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## **WTO AT THE CROSSROADS Stand und Perspektiven des Welthandelsregimes**

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KUNIBERT RAFFER

**Reinforcing Divergence between North and South:  
Unequal Exchange and the WTO Framework**

Unequal Exchange occurs if homogenous factors of production are rewarded differently, or double factorial terms of trade<sup>1</sup>. Like all trade theories, analyses of Unequal Exchange usually assume free trade, exploring whether and how free trade disadvantages certain countries (for a survey cf Raffer 1987). Within all models of Unequal Exchange the mechanisms of disadvantaging trade are based on unequal market or pricing power, such as pressure to sell or easy substitutability of specific products. Real trade, however, occurs within regulatory frameworks, subject to specific economic, legal, and natural constraints. Impacts on Southern Countries (SCs) and their development depend on the way global trade systems are crafted, whether they strengthen or reduce inequalising mechanisms. Real trade may increase, reduce or even invert the effects of free trade. Exploring the impact of trade regimes is thus necessary for adequate development policies.

This paper enquires how the WTO affects Unequal Exchange. But it must be recalled that - while the WTO Secretariat administers the treaties - the WTO's powerful member countries are the forces shaping the system according to the Washington Consensus. It would be wrong to blame all systemic disadvantages of SCs on the WTO. Enforcing the Washington Consensus, the Bretton Woods Institutions (BWI), controlled by the same few countries, changed economic and trade policies in SCs fundamentally. Structural Adjustment lending forced SCs to open and liberalise their economies - to the extent of making the "WTO process a 'victim' of the success of the World Bank and the IMF" (Mattoo/Subramanian 2005: p.20). Bilateral and regional agreements push one-sided liberalisation beyond WTO levels. But the WTO treaties are useful to lock in liberalisation, to restrict SC policy space. Discussing the impact of the WTO in general and briefly analysing its treaties, the paper shows how the WTO system became one of the most important mechanisms impairing development options. Finally, development-friendly reform proposals are presented.

## 1. The WTO System

WTO policies cannot be derived from textbook market theory. Rodrik's (2002: p.10) dictum applies particularly well: "Neoliberalism is to neoclassical economics as astrology is to astronomy. In both cases, it takes a lot of blind faith to go from one to the other". The real actors within the system - powerful members shaping it and, unlike the WTO Secretariat, responsible for its effects - have never wanted to realise free trade, nor to approximate it, as their trade policies prove. Neoclassical theory assumes all actors in competitive markets to be of (roughly) equal power (or lack thereof). The WTO was designed to privilege the powerful and to enhance their position. While a neoclassical market is based on equal trading partners and fully informed consumers, the WTO falls short on both accounts.

Mostly shaped according to Northern interests, the WTO brought about fundamental changes, almost all to the disadvantage of SCs. Industrial Countries (ICs) press for liberalisation where it is to their advantage, opening SC markets, while protecting themselves where SCs are competitive. Able to retain high protection where wanted, ICs managed to restrict or outlaw protection where it would be in the interest of SCs. Mattoo & Subramanian (2005: p.19), argue that the WTO seems to be the "best vehicle" for advancing Northern corporate interests, seeking "the opening of markets in developing countries for manufactured goods". They see a disinterest of transnational corporations in the Doha Round many of whose "main goals were accomplished in the Uruguay Round" (*ibid*: p.20). Remaining interests are pushed via regional or bilateral agreements.

Hoping for a rule-based, predictable, non-discriminatory multilateral trading system, upholding the rights and interests of weaker trading partners - as the WTO had been propagated by ICs - SCs initially welcomed the WTO. Euphoric forecasts of "gains" contributed to this short-lived optimism. These gains did not materialise. According to Mattoo & Subramanian (2005: p.21), two employees of the Bretton Woods Institutions, estimates of the WTO's benefits to SCs were "exaggerated and its costs were underplayed", "liberalization assumptions were disconnected from what the [Uruguay] Round actually achieved". SCs were left with substantial implementation costs that overtax small, poor countries in particular. In addition, promises made initially were not honoured. Membership rights of SCs are not safeguarded.

The WTO (1995: p. 22) itself doubts whether clauses in favour of SCs will be obeyed, warning that agreeing to strengthen multilateral rules and disciplines is not enough: "A willingness to abide by those rule and disciplines,

and to adapt them to changing circumstances is also necessary to a credible system.” The WTO lacks the authority to make powerful members comply, but can be used perfectly as a legal justification for actions against less powerful ones. It is not the only institution not safeguarding the rights of SCs (cf Raffer 2003). The Multifibre Agreements, e.g., were blatant violations of GATT’s letter and essence - liberalising trade in manufactures. Nevertheless, the GATT itself provided assistance in breaking its own basic rules (Raffer/Singer 2001: pp.220ff.).

