

Chapter 3 Working Principles and the Current Context

After reading this chapter you will be able to:

- Describe the main principles governing the WTO's work
- Illustrate why the WTO's work gives rise to concerns about transparency and inclusiveness
- Explain the Doha Work Programme
- Identify the dangers of bilateral and regional trade agreements and of trade-related technical assistance
- Present the main political factors shaping the WTO today
- Evaluate opportunities for NGOs to contribute to on-going negotiations

3.1 The principle of non-discrimination

Two bedrock principles govern the WTO: **Most-favoured-nation (MFN)** treatment and **National treatment (NT)**. They both mean trade without discrimination between trading partners.

Most-favoured-nation treatment refers to non-discrimination among WTO Members. If a WTO Member grants trade-related favourable treatment to goods and services from one Member, it must extend the same treatment to all the others, thereby treating all Members as 'most-favoured' trading partners. For example, if Thailand reduces its tariffs on shoes from Mexico, it must apply the same lower tariff to shoes from all other WTO Members. The MFN principle is stipulated across all the subject-areas of the WTO.

The rules protect WTO Members from arbitrary trade discrimination, which is particularly valuable for smaller Members.

The limit on trade restrictions means that Members may be brought before the WTO dispute settlement mechanism (DSM) if they try to use trade sanctions to alter other Members' behaviour, for instance by imposing higher tariffs, or imposing import bans on goods from countries where child labour is used: in the past, rich countries have used the environment or human rights as a pretext for imposing trade sanctions, and have on occasion sought to impose their moral or environmental standards on other countries with different views. At the domestic level, trade rules can restrict governments' policies to address social and development needs (see Chapters 5 and 6).

Exceptions to non-discrimination are allowed when Members form customs unions and/or enter into bilateral or regional free trade agreements for the purpose of advancing economic integration (see section 3.6 below). These arrangements, however, should fulfil certain conditions, such as not making trade more restrictive, nor imposing higher tariffs on products from outsiders.

National treatment refers to non-discrimination between a WTO Member's own nationals and those of all other WTO Members. This means treating imported and locally produced goods and services equally. National treatment takes effect once foreign goods, services and intellectual property items have entered the market, so that charging customs duties on an imported product is not a violation of the principle of national treatment, even though locally produced goods are not subject to customs duties.

Transparency in India

The focus of this consultation exercise is on the extent to which we can afford to meet the requests that have been made to us and also to identify the market access barriers that we face and frame requests for liberalization appropriately. The objective is to give all interested parties in India the opportunity to participate in the formulation of India's offers in the negotiations.

Government of India, *Department of Commerce, Trade Policy Division*, www.commerce.nic.in/wto_counsel_paper.htm

Human rights advocates can play an essential role in encouraging their country's trade policy-makers and trade negotiators to make their positions public, and to make relevant documents accessible. See also Chapter 7

3.2 The lack of transparency

Internal transparency is promoted by many WTO agreements requiring Members to notify the WTO of their trade-related measures. The Trade Policy Review Mechanism (TPRM) is another device designed to enhance internal transparency, through its regular examination of Members' trade practices and policies (discussed in Chapter 1.8).

One of the difficulties relating to internal transparency concerns the fact that decisions are often made without the full participation or approval of developing country Members, making it difficult for them to follow what is happening in the WTO.¹

External transparency refers to how accessible the organization's decision-making processes are to the outside world. For example, WTO meetings, including hearings of trade disputes, take place behind closed doors, making it difficult for outsiders to monitor the decision-making process. WTO Members, especially some larger developing countries including Egypt, India,

Box 3.1 The European Union – a democratic deficit in trade policy-making

The European Commission's '133 Committee,' composed of trade officials from member states, amends and approves EC proposals for negotiating mandates and position papers for agreements. Three major problems affect the Committee's work:

- it is the only body consulted on EC discussion papers, such as those on how the EU should proceed with sensitive trade issues, while the papers themselves are kept secret.
- agendas, lists of participants and meeting reports for 133 Committee meetings are not made publicly available
- the process is driven by experts at the EC Trade Directorate, so the possibility of member states or civil society shaping the agenda without prior agreement with the EC is very difficult.
- the arbitrary use of deadlines and timing for producing papers.

