The Regulation of World Trade Organization in the North and South Divide

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Abstract

This paper hinges on the regularization of World Trade Organization in the North and South divide hence the demand for trade policy in the developed countries is such that possible WTO agreements include many regulatory issues. On the other hand, regulation is development related in many ways: the "best" rule may vary with the level of development, the opportunity cost of establishing regulation varies with income levels and, finally, liberalisation of regulatory protection between countries at different levels of development is likely to take the form of hegemonic harmonisation. This paper also focused on the special and differential treatment for the developing countries which could provide solutions but SDT is flawed because of two mutually reinforcing ambiguities: first, it applies to a set of countries with widely different levels of development, on the basis of a self selection; second, its provisions for positive action on the part of developed countries are mostly not legally enforceable. The *status quo* tends to be defended by the developing countries as for the first ambiguity, by the developed countries as for the second. Therefore, the expansion of the agenda within the framework of the single undertaking rule, coupled with scant liberalisation in agriculture has produced constant tension up to the Cancun failure. Deep integration through the WTO and single undertaking have proved to be a very difficult combination, which locked the system into a net of issue linkages. This paper has made some recommendations such as the improvement of investment with its conclusions and references.

Keywords: WTO, Regulation, North, South, Divide.

Introduction

The escalation in North South confrontation in the Doha round is the result of the interaction among three factors: the nature of the demand for trade policy in the developed countries, the fact that regulation is development related and the ambiguity of SDT. In the developed economies the demand for further liberalisation is increasingly oriented towards the elimination of barriers to trade arising from internal regulation. Regulation however is development related in several ways and the extension of SDT to the new issues on the GATT/WTO agenda proved to be inadequate. The developed countries negotiating attitude on agriculture exacerbated the conflict, leading to an unprecedented reaction on the part of the developing countries, to the Cancun failure and to a long deadlock (Cuffaro 2003a; 2003b).

Ten months after Cancun, the July 2004 General Council decision -including a framework for modalities in agriculture and the statement that none of the Singapore issues, except trade facilitation, will be negotiated in the Doha Round- seems to indicate that the developing countries have succeeded at least in establishing that the negotiating priority for the WTO is trade liberalisation, first and foremost in agriculture.

The first three sections of this paper discuss the demand for trade policy in the developed countries; the relationship between regulation and development; special and differential treatment in the WTO. Sections four and five focus on two areas of North-South divide which are related to the issue of regulation in the WTO: the notion that the outcome of the Ur was unbalanced (and should be amended); the most controversial of the Singapore issues, namely investments.

The demand for trade policy in the developed countries

The demand for trade policy in the developed countries is such that, in Putnam's (1988) language, the "win-set" (i.e. the set of all possible agreements that would gain the necessary majority among the constituents when voted up or down) includes many regulatory issues and the cost of no-agreement for the developed countries is relatively low, i.e. lower than the cost of no-agreement for the other countries. The developed countries demand for further liberalisation is increasingly influenced by service sector providers and multinationals and increasingly oriented to the elimination of Non-Tariff Barriers (NTBS) arising from internal regulation.

Tariff barriers in goods trade, especially among developed countries, are now low worldwide, with the notable exceptions of agriculture and textiles. Agriculture is in general highly protected in both developed and developing countries; in the textile sector the phase out of the Multifibre Arrangement (MFA) by 2005, agreed in the Ur, should result in substantial liberalisation, although, as a consequence of implementation strategies, the phase out are:

1. The negotiations leading to the July package showed clearly that no progress in non-agricultural market access and services would be achieved before a framework agreement on agriculture (ICTSD, 2004). For example the services industry -and especially the financial services providers- is a powerful corporate lobby group on Eu trade policy.
2. The European Services Forum, which represents the very large majority of the European services industries that have a direct interest in supplying international services, was one of the major supporters of the Commission in the launching of the Millennium Round (Van den Hoven, 2002).

Heavily back-loaded, and tariffs on textiles and clothing remain high relative to those on other industrial products. The developed countries however have resisted the liberalisation of these sectors which are, from their point of view, import competing.