While it had been argued that the WTO would substitute bilateral (and GATT-violating) measures such as the US Super 301, a unilateral measure implemented in breach of the GATT, the WTO has meanwhile accepted Super 301 (Raffer/Singer 2001: p.213). Mechanisms for dispute settlement and enforcing rights are crafted to favour the powerful (Raffer 1995; 2002). Article 3.7, Understanding on Rules and Procedures Covering the Settlement of Disputes states: “Before bringing a case a member shall exercise its judgement as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive solution to the dispute.” The probability of success is explicitly established as the guiding principle. Dispute settlement is not to enforce the Rule of Law or membership rights with impartiality. This is not the officially stated aim. The Understanding is the only document I know where those establishing a settlement mechanism themselves expressly stipulate that fruitfulness, positive settlement of a dispute - whichever way, without any qualification - are preferred over the Rule of Law and of membership rights.

WTO-accession is another inequalising mechanism. Prior bilateral agreements with all members must be reached, which are used to extract further, individual concessions. Small countries often pressed by “donors” to join have little choice but to comply, unlike big ones. Presently deploring high oil prices as depressing its economy the EU demanded that Russia increase its domestic oil price as a precondition for joining the WTO. Russia declined; it is big enough to do so. Apart from China, few SCs could defend their interests as easily.

Co-operation with the IMF was already stipulated in the GATT 1947. The WTO Agreement’s Article III.5 demands the WTO to co-operate, as appropriate, with the BWI to achieve greater coherence in global economic policy making. As all three organisations cannot influence Northern policies, this really means more intrusion into SC-policies, increased pressure on SCs. Available evidence so far does not disprove this concern.

The WTO is a powerful instrument to lock in restrictions of the manoeuvring space of SCs, already limited by BWI-type “Structural Adjustment”. Ana-

lysing trade liberalisation and structural reforms since the early 1980s, Shafaedin (2005) shows that the experience of most SCs, with or without industrial capacity, has not been promising. Only a minority, mostly in East Asia, enjoyed rapid export growth accompanied by fast expansion of industrial supply capacity and upgrading of their industrial base. Half the sample countries with readily available data faced de-industrialisation (decline of manufactured value added in GDP) most of them low income countries which are more vulnerable to liberalisation. A number of them experienced a high rate of manufactured exports in tandem with de-industrialisation. Even Brazil did not achieve acceleration of exports, and faced considerable de-industrialisation. However, the industrial sector has been more vulnerable to trade liberalisation in countries at lower levels of development and low industrial bases. Although this is the effect of neoliberal policies in general, the WTO has perceptibly contributed to and reinforced this outcome.

Chang (2005: p.20) concludes on the basis of historical evidence that “policy space for developing countries has been constantly shrinking over the last quarter of a century and it is at the risk of shrinking even further, to the point of making the use of any meaningful policy for economic development impossible.” He is concerned that the policy space of SCs “will shrink to virtually nothing over the next several years, which could spell the end of development.” (*ibid*: p.21) Denying development is equivalent to making Unequal Exchange permanent, locking in and aggravating present disadvantages.

In his seminal book Chang (2002: p.139) argues that ICs are “kicking away the ladder” of development by “insisting that developing countries adopt policies and institutions that were *not* the ones that they had used in order to develop.” Chang admits that this may be done “out of genuine (if misinformed) good will”, but nevertheless with catastrophic results. The WTO denies SCs important policy options to foster development. The protection of nascent industries along the lines indicated by List, Heckscher and the Prebisch-Singer Thesis successfully practised by the Asian tigers and ICs themselves in the course of their own development is now prohibited. Invoking the free trade dogma when it suits them, ICs do not practice what they preach. Pressing for liberalisation and opening of SC-markets, ICs keep their own markets protected where “needed”.

Calling Doha a “Development Round” may lead one to believe that development problems are finally tackled. The name, however, is mere “spin”, as a quick look at the issues, such as large tariff cuts by SCs, shows. ICs press for further changes mainly if not exclusively in their interest (cf also Stiglitz/Charlton 2005). The Singapore issues (investment, competition policy, trans-

parency in government procurement, trade facilitation these issues stalled at Cancún; “members remained entrenched”, as the chairperson put it) or market access for non-agricultural products (NAMA) are hardly overwhelmingly developmental interests, although benefits for some advanced NICs cannot be excluded. The “discussions on competition have devolved more into ensuring fair competitive access of developed countries into developing country markets, than into ensuring that markets are really competitive, and that developing countries have fair access to developed country markets.” (*ibid.*: p.59) The mere speed of implementation and of reaching new agreements poses problems to many SCs, especially small and poor ones. Lack of human and other resources renders them often incapable of defending their interests properly. Doha does not change this situation. Dispute settlement, where SCs want reforms is not part of the so-called “single undertaking”, purportedly encompassing everything. Nor are implementation problems of poor countries properly tackled.

SC-interests are again sidelined, which triggered significant opposition. 77 SCs made public statements urging that the Singapore Issues not be included as part of the Doha Round (*ibid.*: p.18). Special and Differential Treatment (SDT) practically abolished by the WTO is again discussed. The Doha Declaration calls for a review to strengthen SDT, without practical noteworthy effects so far. The WTO’s impact has been so anti-developmental that proposals for making it more development-friendly even come from within the BWI (e.g. Hoekman 2005).