To remedy these shortcomings:

- public consultation at the national and EU level needs to be improved
- reports on how information was used by decision makers should be regularly produced
- resources to allow meaningful participation by NGOs need to be made available.

Bob van Dillen of Coopération Internationale pour le Développement et la Solidarité (CIDSE), *Democratising the EU's Trade Policy Making, Policy Roundtable, November 2003, Dublin, Ireland*. <https://www.trocaire.org/policyandadvocacy/eupresidency/tradeseminarreport.htm>

¹ For more about lack of internal transparency, see Fatoumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO – the real world of international trade negotiations*, 2003.

Different views on transparency

Because trade policy now impinges on every area of public concern, the WTO needs to be able to interact in a structured manner with all those who today want a say in trade policy making... This includes better access and clearer rules for involvement of parliamentarians and civil society.

EU Trade Commissioner Pascal Lamy, speech to members of the EU Parliament, January 2004.

Trade policy cannot be left in the hands of a few to decide for the majority. Trade ministers in many cases represent or listen only to certain segments of business interests. This often results in policy outcomes that are unbalanced or otherwise lack legitimacy. It is crucial to ensure that those affected by trade and its effects, such as farmers, women producers, parliamentarians, and ordinary citizens, have a say in developing trade rules and policies... Nonprofit public interest nongovernmental organizations (NGOs) groups have a major role to play in rebalancing trade policy, to ensure that it serves the poor and the environment.

WWF, CIEL, ActionAid, IATP, Friends of the Earth and Oxfam, Open Letter on Institutional Reforms in the WTO, 2001.

We must open the proceedings of the panels and the oral hearings of the Appellate Body, both to press coverage and to overall public observation. Further, we need to do the same for meetings of the General Council, the Dispute Settlement Body and all of other major councils of the WTO... I fully understand the reservation about 'transparency' on the part of developing countries fearful that if the doors are opened, they will be elbowed aside by an army of well-funded private interests from the developed world in of what is currently – and must always remain – a 'Member-driven' organization.... But I believe these concerns can be addressed if the right doors are opened in the right way.

Speech by former WTO Appellate Body member James Bacchus to the US National Foreign Trade Council, January 2004.

At a 10-11 September meeting of the WTO's Dispute Settlement body, India said opening up dispute meetings to the public would lead to "trials by media" which could result in "miscarriages of justice." India also accused the United States of double standards on transparency, noting that Washington had refused to grant third party rights to some countries in proceedings such as the shrimp-turtle dispute and its row with the EU over foreign sales corporation tax breaks.

"US Official Backs WTO Amicus Briefs As Promoting Transparency, Legitimacy," BNA, 12 September 2002.

Malaysia and Pakistan, argue that this is necessary to preserve the intergovernmental nature of the WTO. But civil society dismisses these arguments, pointing out that, for example, the UN Commission on Human Rights (also an intergovernmental body) meets in public.

Some Members – including the European Union (EU), India, the US and Canada – do consult with citizens and non-governmental organizations (NGOs) in the formulation of their trade policy. The EU, for instance, must undertake sustainability impact assessments of all new trade agreements it enters into. The EU is required to assess the economic, environmental and social aspects of trade agreements, and assist the European Commission to formulate adequate mitigation measures in the event of negative effects on, for instance, employment or the environment.

Lack of transparency makes it particularly difficult for human rights and other civil society groups both to provide input to trade policy-making and to determine which trade policy decisions their governments may be developing. Many public interest groups question the secrecy surrounding the formulation of international trade policy by most Members. The World Wide Fund for Nature (WWF) showed that the EU's internal decision-making process has come to be dominated by a small group of influential trade specialists, to the exclusion of groups representing the public interest, such as human rights or environmental protection.² It is the European Commission which negotiates trade policy on behalf of EU members (see Box 3.1). EU trade policy is important for others around the world, as the EU is one of the largest economies and amongst the four most influential Members of the WTO, and so affects countries and trade policies outside, as well as within, Europe.

² World Wide Fund for Nature, *A League of Gentlemen: who really runs EU Policy-making?*, November, 2003.

Non-transparency

One of the problems with international trade negotiations is that our government is opening up different areas to the market, and it claims that it will look at the people's concerns. But we don't know what really happens in the negotiations.

Agnes Balota, *Water Vigilance Network from the Philippines*, interview, March 2004.