In the industrial sector, as tariff barriers decrease, firms seeking to exploit the possibility to export demand the reduction of non-tariff barriers, such as technical barriers to trade (Tbts), i.e. barriers to trade resulting from norms (regulations and standards) that control the sale of goods in a particular market by specifying required product characteristics or production processes. Such "barriers" -generally established by governments in pursuit of internal regulatory goals- fragment the market, because different specifications raise each firm's cost of selling abroad. As tariff barriers are lowered, the impact of Tbts becomes more significant: regulatory protection's influence on production and its importance in the agenda of international negotiations will continue to grow (Baldwin, 2000).

Multinational firms in particular have actively pursued the removal of differences in national regulatory systems, such as Tbts Large multinational firms, Baldwin (2000) argues, have a strong interest in (two-way) liberalisation of technical barriers to trade because it defragments the markets, producing a pro-competitive effect and industrial restructuring that involves weaker firms merging, exiting or getting bought, and systematically favours large firms profit.

Furthermore Tbts variety increases the cost of operating international vertically integrated production, strongly related to the activity of multinationals firms that locate different stages of production of a good or goods in different countries, realising vertical integration through direct investment (Fdi) or some contractual arrangement.

Services are a sector relatively untouched by multilateral liberalisation, where the developed countries tend to have a comparative advantage and where barriers to trade do not take the form of import tariffs. Barriers to trade in the services sector are widespread and mostly arise from internal regulation: entry restrictions in services such as basic telecommunications, public utilities, financial services and self-regulating professional services are common and largely apply both to domestic and foreign providers. Hence liberalisation in this sector involves regulatory reform.

Finally, increased integration generates demand for rules on investment. On the whole, the demand for further international liberalisation coming from the developed countries has, much more than in the past, strong implications for internal regulation. This is also reflected in the trends of bilateral and regional agreements which tend to go beyond the removal of tariffs and quantitative restrictions and cover a whole range of regulatory issues relating to technical regulations and standards, rights of establishment,

Literature Review

Brenton (2000) points out that the leaders of large corporations have strongly supported recent regional and bilateral trade initiatives in Europe (the creation of the single market), in North America (Nafta) and in Asia (Apec). The role of business in influencing deep integration has been increasingly institutionalised, for example in the Transatlantic Business Dialog (Tabd) and in the Pacific Business Forum.

Hummels and Rapoport (1988) show the growing weight of vertical-specialisation-based trade, defined as the amount of imported inputs embodied in goods that are exported (i.e. when a country uses imported intermediate parts to produce goods it later exports). This trend is closely linked to the world wide reduction of tariff barriers: when a good crosses multiple borders, as in a vertical specialisation-based trade, even low tariff rates are magnified as they are repeatedly applied to the good-in-process, resulting in effectively in much higher rates of protection. Therefore tariff reductions will spur vertical specialisation more than they will horizontal specialisation. Competition policy and state aids, and trade in services i.e. they increasingly pursue "deep integration" (Brenton, 2000).

The dynamics of the Doha round has also been influenced by the perception that the cost of no agreement may be lower for the developed countries than for the other countries, if the alternative to multilateralism is the proliferation of agreements either involving only developed economies or confronting regionally developing and developed countries – whose number actually surged in the 1990s. In the former case, deeper integration among a group of countries may imply trade and investment diversion, in the latter, depending on the group of players, the bargaining power may be very asymmetrical, as in the "extreme" case of bilateral treaties, involving two economies with vastly different market size.

Following the Cancun failure, the bellicose US negotiators declarations strongly underscored this asymmetry, promising to take note of uncooperative countries in the context of regional and bilateral negotiations. However, it should be noted that negotiation of the most ambitious regional trade agreement proposed to date -a Free-Trade Area of the Americas (FTAA) including every nation in the Americas except Cuba- have partly replicated the contemporaneous Doha round dynamics. The United States demand a regional accord that liberalises services and government procurement, and tightens rules to protect investment and intellectual property; Brazil's priorities are farm subsidies and protectionist antidumping duties, but the Us position has been that both issues could be addressed only at the WTO. Disagreement between the two countries, co-chairs of the FTAA negotiations, has dominated the debate and the November 2003 ministerial meeting at Miami, that should have prepared the final round of talks (the FTAA was supposed to be finalised by December 2004), ended with a declaration according to which some FTAA commitments will be binding on everybody, while other -in contentious areas like agricultural subsidies, investment, intellectual property rights and antidumping- will be "plurilateral" i.e. accepted by only a subset of FTAA members.