## **2. Inequalising Treaties**

Looking at the WTO-Treaties one by one (for more detail v. Raffer/Singer 2001; Raffer 1995; 2002) exposes the fine print of a developmentally unfriendly framework.

### **2.1 Manufactures**

The trade system remained biased: “rich countries’ average tariffs on manufactured imports from poor countries are four times higher than those on imports from other developed countries” (OECD 2000: p.31). Non-tariff measures, certain “behind-the-border” regulations and practices greatly impede SC-trade (*ibid.*). One may specifically mention anti-dumping practices (cf. Stiglitz/Charlton 2005: p.44). Threat of “serious injury” by imports suffices for safeguards. The WTO did not abolish tariff escalation: “OECD tariffs on finished industrial products are about eight times higher than on raw materials. These barriers delay entry into the export-oriented industries, which are most

accessible to developing countries” (*ibid.*: pp.31ff.). Under SC-pressure the restrictive quota system of textiles and clothing was discontinued after many decades of increasing protection. Still, ICs insisted on safeguard clauses and have immediately used them. The EU restricted imports from China. It is alleged that textile producing EU-members agreed to the “compromise” of September 2005 because of restrictions promised in other fields, such as shoes. Fully compatible with WTO-rules, ICs can go on protecting their geriatric industries against Southern infant industries.

Voluntary Export Restrictions (VERs) became legal. ICs safeguarded their subsidy schemes. Art.3 of the Agreement on Subsidies and Countervailing Measures exempts agrarian subsidies, expressly prohibiting subsidies in the interest of SCs, such as those contingent on using domestic inputs or export performance. Annex 1 specifically allows official subsidies for exports in line with the OECD’s *Guidelines for Officially Supported Export Credits*. They are not considered prohibited export subsidies. Furthermore the Guidelines also form a suppliers’ cartel anointed with legal respectability. A free market solution would outlaw any such system, but change price relations in favour of SCs. The US “conducts its industrial policy largely through the military, which supports a wide variety of technological developments that eventually have important civilian applications” (Stiglitz/Charlton 2005: pp.56f). Few SCs can avail themselves of this absolutely legal form of subsidising.

In the “Development Round” ICs are about to decrease SC-tariffs further, well below the level they themselves considered necessary as late as 1950 (Chang 2005). The formula ICs prefer would reduce tariff protection disproportionately, bringing bound tariffs of ICs and SCs quite close together. This also creates financial problems, as many SC-budgets depend on tariff revenues. Especially poorer SCs are unable to substitute these revenues by relatively complicated income tax or VAT systems. Under pressure from WTO-negotiations to slash their budget revenues and by debt service and the BWIs to honour debt obligations, SCs are driven to desperation exports, by definition exports at Unequal Exchange conditions.

## **2.2 Agriculture**

Reductions in protectionism, in particular substantial cuts in export subsidies, are unfulfilled promises made to SCs while their signatures were coveted. Results fell far behind promises. Meaningful export subsidy cuts did not occur. Heavy subsidies to agrarian production are perfectly legal: “the aggregate level of European farm protection has barely moved since the late 1980s (reflecting the limited effective farm liberalization under the Uruguay Round).” (Messer-

lin 2005: p.25) The US Farm Security and Rural Investment Act 2002 even increased domestic support to agricultural producers substantially. The OECD (2000: pp.31f) mentions the pivotal role of agriculture in development and the damaging effects of Northern agrarian policies that “impair the role of agriculture as an engine for [...] overall growth.”

The “justification” that subsidies must have “no, or at most minimal, trade distorting effects or effects on production” is at odds with logic. Any production existing only because of subsidies produces what would not be produced otherwise, thus having effects on production. This produce is marketed, crowding out imports or destroying SC-export markets, thus distorting trade. But logic is unwelcome if it goes against IC interests. Manufactures and agriculture are treated differently, clearly reflecting IC-interests. Subsidies are prohibited in the former case (Art. 27.2 of the SCM Agreement exempting very poor SCs that do not have the money anyway, is one exception, a case of SDT, although such exports may be subject to countervailing duties and the BWI are not unlikely to demand SCs not to use this right). Export subsidies are legalised in agriculture.

Burkina Faso, e.g., is one of the world’s most efficient cotton producers. US exports at prices 65% below production costs dump comparative advantage away. 25,000 US cotton farmers get perceptibly more subsidies than the value of the GNI of either Mali or Burkina Faso (11 million people each). Producing rice in the US costs 2.5 times as much as in Viet Nam. Due to subsidies, both export the same volume. The EU exports sugar and beef at less than half their production costs. WTO cotton and sugar panels legally established that ICs have even failed to abide by the loose rules on subsidies they crafted during the Uruguay Round, as SCs had claimed (Oxfam 2005: p.4). The collapse of cotton prices is estimated to have cost eight West African countries nearly US\$200 million in lost annual export revenue (FAO 2004: p.25). Eliminating all subsidies would increase world cotton prices by 5-11%, expanding African exports by 9-38%.