The EU is not alone in this regard. In the case of the East Asian developing economies, information on their trade policy stances is lacking. "Policies lack transparency, and the policy-making process remains ill-defined."³

3.3 The quest for predictability

The WTO aims to encourage predictability of trade rules and practices. This means that countries reducing trade barriers can be confident that their trading partners will not subsequently raise barriers and take away their export markets. The WTO seeks to ensure predictability through what is called **bindings**, in the sense that when WTO Members agree to lower tariffs and remove trade barriers they **bind** their commitments by listing them in their **schedules** (details on goods and services items). For goods, binding comes in the form of putting upper limits on tariff rates, where Members are bound not to raise tariffs beyond these ceilings (**bound rates**). For services, policies to open services sectors to foreign competition are 'locked' in schedules of commitments (see Chapter 5). Members' schedules of tariff concessions and services commitments form an integral part of the WTO Agreements.

3.4 The problem with consensus decision-making

The WTO continues the GATT practice of decision-making by consensus. In exceptional circumstances, when consensus cannot be reached, decisions may be taken by majority vote, with

Box 3.2 Informal consultations – a necessary evil?

Informal consultations come in different forms:

- Sometimes selected heads of delegations meet informally or discuss matters of common concern under the good offices of the Director-General (**Green Room** consultations).
- From time to time selected Members are invited to take part in **mini-ministerial** conferences, where trade ministers discuss important WTO issues. For example, four mini-ministerials were held among selected Members in the year preceding the Cancún Ministerial Conference in September 2003.
- After the collapse of the Cancún Ministerial, Members suspended formal meetings of the trade negotiating groups and resorted to informal consultations among different groupings in Geneva for several weeks before they could agree on how to proceed with the negotiations.

Call it a necessary evil if you like. But you don't get work done by discussing with over 100 people all together,' said one delegate. 'Some groups are very exclusive. Others don't know what they are doing,' said another delegate, referring to the informal groups of services negotiations.

³ Soogil Young, "Political Economy of Trade Liberalization in East Asia," in Jeffrey J. Schott, ed., *The World Trading System: Challenges Ahead*, 1996.

each Member having one vote. But in fact, WTO decisions are taken by consensus. Nevertheless, despite the consensus practice, big traders are better able to use their negotiating power in the decision-making process, and thus wield disproportionate influence within the organization. Agreement between the United States and the European Union is for instance often necessary for a general consensus among all Members. Since mid 2003, the **G20** developing countries have joined hands to counter-balance the influence of these two big traders in agricultural negotiations (see Chapter 2.3).

In addition to the formal decision-making process, WTO Members very often resort to informal consultations (see Box 3.2). Critics denounce this practice as non-transparent and exclusionary, as informal consultations are not always open to all WTO Members, and there are no official minutes or records for outsiders to monitor what is discussed. However, most Members agree that they are important for consensus building. Informal meetings carry no official authority in the WTO decision-making process, and any common understandings reached must be endorsed by the relevant WTO bodies before becoming an official WTO decision.

3.5 The Trade Negotiations Committee (TNC) and the Doha Round

When a **round** of trade negotiations is under way, a **TNC** is created, which undertakes negotiations through parallel negotiating groups or special sessions. The current Trade Negotiations Committee (TNC) was set up in 2001 to carry out the **Doha Work Programme** (see Box 3.3), with eight subsidiary bodies: TRIPS, DSB, agriculture, trade and development, trade and environment, as well as negotiating groups on **market access** and rules (see Box 1.3). These groups report to the TNC, which is chaired *ex-officio* by the WTO Director-General and reports to the

Reports of General Council meetings are a good source of information on the progress of ongoing negotiations. See Chapter 8.3 for how to obtain them.

Box 3.3 Doha Work Programme

Doha Work Programme: This is the technically correct term for the negotiations agreed to at the Doha Ministerial Conference in 2001 by the Doha Declaration. It is not officially called a “round”.

Doha Round: The word ‘round’ in the GATT and WTO context implies negotiations on a range of issues aimed at reaching multilateral agreements – not a notion accepted by all WTO Members in Doha: some developing countries, such as India and Malaysia, maintain that trade ministers did not decide to launch a new ‘round’ of negotiations in Doha. They consider that the Doha Work Programme is a combination of negotiations and implementation issues left over from the Uruguay Round, and therefore should not be called the “Doha Round”.