More generally the Oecd (2001) points out that until recently regional integration agreements have not advanced much further with liberalisation than has the multilateral system -the EU is the exception, although it must be remembered that the Single Market program took 30 years to initiate. Agriculture frequently remained restricted, in services liberalisation most regional agreements have not gone much beyond what was achieved in the General Agreement on Trade in Services (GATS); government procurement has been *defacto* ignored. Regional agreements, the OECD argues, have not led on the tough issues to the extent that it is sometimes supposed.

Regulation and development

Regulation is "development related" in many ways: (i) the "best" rule may vary with the level of development; (ii) the opportunity cost of establishing regulation varies with income levels; (iii) liberalisation of regulatory protection between countries at different levels of development is likely to take the form of "hegemonic" harmonisation, (Baldwin, 2000) since negotiated harmonisation is unlikely to be feasible, and mutual recognition requires a high level of trust in the other country's governance capacity.

The first point is best illustrated by the issue of the protection of intellectual property rights, which, more than any other, became the symbol of the North-South divide during the Uruguay Round of Gatt.

The agreement on Trade-Related Aspects of Intellectual Property Rights (Trips) follows the Gatt tradition of adopting the multilateral disciplines of non-discrimination (as embedded in the Mfn and the national treatment principles) and a commitment to transparency. But Trips is also an innovation, having established minimum standards of protection -essentially adapting them to the higher US and EU standards- and guidelines for enforcement, while giving member countries discretion in how these standards are implemented (Primo Braga, 1996; De Benedictis, 2000).

Primo Braga *et al.* (1998) observe that traditionally one could largely explain the standard of Iprs protection in a given country by its level of economic development: the least developed countries generally supplied the weakest standards because they had limited ability to create intellectual property and thus Iprs protection would mainly grant monopolies to foreign patentee. The early 1980s, however, marked a significant shift: pressures from industrial countries for strengthened Iprs protection increased and international disputes over Iprs became common. A 'marriage of convenience' between trade law and Iprs law emerged as some developed nations began to use trade measures to curb 'piracy' abroad (Primo Braga, *et. al.*,1998).

Iprs protection implies benefits, in terms of incentives to innovation and attraction of Fdi, and costs that arise from market power and Iprs enforcement; furthermore if Iprs holders are foreigners - and the dominance of industrialised countries in world-wide ownership of Iprs is marked-, strengthening Iprs implies the possibility of an international transfer of rents.

Recent analyses of optimal Iprs protection establish that the South's equilibrium Iprs standard is weaker than that of the North: in a study by Lai and Qiu (2003) the result

derives from the assumption of higher innovative capabilities and demand for innovative products in the North. Strengthening Iprs protection is likely to have a negative welfare impact in the case of countries with some production capabilities (a proxy for the capacity to imitate) but limited innovative capacity - a common scenario for many relatively large developing countries-, as local producers are displaced, prices increase and a rent transfer from local consumers and producers to foreign titleholders ensues (Primo Braga, 1996). In the case of Iprs the best rule is "development related".

Furthermore, the agreements that involve internal regulation present an inherent bias against countries at lower level of development: the Uruguay Round has internationalised an approach to regulation that essentially reflects the experience, the problems and the interests of the developed countries, being the projection of the systems in use in these countries. The related implementation costs are therefore low for the developed economies, but high for the others.

Finger and Schuler (2001) use the agreement on Sanitary and Phytosanitary Measures (Sps) as an illustration of this argument. Under the agreement exporters have, as before, the obligation to comply with the importing country's Sps measures, but the latter has the obligation to demonstrate that its Sps measures are in fact based on science and are applied equally to domestic and foreign producers: exporters have now clearer grounds for challenging an import restriction.

