations. Matters of strategy – not only negotiating strategy but also the basic decision as to whether multilateral negotiations are the approach that would be most effective – are left to developing-country governments. As to the mode of policy reform, the World Bank has followed its clients. In the 1970s and 1980s, when developing-country trade reform was mostly unilateral, the Bank's support focused on this approach. As developing countries became more active in multilateral and regional discussions on policy reform, Bank support has taken up issues brought forward in these fora.

In sum, the World Bank has long recognized trade as an important vehicle for development and has actively supported the effective

use of this vehicle by its client countries. The rationale and the priorities of this work come from the development and poverty-reduction objectives of each country. Its contribution to meeting WTO obligations – if it makes a contribution – is not its justification.

LESSONS OF WORLD BANK EXPERIENCE

To learn something of the development perspective on the implementation of Uruguay Round commitments, a colleague, Phillip Schuler, and I reviewed World Bank project experience in customs-valuation, SPS and intellectual-property regulation. In each of these areas we reviewed Bank experience with four questions in mind:

- (a) How much does it cost?
- (b) What are the development problems in this area?
- (c) Does the WTO agreement correctly diagnose the development problems?
- (d) Does the WTO agreement prescribe an appropriate remedy?

The word “appropriate” in the fourth question refers both to correct identification of the problem and to recognition of the capacities (resource constraints) of the least developed countries.¹⁰

The major lessons we drew from our review are the following.

1. **It Costs Money:** The project costs we have presented here provide a first approximation to the investments needed to implement WTO obligations on SPS, IPR and customs reform. To gain acceptance for its meat, vegetables and fruits in industrial country markets, Argentina spent over \$80 million to achieve higher levels of plant and animal sanitation. Hungary spent over \$40 million to upgrade the level of sanitation of its slaughterhouses alone. Mexico spent over \$30 million to upgrade intellectual property laws and enforcement that began at a higher level than are in place in the majority of least developed countries, customs reform projects can easily cost \$20 million. The figures, for just three of the six Uruguay Round Agreements that involve restructuring of domestic regulations, come to \$150 million per country.¹¹ One hundred fifty million dollars is more than the annual development budget for seven of the twelve least developed countries for which we could find a figure for that part of the budget.

2. **So These are Investment Decisions:** Tariff reductions, removal of quantitative restrictions, etc., can be put in place by

the stroke of a minister's or a legislature's pen. Money may flow in different directions because of these policy changes, but implementation itself costs nothing. But implementation of customs reform, TRIPs, etc., will cost money – will require purchase of equipment, training of people, establishment of systems of checks and balances, etc. Questions of project design and of rates of return as compared with alternative uses of capital are therefore relevant. While it may be useful to know what reforms trading partners will simultaneously undertake, that exchange – though perhaps an appropriate way to examine exchanges of market access, is not the way in which investment decisions are traditionally made.

In sum, implementation will cost money; therefore it is relevant to ask what return the investment will provide – likewise for alternative uses of the money. Implementation is in significant part investing the development budget, and that task is part of the World Bank's expertise.

3. Reform is Needed: We found no shortage of projects to review. Developing countries are willing to borrow money to finance improvements in these areas; hence it is evident that they, themselves, see a need for reform. "Not to reform" is an untenable option; questions about implementation are questions of priorities, of method and of ownership-motivation.

4. Delay is Not an Asset: We should be careful not to be lulled into the ethic of a reciprocal negotiation in which delay, of itself, is a victory. As we have already stated several times, the less developed economies need improvements in the areas that are new to the WTO – to delay these improvements is to lengthen the time that the people in these countries remain poor. Time will be needed for implementation, but implementation periods should be based on considerations of the appropriate priorities for the available development budget and on the engineering requirements to accomplish the required construction. They should not be handed out as second prize in a tough negotiation.¹²

No Least Developed-country Ownership

Ownership of the rules is an important element in the functioning of any system of rules, particularly important in systems such as the WTO, where the central organization has limited power to enforce. Building among members a solid sense of ownership of such rules begins with participation in establishing them – for WTO rules, with effective participation in the WTO negotiations in which the rules were agreed.