Subsidising sugar beet farmers with over US\$2.2 billion per year, the EU changed from an importer to the world’s largest sugar exporter. Prices 75% below its production costs (*ibid*: p.24) are technically dumping. But unlike with manufactures where ICs want to keep cheaper SC-suppliers out of their markets, it is perfectly legal. “Comparative access to subsidies, not comparative advantage” (Oxfam 2005: p.9) shapes “world markets”. A free market is not what ICs want. Institutions interlink: in the name of economic efficiency the IBRD pressured Mali to pay local cotton producers this (subsidised) “world market price” in 2004. The government ultimately refused to bankrupt domestic peasants.

During 1997-2001, coffee prices fell by almost 70%, often below production costs. Exporting more coffee, SCs dependent on it earn much less. More volume, less income also occurred in the case of cotton (FAO 2004: p.22). New entrants are one important explanation. Viet Nam, for example, increased coffee exports from below 10,000 tonnes (1985) to over 900,000 tonnes (2001). As part of “Structural Adjustment” the BWI “encouraged” SCs to increase commodity exports, creating global oversupply, which in turn depressed prices – quite in line with what textbooks predict.

As meaningful cuts in subsidies would have increased food prices ICs apparently perceived a need to assure net-importing SCs of compensatory measures that did not materialise in spite of Article 16 of the Agreement on Agriculture. After ratification SCs were referred to existing BWI-facilities. The WTO tried to help SCs, but remained unsuccessful. Meanwhile, “help” for SCs listed as Net Food Importing Developing Countries was linked to conditions ICs and the BWI might wish to pose (Raffer 1997). While negative effects resulted automatically from the treaty, benefits did not. By increasing SC-dependence the playing field was further tilted against them. The proposal to form “a sub-committee on food aid” within the Committee on Agriculture (Singer/Shaw 1995: p.329) was not taken up either.

### **2.3 Trade Related Investment Measures (TRIMs)**

The TRIMs and TRIPs (Trade Related Intellectual Property-Rights) treaties extend the WTO’s reach far beyond trade. While economic textbooks see trade and Foreign Direct Investment (FDI) as alternatives, the WTO incorporates FDI. Blatantly serving IC-interests, both treaties reach out beyond trade, using “trade related” as a cloak, which logically allows bringing anything under WTO control. Powerful ICs wish to regulate matters important to them in an institution they control.

The TRIMs-Treaty restricts developmental options to industrialise, enforcing the obligation of national treatment of foreign investment. SCs are deprived of options, such as using national laws as bargaining chips in negotiations with transnationals, or fostering their own infant industries by demanding domestic inputs in production. Taking the bargaining chip of domestic law away from SCs may be seen as one-sided disarmament. Without enforceable codes of conduct for transnationals or international anti-cartel norms SCs have lost any countervailing power against restrictive business practices. Their old demand that the power of transnationals must be checked by international norms is not part of the WTO. Politics successfully pursued by Asia’s dragons are now outlawed. The Summary of the IBRD’s (1993) *Asian Miracle* study gleefully pointed

out that highly targeted interventionist measures would no longer be possible for other countries in a changing world trading environment.

ICs, however, do not necessarily consider any FDI a good thing. When CNOOC, a Chinese oil company, attempted to buy Unocal, a US oil company, the US kept CNOOC out. After delaying the deal by law, Congress even considered a law against this purchase (*Time* 15 August 2005: p.25). The US would be up in arms if similar political interference occurred in SCs against US-FDI. Apparently, Unocal's FDI in Thailand is good for the country, unlike Chinese FDI in the US.

## 2.4 TRIPs

Strictly speaking, TRIPs does not protect intellectual property, but specific rights of ICs. Local indigenous knowledge remains totally unprotected. The host of tribal knowledge in SCs is put at the disposal of ICs. Very prominent cases exist of knowledge appropriated under the WTO cloak. It would be easy to protect Southern knowledge, though. One can prove which local procedures or indigenous knowledge exist or not in given regions. Protective mechanisms are easy to design.

Unfortunately TRIPs does exactly the opposite. Art.27 speaks of an "inventive step" as a condition. But the pertaining footnote 5 redefines it as "non obvious". If someone applies tribal or traditional knowledge obtained in SCs to problems in ICs, this might not involve any inventive step but may be considered non obvious. The WTO grants ICs a licence to monopolise other people's intellectual property. The WTO itself stole the acronym of the World Tourism Organisation (WTO) although Art.15 of its own TRIPs Agreement explicitly protects combinations of letters (e.g. WTO).

Shifting the burden of proof in the case of process patents onto defendants, Art.34 compounds the disadvantage of SCs. This inversion of the burden of proof is a highly unusual and dangerous legal practice. Creating nuisance and costs simply by accusing competitors is facilitated. It is easy to see why TRIPs does so.