However, the agreement is actually a heavier burden for developing countries. For instance Sps specifies that measures in conformity with the relevant international. The United States, for example, via Section 301 of the Omnibus trade and Competitiveness Act of 1988 raised the issue of weak foreign protection for US intellectual property to a priority status for negotiations concerning trade preferences and as a basis for potential trade retaliation. Conventions are to be deemed necessary to protect human, animal or plant health, and are presumed consistent with the agreement. Such conventions have been mostly established by developed countries and in significant part generalise their industrial practices and standards. Although a country may adopt other standards or methods, to apply them at the border requires demonstrating their scientific merit and appropriateness: hence, independently of the merit of the standards, the Sps agreement is more effective against current developing countries' use of Sps measures as Ntbs than against industrial countries' use.

Furthermore, to effectively use the Wto agreement to defend its export rights or to justify its import restrictions, a developing country will have to upgrade its Sps system to

international standards, hence application of the agreement requires extensive investment (Finger and Schuler, 2001; Wilson, 2002).

More generally, resource-intensive Wto agreements may not be development priorities or may require many other preconditions in order to be beneficial (Finger and Schuler, 2001; Hoekman, Michalopoulos, Winters, 2004).

Formal agreements seeking to reduce Ntbs arising from internal regulation may adopt two approaches: harmonisation (i.e. convergence to a single norm or conformity assessment procedure) and mutual recognition (i.e. acceptance of foreign norms and conformity procedures). Harmonisation can be accomplished via negotiation, i.e. by narrowing the difference between various nations' norms, or via the hegemonic route, i.e. other nations adopting the norms of a hegemon. However the history of trade integration in Europe shows that negotiated harmonisation is very difficult at the international level (Baldwin, 2000; Oecd, 2001).

The EU recognised Tbts as a barrier to the Common Market in 1957 with Article 100 of the EEC treaty; attempted negotiated harmonisation of content-of-standards between the end of the '60 and mid eighties (i.e. after the elimination of tariffs and quotas had been achieved) and failed, as the detailed timetable was ignored and harmonisation of standards and regulations proceeded much more slowly than the development of new national Tbts. Differences in national norms, reflecting national tastes, history, legal regimes –and producer lobbies seeking to restrict competition from imports –made it difficult to achieve the required consensus.

The experience, Baldwin (2000) argues, shows that in the case of Tbts it is very difficult to objectively determine whether less-trade-restrictive measures could accomplish the same legitimate governance goals, and obscurity-induced delays are important enough to make the negotiated harmonisation approach a non-starter.

Over time, Eu case law and interpretations by the European Commission have developed a new approach whereby Tbts are mostly eliminated by the principle of mutual recognition, under which a product that can be legally sold in any one Eu country can be legally sold in all. This principle was incorporated into the 1992 Single Market program.
Mutual recognition requires considerable mutual trust, since it involves the presumption that national standards and regulations are merely different means of implementing equivalent regulatory goals and that national institutions do enforce the standards. Such

trust is unlikely to emerge among countries with vastly different levels of development. (Baldwin, 2000; Oecd, 2001).

Also, in 1986 procedures for harmonisation were simplified by shifting to majority voting rule for standards harmonisation, leading to a surge in the number of harmonisation directives adopted.

Hence, agreements on the reduction of regulation-related Ntbs between developed and developing countries will most likely follow the hegemonic harmonisation path For several reasons the expansion of the Gatt/Wto agenda in the Ur resulted in an exercise of generalisation to the world of regimes elaborated in the more advanced countries, tempered by Sdt provisions on flexibility of commitments and action for the developing countries. Partial rebalancing through Sdt provisions on positive action by developed countries has proved a failure.

SDT Architecture in the WTO

The Uruguay Round undoubtedly represented a change of model, from the "negative" regulation of Gatt (what government should not do) to positive regulation (what government should do) (Srinivasan, 2002). On the basis of the single undertaking rule all countries, including developing countries, had to assume a range of commitments much deeper than before. Sdt was somehow adapted to this evolution, albeit in an *ad hoc*, and certainly inadequate fashion.

At its inception Gatt included no special provision for the developing countries, which perceived the institution as contrary or extraneous to their interests. Only in 1964, with the introduction of Part IV - dealing specifically with Trade and Development- a series of principles relative to developing countries special needs were recognised and the principle of non reciprocity was for the first time mentioned in a Gatt text. The language of Part IV has the characteristic of being essentially exhortative, as far as action on the part of developed countries is concerned: developed countries are generally invited to make all that it is possible in favour of developing countries in several fields, but the commitments of Part IV are not legally binding.