The African Economic Research Consortium has conducted an evaluation of sub-Saharan African countries' participation in the rule-making exercises of the Uruguay Round negotiations and has found that that this participation was minimal. These countries

lacked the capacity to engage substantively on the wide range of issues that the Uruguay Round agenda included. The African Economic Research Consortium evaluation identified weaknesses at three levels:

1. Geneva delegations were small and lacked persons with the technical backgrounds needed to participate effectively:

A competent diplomat without the backing of a technical staff was not an effective delegation.¹³

2. Links between WTO delegations and the government at home were not developed: There was a lack of established process to involve the relevant ministries with issues that were being negotiated in Geneva, e.g., health and agriculture ministries with negotiations on sanitary and phytosanitary standards, the customs agency with the customs valuation negotiations.

3. Stakeholders (e.g., the business community) were minimally involved: Ogunkola concluded that “[w]hile the participation of Africa has been limited by the capacity to negotiate, the ratification of the agreement and the single-undertaking clause made the implementation of the agreement almost non-negotiable”.¹⁴

To digress a moment, what is the reasoning behind this last point?

The alternative available at the end of the Tokyo Round negotiations – to sign some agreements but not others – was taken away. Countries that chose to remain GATT members but opted not to accept the Uruguay Round package that was incumbent on WTO members would have been discriminated against. They would not be owed the new obligations that WTO members accepted in the Uruguay Round agreements.¹⁵

To the negotiators, the diplomatic value of becoming a WTO member weighed heavily. Result: there came forward in these countries no sense of ownership of the implied reforms. To least-developed country negotiators, the reforms were imposed by the major trading countries. The government agencies that must implement the rules blame the large countries *and* their own negotiators. To them, the rules were imposed by the major trading countries over the weakness of their own negotiators. Among stakeholders, the losers have been agitated, e.g., interests that previously secured protection from the application of customs procedures, or standards. But the process of making the rules has not rallied the potential winners, e.g., traders who would save money from improved customs operations, producers who might be able to export if standards were upgraded to an international level.

Given these attitudes, it is difficult to rally support for implementation. At each level, implementation is viewed as something that

will help someone else,¹⁶ so the urge is to do the minimum in order to get by. Attempts to force implementation through the WTO dispute-settlement mechanism would likely reinforce the impression that the WTO rules are imperially imposed from the outside – for the benefit of the outside.

Bound and Unbound Commitments

The TRIPS, customs-valuation, SPS and several other agreements suggest that developed-country members furnish technical assistance to developing-country members that so request it. This provision, however, is not a binding commitment. In effect, the developing countries have taken on bound commitments to implement agreements in exchange for unbound commitments to provide assistance in the implementation process.

Do it My Way

The content of the obligations imposed by the WTO agreements on customs valuation, intellectual property rights and SPS can be characterized as the advanced countries saying to the others, “Do it my way”. The customs-valuation and TRIPs agreements are explicit on this; and, while the SPS agreement appears to allow retention of an indigenous system, doing so is not a real alternative.

It is of course reasonable that an exporter meet the SPS standards of the importing country. As to a least-developed country applying its own standards to imports, staying with an indigenous system is not really an alternative. In defending trade-related actions, the systems recognized by international conventions have the legal benefit of the doubt. An indigenous system must prove itself.¹⁷ The least-developed countries do not have the resources needed to do so. Hence the only effective option for a country that retains an indigenous system of standards is *not to apply* standards on imports.

Inappropriate Diagnosis and Remedies

The “do it my way!” characteristic of the agreements brings us back to our initial questions. From a development perspective:

- (a) Do the WTO agreements appropriately identify the problems faced by developing countries?
- (b) Given the least developed countries’ needs and their resource bases, do the agreements provide the most effective remedy?