Doha Development Agenda: The WTO Secretariat coined this term as opposed to “round” to make the negotiations seem less threatening to those (particularly developing countries) who had opposed the launch of a new round of trade talks. However, the term “Doha development agenda” is not defined or even mentioned in the text of the Doha Declaration, so many Members prefer the use of the term “Doha Work Programme”, which is technically correct. This name in turn has been disputed by other Members and many civil society groups, who see little to indicate that the current negotiations will yield much in the way of developmental benefits for poorer economies. Critics say that whatever it is called, the work programme or agenda does not reflect the development priorities of developing countries.

Third World Network Info Service on WTO Issues, *The Twists and Turns of the Singapore Issues: The Many Ways To Drop (or Not Drop) An Issue*, May 2004.

For some actions that human rights advocates can undertake in the lead-up to the Ministerial Conference in Hong Kong, see Chapter 7.

The problem of enclave-led growth is particularly important from a human rights perspective. Whilst some people benefit from such growth, others may suffer. Those that suffer are often from groups that are already the most vulnerable or marginalized.

General Council under a standing agenda item. Other areas of work mandated by the Doha Declaration take place in regular WTO bodies.

The Doha Negotiations

The current “Doha Round” is the first round of trade negotiations since the WTO was established in 1995, although calling it a ‘round’ is itself controversial. (See Box 3.3).

The entire package of the Doha Work Programme includes over 20 subjects, ranging from agriculture, services, intellectual property, **market access** for non-agricultural products and **implementation** issues (i.e. the difficulties developing countries face in implementing their Uruguay Round commitments, and the difficulties for them through industrialized countries’ delay in implementing pro-development WTO commitments), to the controversial **Singapore issues** (Box 3.4). The original deadline to wrap up the negotiations was set for 1 January 2005, but following difficulties in the negotiations and slow progress, Members agreed in a decision adopted in July 2004 (known as the **July Framework**) to extend the negotiations beyond January 2005, and to redouble their efforts leading up to the Sixth Ministerial Conference in Hong Kong in December 2005.

According to World Bank estimates, the conclusion of the Doha Work Programme might add EUR 430 billion to global incomes by 2015, lifting 144 million people out of poverty. However, as a recent UNCTAD report shows, there is no guarantee that increased exports from poorer countries will lead to economic growth that is inclusive, and that would benefit the most marginalized sectors of society. According to the UNCTAD report “there is a strong likelihood that export-led growth will actually turn out to be ‘enclave-led growth’. This is a form of growth that is concentrated in a small part of the economy, both geographically and sectorally.”⁴

The 2003 Fifth Ministerial Conference in Cancún, two years after the launch of the Doha talks, revealed the depth of disagreement, and ended with Members failing to reach agreement.⁵ In addition to the Singapore issues, negotiations on agricultural trade are highly contentious. Rich countries’ agricultural subsidies prompted the formation of the **G20** group of major developing countries, such as Brazil, China, India and South Africa, to counterbalance a joint proposal by the United States and the European Union on how agricultural negotiations should proceed. The confrontation of the two positions was one of the main features in the termination of the Cancún Ministerial without agreement. Agriculture and human rights is discussed in more detail in Chapter 6.

Box 3.4 The Singapore issues

The four **Singapore issues** (named after the 1996 Singapore Ministerial Conference) are investment, competition, transparency in government procurement, and trade facilitation. Some developed countries, in particular the European Union and Japan, have been keen to kick off WTO negotiations on these issues for a number of years, and succeeded in placing them as potential negotiating items on the Doha Ministerial Declaration. However, sustained resistance by most developing countries since Doha – notably Malaysia and India – led to an agreement in July 2004 to drop all Singapore issues except trade facilitation from the Doha Work Programme. Developing country resistance to these issues centres around three main concerns:

- They do not want to overstretch their already stretched negotiating capacities by having to take on new areas.
- They are reluctant to make further commitments in any area while existing problems in implementing the Uruguay Round results are not fully addressed.
- They do not want to limit their ‘policy space’ in these new areas by entering into agreements that will bind them beyond current commitments.

⁴ UNCTAD, *The Least Developed Countries Report 2004*, 2004.