TRIPs "increased the monopoly power of patent holders and limits the ability of generic producers to compete." (Mattoo/Subramanian 2005: p.20). It enabled pharmaceutical companies to raise prices far above what many poor people can afford. Its effects should be seen with recent trends of extending patenting in mind. Especially in the US a trend exists to grant patents for simple and obvious ideas, e.g., software to order books online by clicking a symbol (Schmundt 2005: p.127) Firms already exist that earn money uniquely by registering some dubious patents to harass others "infringing" on these patents.

If this trend continues and picks up, few things, if any, might soon be left without “patents” for which SCs will have to pay. A trend towards monopolisation where in the interest of powerful ICs manifests itself.

TRIPs foresees the application of Art.XXIII, GATT, which allows to challenge measures in full conformity with the agreement. Such non-violation complaints should have entered into force after five years. But SCs blocked the necessary steps pursuant to Art.64.3. Türk (2002) argues that WTO members in the TRIPs Council should make an explicit decision not to apply it. Considering the WTO’s record, the opaque formulations of Art. 64 (e.g. “existence of any other situation” impairing benefits) are quite dangerous to SCs. One has to fear that Art.XXIII would be used to harass SCs.

### **2.5 General Agreement on Trade in Services**

During 1993-2003 the shares in services exports of most SCs fell. The share of SCs in total trade is relatively small. Although GATS is still very much in evolution, this underlines the need for policy space to allow SCs to develop local service industries in the medium and long run. Once again, the Treaty contains special rights for SCs, such as Art.XIX.2 allowing SCs to attach conditions to market access aimed at achieving all Art.IV objectives. Dispute settlement has already started to restrict this option by demanding that regulatory mechanisms are “reasonable” and “necessary” for meeting the development objective (Borrero/Raj 2005: p.16). If this became the ruling interpretation, “aiming at” would no longer suffice. The meaning of the wording would be altered. Few SCs have utilised the provision of Art.XIX.2 (*ibid*: p.1) for whichever reason. “Advice” by donors or the BWI might be one. In any case, this should raise concern that SC-rights might again be diluted or reduced. SCs might get locked in to IC-techniques obstructing the evolution of local service sectors (Raffer 1995).

### **3. Practicing Double Standards**

The framework itself is already biased. WTO practice further aggravates this bias. The WTO does not protect the rights of weaker members, as for example, pharmaceuticals show. Even when SCs exercise contractual rights this raises the WTO’s concern. Though “not extensively used” in Asia after the 1997 crisis, selective tariff increases “within the flexibility allowed by bindings under the WTO agreements” gave “cause for concern to the extent they may distort the pattern of production and trade” (WTO 1998: p.28). The WTO has never voiced similar concern on potential distortions regarding ICs, be it

agrarian subsidies or the rather long phasing out period of GATT-inconsistent restrictions.

TRIPs is particularly tough on SCs already squeezed in WTO dispute settlement procedures by an array of problems, not least costs. Obtaining a patent in the US costs \$20,000, challenging one \$1.5 million (Kaul/Le Goulven 2003: p.351). This disadvantages SCs even in “normal” cases. The patent on the AIDS virus illustrates this. It was awarded by the US to R. Gallo, who claimed to have identified the virus first. After years of legal battle he admitted that “the virus he ‘discovered’ had been previously isolated by Montagnier” (*Time* 8 November 1993: p.69). Lack of resources - the French government financed legal costs - and political influence would bar most SCs from protecting their intellectual property against encroaching Northern interests.

Big players have a choice whether to accept a ruling. When the EU complained against the Helms-Burton Act the US threatened “the WTO panel process would not lead to a resolution of the dispute, instead it would pose serious risks for the new organization” (WTO 1996: p.2). Following US “advice” (*ibid*) the EU requested the panel to suspend its work after securing bilaterally that the Act would not be used against EU-corporations. Defending the US one could quote Article 3.7 of the Understanding on dispute settlement. While Helms-Burton is a clear violation of US WTO-obligations one may call the EU’s move illegal due to its evident unfruitfulness.

In a dispute with Brazil, Canada simply refused to provide information it was obliged to disclose promptly and fully pursuant to Article 13.1. Expressly mentioning this and speaking of a potential to undermine the functioning of the dispute settlement system, the WTO nevertheless found against Brazil, as Canada’s WTO-violating behaviour could not be proved because of Canada’s additional violation of WTO-rules on information (Raffer/Singer 2001: pp.213ff.). Apparently, Brazil’s efforts were highly unfruitful.

This is sufficient to show the need for change. There was a review process, also quite unfruitful. It was not even agreed to continue the review process. Informal discussions continued. Countries happy about the present situation, dubious as it might be by any decent legal standards, can preserve the *status quo*. The Doha Round also sidelined dispute settlement reforms. They are not part of the “single undertaking”.

Dispute settlement institutes the law of the jungle. Suing big guys is often fruitless, not least because of the way “relief” is organised. There is no right to compensation for damages suffered by violations of contractual obligations. The winning party may be authorised to suspend WTO concessions subject to constraints. After winning against the US, Antigua, whose exports of internet-

games were blocked in breach of contract, is authorised to do so. Presumably, the US is shocked and awed.