The WTO customs-valuation agreement extends the Uruguay Round concern to control import restrictions by developing countries – bound *ad valorem* tariffs are not constraining if valuation is not constrained. But from the perspective of the least-

developed countries' need for customs reform, the WTO agreement provides neither an appropriate diagnosis nor an appropriate remedy. Least-developed countries' face a range of problems with customs administration: smuggling,¹⁸ unreasonable delays, uncodified procedures and widespread corruption.

Over the small part of the problem it covers – valuation – it provides an inappropriate remedy, one well-suited to the business environment of the industrial countries, but one that is incompatible with the resources the least-developed countries have at their disposal. Customs stations at many land border stops in developing countries do not even have telephone connections, much less the electronic management information systems that are an integral part of industrial country systems.

Our conclusions on the intellectual property rights agreement are similar. Its diagnosis focuses not on encouraging innovation or protecting endogenous technology in less developing countries, but on industrial country enterprises' collecting for intellectual property on which least developed countries now recognize no obligation to pay.

The default remedy of the intellectual property rights agreement is to copy industrial-country intellectual property law. While legal scholars point out that the agreement allows for the possibility of adopting intellectual property law that is friendly to users and to second comers, they also point out that the benefit of the doubt is on the side of copying present industrial-country approaches. The balance that has been institutionalized in the industrial countries' intellectual property rights law, so many industrial-country experts argue, is tipped toward the interests of commercialized producers of knowledge and away from users – tipped past the point of optimality even for the community of interests that make up industrial-country societies.¹⁹

A major cost of standardizing on the current industrial-country example is to cut off experimentation – the process of developing more appropriate legal approaches in developing countries.²⁰

Our review found lesser problems with the SPS agreement. The agreement does allow a developing country to apply indigenous standards; its strictures apply only to what can be defended through the WTO when it is applied at the border. A number of industrial country processed food companies have facilities in developing countries from which they export to their home countries. Meeting home country SPS standards has been built into the construction of these facilities; the next challenge is to pass mastery of this technology to indigenous enterprises.

Allowing vs. Providing Alternatives

The customs valuation agreement and intellectual property rights agreements allow for delayed implementation, and provide also

possibilities to petition for further delays or to continue with certain current practices for a transitional period. For example, the customs valuation agreement's Annex III allows developing countries to petition to retain use of reference prices for a transitional period. As of November 1998, 34 countries had petitioned to do so.²¹ The intellectual property rights agreement, according to legal scholars, provides some wiggle-room that could allow indigenous systems to be maintained.

COHERENCE BETWEEN WORLD BANK AND WTO APPROACHES

The World Bank and the WTO have both contributed substantially to integrating the developing countries into the global trading system. They are however different institutions with different responsibilities and therefore different perspectives and different modes of work. To illustrate, the first paragraph of each institution's annual report for 1998 was about the Asian crisis. The WTO report pointed to the need to avoid protectionism, the World Bank's concern was with maintaining in Asia what has been the most successful anti-poverty experience in history.²² The following table compares characteristics of the Bank and the WTO.

Bank-WTO: Qualitative Comparison

<i>Dimension</i>	<i>World Bank</i>	<i>WTO</i>
Arch Enemy (target)	POVERTY	TRADE BARRIERS
Range of instruments	COMPREHENSIVE DEVELOPMENT STRATEGY	TRADE POLICY
Workspace	a COUNTRY	the trading SYSTEM
Key Relationship	the BANK with each COUNTRY	one MEMBER with another MEMBER
Mode	supporting and influencing what THE COUNTRY DETERMINES	DETERMINING COLLECTIVELY WHAT ALL MEMBERS WILL DO
Country attitude that the institution encourages	TAKE CHARGE OF YOUR OWN DEVELOPMENT RESPONSIBILITIES	FOLLOW the RULES, USE the RULES to advance your own interests
Level of legal obligation	COUNTRY and PROJECT SPECIFIC	CATHOLIC, the same for all