⁵ WTO Press Release, *Supachai: sluggish trade growths calls for urgent pick up of stalled trade talks*, November 2003.

The organization points to the recent sluggish performance in global trade to highlight the pressing need for WTO Member governments to put the trade negotiations agreed to at the Fourth Ministerial Conference in Doha in 2001, back on track. Supporters of the talks argue that if the WTO system gets stuck and regional and bilateral trade agreements (see section 3.6) proliferate, the WTO will be marginalized.

Many of those who do not favour negotiations on more liberalization still want to maintain the multilateral system so that trade will not be left entirely to bilateral arrangements, where large trading countries enjoy greater negotiating strength. Many of these (including developing countries and many NGOs) are seeking improvement of WTO rules and better application of the WTO's development-friendly provisions rather than increased trade liberalization.

Given the intergovernmental nature of the WTO and the lack of public access to the General Council and other bodies, public interest groups may find the best route to influencing the WTO is through their own governments (this is discussed more in Chapter 7.2).

3.6 Regional and bilateral trade agreements

A multitude of regional and bilateral trade agreements have been negotiated in all regions of the world, a trend that has accelerated in recent years. For instance, a bilateral trade agreement is currently being negotiated between India and Bangladesh; in September 2004, Mexico and Japan signed a trade agreement; and New Zealand has initiated talks for a trade agreement with Burma. In Asia, larger free trade / cooperation arrangements such as the Association of Southeast Asian Nations (ASEAN), the Asia-Pacific Economic Cooperation (APEC) forum and the forthcoming (2006) South Asian Free Trade Area (SAFTA) exist alongside bilateral agreements such as those between the US and Singapore and the US and Indonesia (see, for instance, Box 3.5).

It is not easy to keep track of the many new bilaterals being negotiated. For up-to-date information about them and their public interest implications see www.bilaterals.org

Designed primarily to enhance the movement of goods and services among their signatories, bilateral treaties can often impose stricter requirements across a range of areas than do WTO

Some views on regional trade arrangements

The resurgence of regionalism today risks signalling a failure of global economic cooperation and a weakening of support for multilateralism. It threatens the primacy of the WTO, and foreshadows a world of greater fragmentation, conflict, and marginalisation, particularly of the weakest and poorest countries.

Dr. Supachai Panitchpakdi, WTO Director-General, November 2002: speech at Second International Conference on Globalisation, Leuven, Belgium.

Economic development should occur hand in hand with human rights. If APEC means business, then human rights should be APEC's business. All participants should ensure that human rights issues related to economic development are taken into account in the individual action plans of the member countries.

Ross Daniels, Amnesty International, speech to parallel NGO Forum in Manila during Fourth APEC Summit, 23 November 1996.

The message we received in Cancún [on multilateral trade liberalization] was, "not now." The US trade strategy, however, includes advances on multiple fronts. We have free trade agreements with six countries right now. And we're negotiating free trade agreements with 14 more ... Over the past few days, a number of other developing countries that are committed to opening markets and economic reforms expressed their interest in negotiating free trade agreements with the United States.

Robert Zoellick, US Trade Representative press briefing immediately following collapse of WTO negotiations in Cancún, 14 September 2003.

The United States' free trade agreements with Central and Latin America shows that the US has managed to get, in terms of intellectual property rights standards, more than what's required by WTO rules. We are concerned about the nature of power imbalance, for example between the US and a poorer country such as Thailand, in bilateral trade negotiations.

Sean Healy of Médecins Sans Frontières' Campaign for Access to Essential Medicines, phone interview, April 2004.

Box 3.5 Association of South East Asian Nations Free Trade Area (AFTA)

Indonesia, Malaysia, Singapore, Thailand, Brunei and the Philippines will form the Association of South East Asian Nations Free Trade Area (AFTA) by 2007, said Apiradi Tantraporn, director-general of Thailand's Trade Negotiation Department. She says the deal, which feeds into the main 2020 drive towards an integrated ASEAN Economic Community (AEC), would be signed at a regional summit in Laos in November 2004. The six nations, the oldest members of the 10-strong ASEAN, would eradicate import tariffs on thousands of items including car parts, clothes, textiles, electronics, fisheries, and wood, farming and rubber products, she said. Newer and poorer ASEAN members Myanmar, Laos, Viet Nam and Cambodia would cut their import tariffs to zero in 2012, compared with an original target date of 2015.