Not less disturbing is the fact that the membership rights of SCs have continuously been infringed. The TRIPs Agreement contains a wide range of safeguards to protect public health, a flexibility, which according to the World Health Organisation is not used by SCs. The *Financial Times* (20 June 2001) explains why. Over years the US threatened trade sanctions against countries revising their legislation to incorporate TRIPs safeguards. Pressure by AIDS activists made the administration announce it would no longer oppose TRIPs-consistent measures. Health groups, however, say the US is still exerting pressure on countries to forgo or weaken TRIPs safeguards, e.g., in negotiations on the Free Trade Agreement of the Americas. Over 100 NGOs urged the WTO to adopt a seven-point strategy including a moratorium on dispute settlement action, and an agreement not to pressure SCs to forgo TRIPs rights (Raffer 2003).

The Republic of South Africa was sued by pharmaceutical companies alleging it had violated international patent regulations by facilitating access to low-cost medicines. Public pressure made them withdraw the lawsuit. Providing the “cocktail” of needed drugs free of charge, Brazil reduced AIDS mortality from 10,592 deaths (1995) to 1,700 (2000). The US filed a complaint against Brazil.

The US itself forced Bayer to sell its Cipro tablets at roughly 20% of its market price, threatening to override Bayer’s patent. Canada had placed large orders with a local company for a Cipro-copy before, reopening the debate about patent protection for essential medicines. The *Financial Times* reported on 25 October 2001 both about the US enforced price cut and fierce opposition by a US-led group including Canada against SCs led by Brazil and India, insisting on a declaration by ministers at Doha that “nothing in the Trips agreement shall prevent governments from taking measures to protect public health”, which basically states that one has the right to do what one is entitled to by the Treaty. At Doha the right of WTO members to use, to the full, the provisions in the TRIPs Agreement was “reaffirmed” - unnecessary if their rights had been respected before. In plain English this means that membership rights are now to be respected even if and when exercised by SCs. The 30 August 2003 Decision should finally make it easier for poorer countries to import cheaper generics made under compulsory licensing if they are unable to manufacture the medicines themselves. Practice will tell how much it is worth.

This TRIPs problem is another fine example illustrating the nature of TRIPs and the real value of membership rights guaranteed by the WTO’s “rule

based” system if members are neither the US, the EU, nor Japan. The WTO has a built-in ratchet effect: its obligations bar SCs from reverting to options of the past. Massive pressure is exerted to prevent them from enjoying “guaranteed” membership rights. Their obligations are enforced their rights are not. This underlines the need to reform dispute settlement procedures to prevent their use to harass weaker members. If a rule based system, the WTO is apparently a system with one rule for the rich and another one for the poor.

#### **4. Reforms in Favour of Development**

Reforms are urgently needed to level the playing field, to increase export possibilities for SCs, their pricing power and to recover development policy space (cf Raffer 2002; Raffer/Singer 2001: pp.250ff.). Hoekman (2005) meanwhile also advocates more policy space for SCs. It is necessary to open markets for SCs to allow long run diversification and to reduce their strong dependency on a few, simple products by broadening the range of export products. ICs should liberalise as they preach to others. It is also mandatory that the rights of any member must be guaranteed. Market distortion in favour of ICs must be abolished.

##### **4.1 Abolishing Discrimination**

Competitive SC-exports must no longer face discrimination as described by the OECD. Special export schemes as in agriculture and the OECD’s export credit cartel must be dissolved. VERs must become illegal against SCs because of the doubtful nature of “voluntarily” offered restrictions. The practice of backroom negotiations to which only a few countries are invited, whose results are then presented to the rest for “consensus”, often under heavy pressure, must go. This will also slow down negotiations, a change urgently needed by many SCs.

##### **4.2 Meaningful SDT**

Some clauses demanding SDT exist, most of them not very concrete. Many SCs have voiced concern that not much SDT has actually been forthcoming. One could in fact speak of a rollback by the WTO of this principle once established within GATT. To progress towards the status of real partners, to overcome present disadvantages of SCs, positive discrimination is necessary in addition to levelling the playing field:

### **4.3 Infant Industry Protection**

Protection for SCs should be allowed so that economic structures can be developed. Their right to protect their economies at least as strongly as ICs must be built into the WTO agreements (Raffer/Singer 2001: pp.251f.). Infant industry protection can be integrated by establishing the right of SCs to a given number of waivers for industries they specify, valid for a specified time, depending on the country's stage of development. Country groups according to objective criteria (Least Developed, GNP/head) exist to base differentiation on. Poorer countries should be allowed higher protection. Some form of graduation can be incorporated, and provisions for an eventual phasing out - or phasing down to OECD levels. This would foster industrialisation and diversification. As protection in textiles and clothing proves phasing out should not be done too quickly. ICs have protected their industry over decades, still claiming too "quick" liberalisation to be unrealistic. Sequencing would be necessary, a process granted by the WTO to ICs in textile trade. One may discuss whether protection should be extended to all investments or limited to domestic firms. The former solution would have the advantage of forming an additional incentive for FDI. Provisions are needed to guarantee that developmental protection is a temporary measure. The kind of petrification known so well in ICs must be avoided.