A major difference between the Bank and the WTO is that the standards of the WTO (applicable to all Members) are determined *multilaterally* while the relationship between the Bank and its borrowing countries is determined through *bilateral* negotiations (the country and the Bank), allowing for different dimensions in the Bank's relationships with different countries. Thus the legal obligations that a country takes on through the WTO are the

generic obligations expressed in the WTO agreements; the same obligations for all Members. The legal obligations a country takes on through the World Bank are those expressed in loan documents. These obligations are country and project specific. Bank-provided generalizations on policy, e.g., in a *World Development Report*, are not statements of the legal obligation of Members. Their function is to facilitate intelligent conversation with and among members.

Relevant Bank Documents – the CAS

The WTO's policy position *vis-à-vis* any country is the expressed in the familiar GATT/WTO agreements. The Bank has no parallel statement of universal standards or concerns. Each Bank loan contains performance conditions specific to the project the Bank is helping to finance, the Country Assistance Strategy (CAS) for each country expresses the Bank's shared understanding with the country of the country's development strategy and of how the Bank will support implementation of that strategy. A CAS is country-specific, it is not an overall set of standards with each Bank member must comply. The CAS document is the central tool of Bank Management and the Bank's Executive Directors for reviewing and guiding the Bank Group's country programs. It is also the vehicle for judging the impact of the Bank's work.²³

The CAS document provides a discussion – with emphasis on poverty reduction – of the government's priorities and development strategy, and of its recent performance. It also takes up the social, political and institutional factors that affect the country situation and the Bank's strategy. The document reviews (a) the Bank program proposed to address the development needs highlighted in the diagnosis, (b) the mechanisms for eliciting stakeholder participation and (c) the Bank Group's coordination and collaboration with external partners (IMF, MDBs, bilateral donors, private sector, non-governmental organizations, etc.). Cross-cutting issues such as gender and environment are usually taken up in the CAS, along with governance conditions and corruption – their impact on the country strategy and the risks they pose to Bank Group projects.²⁴ The CAS also includes clear goals and monitorable indicators or benchmarks for evaluating Bank and country performance in implementing the CAS – particularly in poverty alleviation.

Coherence: WTO Ministerial Stipulation

The matter of coherence was addressed in one of the Ministerial Declarations that accompanied approval of the Uruguay Round Agreements²⁵ and has been mentioned in the 1996 and 1998 WTO Ministerial Declarations. The mentions of coherence refer to structural, macroeconomic, trade, financial and development policies being mutually supportive of economic and social objectives. On the negative side, coherence is sometimes mentioned as the

avoidance of contradictory obligations and advice from the IMF, World Bank and the WTO. The Uruguay Round Ministerial declaration also notes that “the task of achieving coherence between [structural, macroeconomic, trade, financial development] policies falls primarily on governments at the national level,” and warns against “the imposition on governments of cross-conditionality.”

Passive vs. Active Coherence

With regard to the World Bank’s work to support developed countries to use trade as a vehicle for development, coherence might be characterized in two ways:

Passive: Ensure that the Bank is cognizant of countries’ WTO obligations.

Active: Ensure that the WTO is cognizant of how policy looks from the perspective the Bank encourages its clients to take.²⁶

Recent suggestions for what the Bank might do to support implementation of WTO obligations presumes the passive interpretation of coherence: The Bank should declare that the WTO obligations make development sense, include them as part of the conditionality it imposes through its lending and finance implementation.