Today special and differential treatment consists of 145 provisions, spread across the Multilateral Agreements on Trade in Goods; Gats, Trips, the Dispute Settlement Understanding (Dsu) and various Ministerial decisions. About two thirds of these provisions were adopted at the conclusion of the Uruguay Round.

Essentially Sdt provisions can be classified into three groups: flexibility of commitments and action for developing countries; provisions that imply action on the part of developed countries; provisions relating to least-developed countries.

One could argue that " hegemonic" harmonisation in many circumstances occurs as a result of market forces, since exporters have a strong incentive to produce goods that comply with the standards of the largest markets. Vogel (2001) for example notes a "California effect" in a number of environmental regulations within the Us, where automobile emission standards have moved in the direction of the political jurisdiction with stricter regulatory standards, California, because automobile producers had a strong incentive to produce vehicles that complied with California's standards, so that they could continue to market their cars in such a large and important market. Similarly, Canada adopted in 1992 US auto emission standards and Switzerland the Eu regime on technical regulations and industrial standards.

Consistent with these provisions, many developing countries have not bound tariffs on their industrial products to the same extent as developed countries (in the Ur the informal consensus was that developed countries should reduce their tariffs by one third, developing countries by one fourth) or have agreed to bind at substantially higher than applied levels (whilst in general developed countries' tariff bindings through the history of the Gatt and the Wto have been close to the rates actually applied). agreed rules; required changes in trade distorting agricultural policies. In the contest of single undertaking, developing countries accepted rules and disciplines in areas in which they had previously enjoyed complete latitude (Michalopoulos, 2000).

As a result, Sdt changed from a focus on preferential access and special rights to protect, to one of responding to special adjustment difficulties stemming from the implementation of Wto decisions. The various Ur agreements generally determine differential commitments and obligations by developing countries: flexibility, which in the majority of cases takes the form of a slower rate of implementation, has actually become the most important form of special and differential treatment.

The basic reason underlying this extension is that developing countries do not have the institutional capacity to implement the commitments demanded of them in some of the new areas, but, as Whalley (1999) observes, the Ur Sdt provisions were *ad hoc*, arrived at only late in the process, and lacked an integrated intellectual structure. In particular the typical Ur time extension of five years lacks realism, because it applies to countries with vastly different levels of development (Michalopoulos, 2000).

Provisions aimed at increasing the trade opportunities of developing countries; provisions under which WTO members should safeguard the interests of developing countries; technical assistance.

Unbalanced outcomes not amended

The literature on the Ur has generally considered the overall result of the Round unbalanced from the point of view of the equilibrium between the interests of developed and developing countries. This was undoubtedly the perception on the part of the latter, essentially for three reasons: the limited liberalisation of the agriculture and textile sectors, the extension of commitments on the new issues, the inadequacy of Sdt. Finger and Schuler (2001) observe that, compared to developed countries commitments in the Ur, developing countries tariff cuts covered approximately the same percentage of imports and were "deeper" (although the average level of tariffs in the developing countries remains higher even after the Ur reductions). However, beyond such exchange, the major part of what developing countries "gave" - mainly the acceptance of codes on major areas of domestic as well as import regulations/institutions is due now, what they got in return is Mfa elimination -not due until 2005- trade liberalisation and reduction of domestic support on agricultural products -yet to be negotiated (Finger and Schuknecht, 2001: 252). An interesting insight on the value of the acceptance of codes in the Ur is provided by McCalman (2001), who estimates that patent harmonisation consistent with the Trips agreement generates large transfers of income between countries, with the Us being the major beneficiary and the developing countries the major contributors.

The Gatt has always adopted a procedure based on consensus, therefore in principle developing countries could have a strong influence. However experience suggests that, even if there is formal symmetry in the definition of the agenda, results tend to be asymmetric: this occurred also in the Ur, in spite of the increased participation of developing countries, and their change of attitude in the direction of a greater acceptance of the general principles of Gatt.