### **4.4 Sequencing Liberalisation**

Comparing the speed of liberalisation is informative. SCs are forced to liberalise very quickly, even considering sometimes slightly longer implementation periods, which pale in relation to the "adjustment period" of ICs for Textiles-Clothing. The first protectionist measure was taken in 1935. The US forced the first "voluntary" export quota system on Japan. Tariffs of 40 to 60% were considered insufficient to protect US "comparative advantage". Similar sequencing seems indicated for SCs. One could even discuss whether eight decades are enough: SCs are less developed than the US. If and as it concerns not one very small sector (textiles-clothing) but whole economies, there would be scope for even longer adjustment periods. Generally, however, Textiles-Clothing may be seen as a model for phased liberalisation in SCs, even for "Structural Adjustment". In a first phase, e.g., the BWI could demand liberalisation to be stipulated for sectors where no restrictions exist, or SCs could stop intervening where they have not intervened at all, copying the first stage of "liberalisation" under the ATC that "liberalised" (with one exception in Canada: girls' singlets) only goods where no barriers existed. Sequencing of liberalisation and structural adjustment along these lines would be indicated by IC experience. It would

allow SCs a similarly smooth adjustment to world markets. What is good for ICs must be good for SCs.

One should recall the GATT's Decision of 19 November 1960 on the Avoidance of Market Disruption explicitly defining "market disruption" as a situation where "price differentials do not arise from governmental intervention in the fixing or formation of prices or from dumping practices." (Blokker 1989: p.365) Restrictions on trade in Textiles and Clothing were thus explicitly taken against the world market itself, not against any government intervention. The argument that trade reflected comparative advantages did not carry much weight when raised by the South (*ibid*: p.72; p.76). If ICs need such protection from the market to be able to adjust in an orderly fashion, this strongly supports similar respite for SCs.

#### **4.5 TRIMs**

TRIMs must be waived for SCs. One may discuss whether some very advanced SCs might be treated fairly similar to ICs, but poor countries must be exempt, to allow them to pursue an industrialisation drive such as the successful Asian Tigers or ICs themselves, building up industries behind protective walls. The East Asian/IC option must be re-opened.

#### **4.6 Helping Net-Food-Importers**

Additional resources for net food importing SCs must be made available. A Food Import Facility correcting this shortcoming should be established at the WTO, possibly at a Sub-Committee on Food Aid, working as a contractual insurance scheme without conditionality (Raffer 1997), like the original Stabex in Lomé I, meanwhile undone.

#### **4.7 TRIPs**

Southern knowledge must be protected (see also the article of Drahos in this issue). Art. 34 must go, at least for SCs. Normal decent legal standards that people have to be proved guilty rather than having to prove their innocence should rule. If ICs insist on having an exception for themselves only, wanting their producers to be guilty until they prove they are not, they might make this provision exclusively applicable to ICs. Alternatively, the onus of proof could be reversed and companies should show that the patent they are seeking is not based on traditional wisdom (Stiglitz/Charlton 2005: p.14). Art.XXIII GATT must not be applied to SCs.

#### **4.8 Fair Dispute Settlement**

This was one of the main chocolates on the tray to convince SCs to sign the WTO treaties, promoted as a rule based system, protecting the rights of the weak. Unfortunately, it was designed without the authority to make powerful members comply, but can be used perfectly as a legal cloak for actions against less powerful members. These changes are mandatory:

#### **4.9 Compensation**

This is not a new proposal. SCs demanded it already. If an IC files a complaint against an SC and loses, the SC's legal costs must be paid by the plaintiff. Damage inflicted upon SCs must be compensated. Winning against the EC Ecuador was allowed retaliations but left with uncompensated direct damages of \$201.6 million. Compensation would doubtlessly have been preferred. Pressure on SCs not to use WTO membership rights must be fined. For obvious reasons not only the country under pressure but also international organisations and NGOs accredited at the UN – or a special WTO-ombuds-person – must have the right to sue offenders. To avoid misunderstanding, this would not be the same mechanism as state-investor dispute settlement under, for example, NAFTA.

#### **4.10 Proving Non-Negligible Damage**

To start a complaint against SCs (differentiation according to development stages can be discussed) an IC plaintiff would have to prove non-negligible damage to be at least likely to have been done by the SC. This important change (Raffer 2002) would protect poor countries against legal harassment. Meanwhile Hoekman (2005, p.18) also suggests this, labelling it “immunity” of SCs if there are no “significant negative spillovers”.

#### **4.11 Collective Retaliation**

Retaliatory action by the whole WTO membership against an offender is needed to change the present situation where powerful countries can decide not to implement decisions with impunity, even prevent them, as Helms-Burton shows. This suggestion made by Raffer (1995), was formally brought up by India in 1999.