The flaws in this position include:

1. The Bank has no mechanism for declaring universal policy obligations. Documents such as the World Development Reports and the many working papers the Bank publishes impose no obligations. Higher level reports such as the World Development Reports have received the benefit of discussion by the Executive Directors, but they are not “approved” by the Executive Directors.
2. The matter of ownership – which much more than conditionality is the motivation behind countries complying with Bank-supported development strategies – is ignored.
3. The customs valuation and intellectual property rights agreements illustrate the inappropriateness in some policy areas of one-size-fits-all approaches. Some developing countries’ customs systems are at a stage of development at which a valuation system as specified in the WTO agreement would provide substantial benefits. Other developing countries have yet to deal with basic problems of control and corruption.



The **mockingbird** is the state bird of Tennessee. Cordell Hull represented a district of Tennessee in the Congress of the United States, and was elected a senator from there, before

The WTO is a “one-instrument” institution, that instrument being trade policy. While there is overwhelming evidence that open trade policy has much larger benefits for the totality of citizens of a country than costs, it is also evident that trade liberalization, by itself, will have a negative impact on some, often those who are

becoming U.S. Secretary of State (1933-44).

Trade Policy Analyses

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relatively poor to begin with. Hence if the Bank – with poverty its assigned arch enemy– is to decide on trade policy in isolation, as it is decided in the WTO, then the Bank's mandate would demand that it be opposed in many instances. In a comprehensive policy framework (in Tinbergen terms, a multi-target, multi-instrument model) the negative impact on some persons can be offset by education policy, safety nets – other instruments. This is another reason why the Bank can have, within its own way of doing business, a very supportive position on trade liberalization, yet within the WTO frame of reference might be more reserved.

Why, for the sake of argument, did the Uruguay Round customs-valuation agreement misdiagnose the challenges that developing countries face with customs reform? From the perspective of active coherence, it is much the World Bank's fault as the WTO's. The WTO agreement within the WTO context is part of controlling (particularly) developing countries' import restrictions. It is not intended to be part of development policy, or even of overall customs reform.

REMAINING PROBLEMS

Ownership Issue: Developing local ownership of policy reform is increasingly built in to the World Bank relationship with its clients, the objective is that local ownership rather than conditionality will be the motivation for countries' reforms. How can ownership be brought into the WTO process?

Implementation of Customs Valuation and TRIPS: The one size fits all nature of the WTO customs valuation and intellectual property rights agreements raise serious questions about how they might be implemented. For a number of developing countries, they are not likely to make development sense for a number of years. In the meanwhile, the WTO will be imposing on these countries a legal obligation that they will not be motivated to implement. The impact on WTO's universal rule of law approach to policy to policy may be more serious than the impact on these countries' efforts to develop and to overcome poverty.

¹ \$50 x 10⁹.

² The findings, interpretations and conclusions expressed in this paper are entirely those of the authors. They do not necessarily represent the views of the World Bank, its executive directors, or the countries they represent.

³ Here, in the official UN list sense of least developed countries.

⁴ Information taken from WTO Committee on Customs Valuation, "Draft Report of the Committee on Customs Valuation to the Council for Trade in Goods", Document G/VAL/W/21 10, World Trade Organization, October 1997.

⁵ Both the United States and the European Union have submitted WTO papers on the issue. General Council, World Trade Organization, Preparations for the 1999 Ministerial Conference: EC Approach to Capacity Building and Coherence in Global Economic Policy-Making, *Communication from the European Communities*, WT/GC/W/297, 5 August 1999; and Proposal on Technical Assistance/Capacity Building, *Communication from the United States*, WT/GC/W/276, 28 July 1999.

⁶ We have not yet looked into the implementation of technical standards.

⁷ These trade reforms were implemented in countries that bought about one-fourth of United States exports -- in dollar value, about \$120 billion in 1993. United States exports to these countries have increased about three times faster to these countries than to countries that have not undertaken such reforms.

⁸ Some of the papers and a more detailed description of the project are available at www.worldbank.org/trade.