Reuters, ASEAN brings forward free trade deadlines by 3 years, August 2004.

agreements. Many civil society groups point to these agreements as mechanisms used by powerful countries to extract concessions in areas such as intellectual property rights and access to markets from weaker economies, particularly in the case of bilaterals between the US and developing countries. Thus many civil society groups are actively opposing new US bilateral agreements. The NGO Thai FTA Watch (www.ftawatch.org), for instance, is contesting a bilateral trade agreement being negotiated between Thailand and the US, and warns that the agreement would result in Thailand losing sovereign control over crucial sectors of its economy.

In a bilateral setting, developing countries' bargaining power is less than if they were to negotiate under the auspices of the WTO, where they can form larger, more powerful blocs. On the positive side, regional trade agreements can serve as platforms for countries to cooperate on a range of topics, such as development of product standards or production capacity for generic medicines. ASEAN (in reality more of a wider regional cooperation arrangement) has a working group to develop a mechanism monitoring human rights in the region. Many bilateral agreements, particularly those with developed countries, have in-built labour and environmental provisions that aim not only to prevent backsliding in these areas of social policy, due to the increased competition that liberalization of trade and investment causes, but also to promote adherence to principles such as core labour standards. It must be noted, however, that many developing coun-

Box 3.6 Public interest measures: protectionism in disguise?

In early 2004, India notified the WTO that in view of the multiple outbreaks of avian (bird) flu, India had decided to impose a six-month ban on imports of poultry products from all over the world. The reasons given were that this would protect human health and food safety, as well as prevent domestic and wild birds from contracting the flu. The European Union complained in a meeting of the WTO Committee on Sanitary and Phytosanitary Measures that the Indian ban was unjustified because the disease was not found in EU countries. India said that the restrictions were needed because it would be 'virtually impossible' to protect its millions of small unorganized farms should the virus enter into the country.

WTO Members often question other countries' restrictions of imports on health grounds, for fear of food safety becoming a disguise for protectionist measures. In 1998, for instance, after consultations with Members on proposed regulation on aflatoxin, a cancer-causing fungus found in a number of commodities, the EU modified its proposed regulation to address Members' concerns.

tries have resisted the inclusion of these provisions in bilateral agreements with developed countries for fear that they would be used as a form of economic conditionality. Indeed, industrialized countries have used a range of measures supposedly to protect health, but which in fact disguise protectionist measures (see Box 3.6).

3.7 World Bank, IMF and technical assistance

The Marrakesh Agreement specifies that the WTO should increase its cooperation with other international agencies involved in economic policy-making. The World Bank and the IMF seem to be the WTO's partners of choice in this enterprise. The narrow way in which these institutions perceive economic policy – i.e. the strong focus on monetary and aggregate elements without regard for the livelihood of individuals, communities or vulnerable groups – elicits criticism from the development, human rights and environmental community.

Moreover, most trade-related technical assistance, whether provided by the WTO itself or by other agencies such as the World Bank, the International Trade Centre (ITC) or through bilateral aid, focuses on encouraging developing countries to comply with WTO rules, or to liberalize their economies beyond the requirements of those rules. Technical assistance is rarely provided to encourage developing countries to assess what level of trade liberalization would be best suited to their economies.

3.8 Current challenges to the WTO

The political calendar of 2004, notably elections in the United States and India, as well as the enlargement of the European Union, indicated that chances for significant movement in the Doha Work Programme before 2005 were slim. Economic downturn and unemployment problems favour domestic **protectionist** sentiment in many countries, rendering it difficult for governments to make the necessary concessions in multilateral trade negotiations. In addition, United States trade policy has undergone significant changes as a consequence of increased attention on security. Almost all WTO Members, in particular, Brazil, China, the EU and many African countries, have told the US in its trade policy review that security concerns should not be used as an excuse for implementing disguised forms of trade barriers.