### **5. Conclusion**

Unequal WTO-treaties and WTO-practice, especially the violation of SC-membership rights, have contributed to tilting trade further against the South.

The WTO is part of an array of neoliberal changes weakening SC-economies, intensifying the mechanisms of Unequal Exchange. Hindering diversification ICs make SCs concentrate on relatively simple exports that can be relatively easily substituted. SC pricing power, weak under free market conditions (Raffer 1987; 1994), is further weakened. Increased commodity exports at plummeting prices are one result. This recalls Braun's (1977) backward bending supply curve, where the need to earn a minimum of foreign exchange leads to increased exports if prices fall, or Raffer's (1987: p.128) individual position of sellers (e.g. the especially desperate need to get foreign exchange) as an important factor influencing prices. As with Braun and Raffer, subsidised production, especially of food, legalised by the WTO makes ICs less dependent. IC-protection of agriculture avoids Northern food dependence, which would change market relations and pricing power. Trade restrictions play the role identified by Braun. Long run development options are restricted or destroyed. Opening SC-markets, ICs make productivity increases depress wages in SCs as described by Amin (1981: pp.65f). Export subsidies have the same effect, annihilating domestic production in SCs under the banner of "free trade".

Fortunately, SCs started to defend their interests. Brazil and India have increased their weight in negotiations perceptibly. But transforming the WTO from an inequalising mechanism to a fair trade system fostering development, and allowing all to reap the benefits of trade, remains an uphill struggle. Strong IC-opposition, not least against a really fair market, still has to be overcome.

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## **Abstracts**

Die Industrieländer haben Protektionismus, der ihren Interessen dient, legalisiert und über die WTO – in der Literatur sogar als „bestes Mittel“ bezeichnet, die Interessen nördlicher, transnationaler Konzerne durchzusetzen – dort verboten wo er Entwicklung fördern könnte. Ungleiche WTO-Abkommen und die Praxis der WTO, insbesondere die Verletzung der Mitgliederrechte von Entwicklungsländern, haben dazu beigetragen, den Tausch ungleicher zu gestalten. Neoliberale Politik, auch von der WTO stark vorangetrieben, hat die Entwicklungsländerökonomien geschwächt und die Mechanismen des Ungleichen Tausches verstärkt. Nach einer Analyse der benachteiligenden Effekte einzelner WTO-Verträge werden notwendige Reformen vorgeschlagen, die allen eine faire Teilhabe an den Vorteilen des Handels ermöglichen würden.

Able to retain high protection where they want it, Industrialised Countries used the WTO - even called the “best vehicle” for advancing Northern corporate interests in literature - to restrict or outlaw protection where it would foster development. Inequalising WTO-treaties, WTO-practice, especially the violation of membership rights of Southern Countries, have contributed to tilting trade further against the South. Weakening Southern economies, the WTO and neoliberal policies by other international organisations have intensified Unequal Exchange mechanisms. After analysing the disadvantaging features of the WTO-Treaties, this paper proposes necessary reforms towards a trading system from which everyone can benefit fairly.

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**Die Verhandlungen zur weiteren Liberalisierung des Agrarhandels**

– Reduktion unfairen Protektionismus' oder ein Schritt in Richtung Nahrungsmittelsouveränität?

„The reality is that no industrial country – not the United States, not Canada, not the countries of the EEC, not the other European states, not, we all know, Japan – leaves its farmers to the free market. None. Those who affirm the beneficence of the free market for agriculture are, as regards the industrially developed countries, speaking of something that does not exist. Perhaps it will in the next world; theology has its claim on that. Not in this world. It does not exist because left to market forces, agriculture has a relentless, wholly normal tendency to overproduce.” John Kenneth Galbraith (“Agricultural Policy: Ideology, Theology and Reality Over The Years”) remarks at the National [U.S.] Governors Conference, July 27, 1987.

**1. Einleitung**

Der globale Handel mit Agrargütern ist seit langer Zeit durch viele Ungleichheiten und Verzerrungen gekennzeichnet. Die Deviseneinnahmen von vielen Entwicklungsländern stagnieren oder sinken z.T. sogar trotz volumenmäßiger Zunahme ihrer Rohstoffexporte. Der Grund dafür sind die seit Jahren sinkenden Rohstoffpreise. Verarbeitete Agrarprodukte, die mehr Einnahmen bedeuten würden, haben aufgrund hoher Einfuhrzölle keine Chance auf den Märkten der Industrieländer. Und zugleich exportieren die Industrieländer, insbesondere die EU und die USA, seit Jahren ihre Überschussproduktion unterhalb der tatsächlichen Produktionskosten in Entwicklungsländer und drängen durch diese unfaire Importkonkurrenz, die mit der Reduktion von Schutzzöllen erst möglich wurde, zunehmend lokale ProduzentInnen aus ihrer Tätigkeit. Dieses Phänomen ist weithin als „Dumping“ bekannt und zählt zu einem der größten Probleme im Agrarhandel. Exportsubventionen und interne