Developed countries have more negotiating power not only because they have a greater share of trade, and therefore more possibilities to put their commercial partners under pressure and divide them, but also because, compared to developing countries, they are a smaller and more homogenous group, in terms of per capita income. The second characteristic reduces free riding, while homogeneity facilitates common positions especially regarding internal regulatory issues such as Iprs, environmental regulation, and investment policies.

Therefore within Gatt the developing countries have often been confronted with agreements that had basically been negotiated by a few influential developed countries (Chada et al., 2001; Panagariya, 2002; Srinivasan, 1998 and 2002). Comparison of these transfers with estimated gains from Ur trade liberalisation show that the net transfers the Us receives is up to 40% of the gains associated with trade liberalisation, while the developing countries pay net transfers of up to 64% of the their gains.

In particular in the Ur most developing countries made commitments on the new issues in conditions of low capacity in negotiations and implementation. This has generally produced both a sense of coercion and complex implementation problems. However, the unfolding of negotiations on Sdt showed clearly that the developed countries were not prepared to accept the notion that a new round should be used to amend what the previous one had achieved.

The post Doha negotiations on Sdt were complex because they went through several different channels First, the Doha declaration launched negotiations in agriculture, services, market access for non agricultural products and WTO rules, indicating that Sdt measures are an integral part of all elements of the negotiations within the relevant Committees (in the case of Trips, two out of the three related points in the Declaration were Sdt related). Similarly Sdt is mentioned as an integral part of the preparatory work on all the Singapore issues. Moreover, the Declaration addressed directly the issue of technical co-operation and capacity building and declared a commitment to the objective of duty-free and quota-free market access for products originating from Ldcs.

Second, a large number of Sdt issues were treated as '"Implementation Related Issues". The term implementation normally refers to the respect of negotiating commitments, however, in the process that led to Seattle, the issue was set by the developing countries in terms of correction of the Ur unbalances, essentially the idea that developed countries did not respect the commitments made under the many non-binding provisions of the Ur agreements as well as difficulties encountered by the developing countries in implementing their obligations.

In their perception, since these issues referred to shortcomings of previous agreements that translated into lower than expected benefits, the corrections should not be the object of further negotiating exchanges: they should not have to "pay" again. In this sense some developing countries, including India, considered the solution of the implementation issues preliminary to the launch of a new Round. Developed countries have in principle

accepted the notion of implementation, but they have in practice opposed an interpretation of the mandate very restrictive if compared to developing countries expectations.

The debate on implementation followed two distinct negotiating tracks. The Doha Ministerial Conference adopted a specific decision (Decision on Implementation Related Issues and Concerns), which addressed directly a number of Sdt issues but actually produced only a few clarifications of rules, more moral suasion (e.g. on Sps the declaration "urges members'" to provide financial and technical assistance to Ldcs); a request of 13 Examples of these feelings are the observation by Ricupero (1998:17) that although in the Ur developing countries were among the main proponents of the single undertaking provision, when the concept was agreed they were not "aware of the real intentions of the developed countries in the Trips negotiations" and by Zutshi (1998) that "Of all the issues negotiated under the Uruguay Round, Trips was and remains the most difficult and painful issue for India. The developing countries had themselves acquired technology under lax IPR regimes… a number of factors accentuated the already existing unequal bargaining power between developed and developing countries. At the end of the day, it was the assessment of developing countries that they needed a multilateral trading system, based on the principle on non-discrimination, much more than the developed countries, and if inclusion of Trips in the system was the price for that, they would have to pay it." (Zutshi, 1998: 47- 8)

The developed countries have mostly argued that any significant change can only occur in the context of new negotiations and thus must be open to trade-offs, that the Ctd Special Session is not a negotiating body and that in order to provide a framework for the evaluation of the proposals submitted to the Ctd, detailed discussions on the broader principles and objectives of Sdt must occur -first and foremost on criteria for differentiation and graduation (i.e. providing different levels of flexibility for Members at different levels of development, and establishing some criteria for countries to "graduate" out of these flexibilities).