Two other important issues occurred in the WTO context in 2004. First, the **peace clause** on agricultural subsidies, which in Article 13 of the Agreement on Agriculture requires Members to exercise due restraint in bringing legal cases against agricultural subsidies, expired in December 2003. The peace clause has prevented a series of potential complaints to the DSM against farm support programmes of the European Union, the United States and other major subsidizing nations. This is now changing: in mid-2004, WTO dispute panels ruled in favour of Brazil against US subsidy programmes for cotton and against European Union sugar subsidies, setting precedents that may encourage other countries to launch disputes against heavily subsidized agricultural products (see also Chapter 6). These cases will show whether current WTO agricultural rules can provide effective tools for developing countries to protect their poor farmers. However, it is far from certain whether smaller economies such as LDCs (as opposed to larger countries like Brazil) will be powerful enough to be able to force industrialized country Members to dismantle subsidized farm programmes even in the case of a favourable dispute settlement decision.

The other important event is the final phase-out of quotas on textile and apparel goods as mandated by the Agreement on Textiles and Clothing (ATC). Developed countries will be obliged to open up their textile markets by the end of 2004. The ATC phase-out will affect textile producers and importers alike. Once quota preferences are gone, smaller textile exporting countries, such as Bangladesh and many other LDCs, are likely to lose their export markets to countries like China which can produce more efficiently, endangering the livelihoods of the poorest and most vulnerable people in the countries that until then had benefited under the quota system.

Human rights advocates could remind their country representatives to the WTO that trade-related technical assistance should respond to the specific development needs of the recipient country, and that coherence should take into account a broader range of issues than just the economic ones as perceived by these institutions.

The rapid expansion of WTO membership and the growing political weight of developing countries have marked a further change in political dynamics within the WTO. While the two biggest traders, the United States and the European Union, are still influential in shaping decisions within the organization, developing countries have been gaining bargaining power and experience over the years. Although their interests are very often diverse and sometimes even in conflict with each other, the major developing countries have managed to align themselves on issues of common interest, such as striking a balance between TRIPS and addressing rich countries' agricultural subsidies and access to essential medicines (see Chapters 4 and 6). This was evidenced dramatically in their united stance against Northern agricultural subsidies and on issues such as investment at the 2003 Ministerial Conference in Cancún.

As a result of these new power dynamics, the WTO has struggled to fit old negotiation methods with an expanded and empowered membership. After the collapse of the Cancún Ministerial, Pascal Lamy, then European Trade Commissioner, called the WTO's decision-making processes 'medieval,' complaining of a lack of focus in the trade body. In addition to proposing greater powers for the Director-General, Lamy maintained that to achieve a better balance between transparency and effectiveness, there should be a consultative group of countries, with representatives that reflect the diversity of membership. As indicated in Chapter 2.3 on groupings and alliances, this is already happening, albeit informally.

Developing country concerns about unfair rules and opaque decision-making structures are echoed by a large number of civil society groups, who in recent years have been working closely towards certain shared aims, such as keeping the Singapore issues off the WTO agenda. However, NGOs and developing countries do not always agree. Issues concerning external transparency, such as whether to open up dispute settlement hearings or to discuss rules on whether to condition access to export markets on respect for minimum labour standards, are particularly controversial. For example, developing countries have opposed bringing ILO rules on core labour standards into the WTO, as advocated by some NGOs. They are concerned, understandably, that the protection of labour rights might be used as an excuse for protectionism (see Chapter 7.8 for discussion of this issue).

The proliferation of subjects covered by the WTO, such as intellectual property rights and services, has invited wider scrutiny of the organization outside the strictly economic realm. The organization's strengthened dispute settlement mechanism has been a major cause for concern, since rulings by WTO panels not open to the public have the power to oblige countries to overturn domestic policies. This in turn has a chilling effect on countries' willingness to introduce new social, human rights or environmental protection measures, as they must look over their shoulders before designing such legislation, to ensure it is compatible with WTO rules. As a result, over the years more and more NGOs have kept a keen eye on the WTO. The number of NGOs accredited to the WTO Ministerial Conferences has increased steadily and reached a record high of almost 800 in Cancún. The anti-globalization movement has posed a challenge to the WTO, putting pressure on the organization and Member governments alike to improve external transparency, and to take into consideration legitimate concerns over global trade rules' impacts on development and human rights.

The increased focus on how the WTO impacts on development and human rights, combined with developing countries' concern about loss of **policy space**, together with the sluggish pace of WTO negotiations, offer human rights advocates a real opportunity to make their concerns heard in the WTO and in other international trade fora. Chapter 7 suggests some steps to ensure that international trade and trade rules respect human rights.