⁹ Bernard Hoekmann, Aaditya Mattoo and Philip English (eds), *Development, Trade and the WTO* (Washington, DC: World Bank, 2002). The volume is available for download at http://publications.worldbank.org/ecommerce/catalog/product-detail?product_id=1525978&

¹⁰ To take a brisk 30-minute walk every day would not be a good prescription for a paraplegic.

¹¹ The experiences we have reviewed were in the more advanced developing countries, the costs could be higher in the least developed countries who will begin further from the required standards.

¹² One of Robert Hudec's favorite stories illustrates the attractiveness of delay. The story is about a condemned prisoner who accepts a six-month reprieve in exchange for teaching the King's horse to talk. He quotes the prisoner: "Who knows? The horse may learn to talk." Robert E. Hudec, "The New WTO Dispute Settlement Procedure: an Overview of the First Three Years," *Minnesota Journal of Global Trade*, Vol. 8, No. 1, Winter 1999, p. 14.

¹³ Of 65 developing-country GATT-WTO members when the Uruguay Round began, twenty did not have delegations in Geneva. Of the twenty, fifteen were represented from embassies in other European cities and five by delegations based in their national capitals. Furthermore, developing-country delegations were notably smaller than those of the industrial countries. In 1987, when the Uruguay Round negotiations began, the European Union had in Geneva a delegation of ten, while EU member states' delegations included an additional 57 persons. The U.S. delegation numbered ten; the Japanese, fifteen. Only twelve developing countries had delegations of more than three persons. The larger ones, namely Korea, Mexico and Tanzania, had seven each; Brazil and Indonesia, six each; Thailand, Hong Kong and Egypt, five each. Of the 48 least-developed countries, 29 are WTO members, but only eleven of these maintain delegations in Geneva. As of January 1999, six least-developed countries were negotiating accession to the WTO, while another six were observers, not negotiating accession.

¹⁴ "Single undertaking" here means that each member was expected to take on all obligations, that the codes approach of the Tokyo Round negotiations, in which each member could opt to sign some codes and not sign others, was not available. John Croome, who served in the GATT-WTO Secretariat throughout the Tokyo and Uruguay Rounds, has pointed out in correspondence that "single undertaking" initially referred to the members voting on all parts of the agreement as a whole, i.e., that the outcome of the tariff negotiations would not be put up for approval separately from the outcome of the subsidies negotiations. As the negotiations progressed, the meaning of "single undertaking" expanded to include the "no country can opt out of any part" meaning.

¹⁵ Because the Tokyo Round codes were part of the GATT, the GATT non-discrimination obligation (Article I) required that code signatories apply the codes in their dealings with non-

signatories as with signatories, i.e., non-signatories were entitled to the benefits of a code without accepting the obligations.

¹⁶ An African food scientist remarked to me in conversation, "They want us to adopt the SPS agreement so that we will import more chickens from them."

¹⁷ To a great extent the industrial countries already apply the international conventions. There is a chicken-or-egg question here. Do the industrial countries' standards follow from the international conventions? Or *vice versa*?

¹⁸ Both clandestine entry and undisclosed or incorrectly documented passage through official ports of entry.

¹⁹ Sydney Templeman, "Intellectual Property", *Journal of International Economic Law*, Oxford, Vol. 1, No. 4, December 1998, 585-602.

²⁰ Matthew Stillwell of the Center for International Environmental Law pointed this out to me.

²¹ WTO document G /VAL/W/29, November 4, 1998.

²² The opening paragraphs in the World Bank Annual Report are about internal World Bank matters. The Asia Crisis is the first topic the World Bank takes up other than the World Bank.

²³ CAS discussions take place in two-, three- or four-year cycles. If needed, a CAS Progress Report may be taken up in intervening years.

²⁴ Assessments of particularly sensitive matters may be reserved for oral statements.

²⁵ "Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking", Marrakesh, April 1994.

²⁶ A second statement that paralleled the first, e.g., "Ensure that the WTO is cognizant of countries' World Bank obligations" would be inappropriate.