Developing countries on the other hand mostly argued that strengthening Sdt provisions entails making effective previous negotiations and it is therefore an implementation issue -all individual, agreement-specific Sdt provisions should be reviewed and operationalised by the Ctd; at the same time they tend to resist discussion on general principles, in particular graduation, differentiation and utilisation, or argue that such discussion should be postponed until the agreement-specific proposals have been made more effective. The reluctance of developing countries to consider the notion of differentiating among them on the basis of development levels is well illustrated by the adverse reactions to the Lamy

and Fisher May 2004 proposal to define a set of countries –the G-90 Group comprising the world's least developed countries and the smallest of the developing countries - which would not be required to make commitments in the round (Ictds, 2004).

Asking for an investment agreement or asking for the impossible?

Investment rules have been a controversial North-South issue within the Gatt/Wto long before the Singapore Ministerial. In the Ur, the United States had to abandon the idea of a wide ranging agreement on investment because of the strong opposition on the part of the developing countries, who in the end felt that even an agreement with a relatively limited scope as the Trims 16 represented a strong limitation for their industrial policies. Attempts to achieve a multilateral agreement on investments (Mai) outside the Gatt, by negotiating strong, comprehensive rules amongst the supposedly like-minded developed countries of the Oecd also failed: the debate started in 1991, negotiations started in 1995 and ceased in 1998 with no agreement. Finally, the Singapore issues -first and foremost investments – were the issues around which the Cancun Conference formally failed.

The strong resistance to multilateral rules on investment actually coexisted with a bias toward unilateral liberalising changes in domestic investment policy regimes. The record of the 80s and 90s for Fdi is one of fast growth - Fdi grew much faster than GDP and goods export-; of continued liberalisation in virtually all countries and especially developing countries; of an increasing number of regional and bilateral treaties encompassing investment liberalisation.

The decline of global Fdi inflows in 2001 and 2002 is essentially explained by slow economic growth in most parts of the world and the winding down of privatisation in some countries and has been accompanied by further liberalisation of Fdi regimes, increased financial incentives and bidding wars for large Fdi projects. Bilateral and regional investment agreements have continued to gain importance, both in response to the Fdi downturn and as a part of a longer trend, and, unlike in the past, many recent regional and bilateral trade agreements address investment directly or have indirect implications for investment (Unctad, 2003).

Under the Trims agreement a number of investment performance-related measures (including local content and trade balancing requirements) were to be notified and eliminated.

Although the Trims agreement is modest when compared to the initial request by the Us of a "Gatt on investments" on the whole the results of the Ur have significant consequences

for the direction of developing countries industrial policies: the Trims agreement asks the elimination of measures traditionally important, and together with the prohibition of export subsidies reduces the possibility to adopt *ad hoc* instruments; higher Iprs protection under Trips make imitation harder (Balcet, 1993; Pangestu, 2002).

There is no clear consensus in the literature about the desirability of a multilateral framework on investment, which would increase stability and predictability of rules governing Fdi and reduce transaction costs, at the expense of the flexibility for host countries to adopt control measures that may be welfare enhancing - although the case for codifying best bilateral or regional practices in a multilateral setting is strong in the area of incentives18, a topic neglected by proponents of a Mai.

However the relevant issue, in the context of the WTO, was to assess the probability of success of negotiations for a formal Mai, a probability that appeared very low for several reasons.

As Sauvè and Wilkie (2000) observe, since market forces are already leading countries to several pro-Fdi practices, private sector support for multilateral negotiations is weak. Furthermore, formalising actual policy trends into an explicit Mai makes this a political issue and, as Bhagwati (2000) recalls, the politics of international economic policy is such that the level of difficulty escalates as you go from free trade in goods, to free trade in services, to freedom of Fdi, to freedom of all capital flows, to freedom of labour flows. The lesson from the decision to abandon negotiations on an Oecd-based Mai19 is that there actually was limited political interest for what was in the end considered an intrusive agenda on investment. Strong cases of political sensitivity are Fdi pre-admission restrictions, often connected to sovereignty concerns, especially in sensitive sectors such as defence or media industries, and forms of investments less permanent than Fdi.

In the case of countries at different level of development matters are complicated by the asymmetry of Fdi flows: capital is essentially exported by multinational firms based in the developed countries; Fdi generally represent a significant share of total investments in the developing countries. Countries therefore part along a North-South divide in a multilateral negotiation, with the developed countries mainly interested in the protection of Fdi and the developing countries mainly interested in maintaining their freedom of policy making and eventually in rules on Fdi incentives.

Why did the Eu insist on maintaining the four Singapore issues and especially investments, on the Cancun agenda in spite of mounting and widespread opposition on the part of the developing countries?

The agenda of the Doha Round was wide enough from the point of view of the European Union without the inclusion of the Singapore issues. In particular, the service negotiations provide wide scope and more secure ground for investment liberalisation than the call for an agreement on investments.

The Eu insistence on the Singapore issues up to the last day of the Cancun meeting could have three possible, not mutually excluding, explanations: a bargaining explanation -the Eu insisted on a large agenda, including issues unacceptable to the developing countries, to "shelter" agricultural policies-; an explanation liked to the ability to negotiate – as a result of the shared power between the Commission and the member states the Eu is a complex and therefore possibly "slow" negotiating actor and made a mistake in the evaluation of the likely dynamic of the negotiations, underestimating the determination of many developing countries-; an actual evaluation that the Eu demand for trade policy would be best served by a change in Wto rules, and that a crisis in the negotiation would lead to a redefinition of rules. After all, in the aftermath of Cancun the Commission (Ec, 2003) expressed the view that the negotiations on the Singapore issue should continue, although not necessarily within the Single Undertaking.

Recommendations:

This paper therefore recommends that:

- As more countries liberalise and liberal Fdi policy loses effectiveness as a locational determinant of Fdi, governments should increasingly compete to attract Fdi through fiscal and financial incentives and there may be a tendency to overbid.
- There should be forms of investment less permanent than Fdi, and of investment liberalisation (including the pre-admission phase) and the idea that liberalisation would apply to most sectors, excluding obvious ones such as defence and country specific exceptions.
- Large part of commitments on the liberalisation of market access concern commercial presence, which typically involves all forms of Fdi entry should be encouraged.
- Infrastructural services, were typically publicly owned monopolies and foreign ownership in financial services such as banking and insurance was either not permitted or restricted.

- Manufacturing activities which extended to the services sector, such as telecommunications, public transport, other public utilities and the construction of public infrastructures, often in the course of their privatization programs should be encouraged.

Conclusions

The demand for trade policy in the developed countries is such that possible Wto agreements include many regulatory issues and the cost of "no-agreement" for the developed countries is lower than the cost of no-agreement for the other countries. At the same time developed countries maintain their traditional resistance to liberalisation in the agriculture and, to a lesser extent, the textile sector. On the other hand, regulation is development related in many ways: the "best" rule may vary with the level of development, the opportunity cost of establishing regulation varies with income levels and, finally, liberalisation of regulatory protection between countries at different levels of development is likely to take the form of "hegemonic" harmonisation.

Special and differential treatment for the developing countries could provide solutions but Std is flawed because of two mutually reinforcing ambiguities: first, it applies to a set of countries with widely different levels of development, on the basis of a self selection; second, its provisions for positive action on the part of developed countries are mostly not legally enforceable. The *status quo* tends to be defended by the developing countries as for the first ambiguity, by the developed countries as for the second. Therefore, the expansion of the agenda within the framework of the "single undertaking " rule introduced in the Uruguay Round, coupled with slow or scant liberalization in agriculture has produced constant tension up to the break up of Cancun. The "traditional issues first" position taken by the Group of 20 at Cancun was not new: on the extension of the agenda the developing countries shared a common resistance during the entire Uruguay Round, a minimalist position in part based on the awareness of the political and technical difficulty of obtaining results favourable to development in the negotiations on non traditional issues of vast impact (Cuffaro, 2003a and 2003b). The novelty was the fact that a group of developing countries had the strength to refuse an Us-Eu deal as the basis for negotiations.

Deep integration through the Wto and single undertaking have proved to be a very difficult combination, which locked the system into a net of issue linkages. In the aftermath of Cancun the widespread perception was that these difficulties would lead to the abandonment of single undertaking, but ten months after Cancun, the July 2004 General Council decision seems to indicate that the developing countries have succeeded in

establishing that the negotiating priority for the Wto is trade liberalisation, first and foremost in agriculture.

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