

## ARTICLES

# WTO WINNERS AND LOSERS: THE TRADE AND DEVELOPMENT DISCONNECT

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*“There must be something in the pie for everyone. Not pie in the sky when we die, but pie on the table.”<sup>1</sup>*

### I. INTRODUCTION

The World Trade Organization (“WTO” or the “Organization”) is premised upon increasing prosperity by opening markets to greater trade flows.<sup>2</sup> Although the goals of the Organization include enhancing development and reducing poverty, thus far the WTO has had difficulty bridging the gap between its trade expansion focus—exemplified by members’ substantive commitments to provide greater access to their markets—and its desire to promote development—largely framed in aspirational, nonbinding terms. This article explains why current measures to assist developing countries (“DCs”)<sup>3</sup> are not a complete solution to the trade and development disconnect. It further proposes using the concept of Kaldor-Hicks efficiency as the basis for a framework under which the WTO’s trade and development aims could be pursued in a more integrated fashion by adopting a direct or indirect compensation mechanism.

Historically the WTO has concentrated its negotiations on issues of market access and not on development directly. This reflects an underlying assumption that the rising tide will raise all boats—that liberalizing markets alone will make all WTO members better off.

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1. Mike Moore, Dir.-Gen., World Trade Org., Address at the Conference of African Trade Ministers: Africa and the Multilateral Trading System: Challenges and Opportunities, (Sept. 23, 1999) available at [http://www.wto.org/english/news\\_e/spmm\\_e/spmm07\\_e.htm](http://www.wto.org/english/news_e/spmm_e/spmm07_e.htm).

2. See, e.g., Marrakesh Agreement Establishing the World Trade Organization, Preamble, Apr. 15, 1994, 33 I.L.M. 1144 [hereinafter Marrakesh Agreement] (objectives of raising standards of living and increasing real income to be attained “by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade . . .”).

3. This article uses “DCs” to refer to both least developed countries (“LDCs”) and developing countries. “LDCs” is used to refer solely to least developed countries.

However, this assumption is flawed. Trade liberalization, while wealth-generating in the aggregate, does not necessarily lead to greater wealth for each participant. Instead, the multilateral trading system thus far has resulted in winners and losers, and will continue to do so for the foreseeable future.<sup>4</sup> The WTO's stated objective of ensuring that all WTO members benefit from the system cannot be met unless and until the WTO institutionalizes measures to systemically ensure that the losers also become winners. Increasing the number of members benefiting from the world trading system would do more than just meet the aspirational goals of the WTO. Members would benefit from increased volumes of trade and thus greater overall wealth would be generated within the membership. And from a pragmatic standpoint, more steps should be taken to help the losers as these members have the ability to hamstring further progress in the Doha Round and any future rounds.<sup>5</sup> Therefore, it would behoove the membership to take steps to ensure the Organization's policies are in the best interests of all the members.

As a result of the assumption that trade liberalization benefits all participants, DCs' requests for special and differential treatment or other forms of assistance have been treated as an obstacle or stumbling block that needs to be addressed in order to get agreement on the latest round of liberalization measures. In reality however, DCs' pleas for differential treatment arise out of the reality that not all members will benefit as a result of a given round of negotiations. The degree of disparity is exacerbated when the negotiated outcome includes agreements such as TRIPS, which impose high implementation costs on poorer countries, and excludes meaningful additional market access in areas of importance to these countries, such as agriculture.

The recent focus within the WTO on generating funds for Aid for Trade and the creation of an Aid for Trade Task Force to recommend

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4. In the absence of perfect market conditions such as free movement of labor and capital, even free trade will not lead to a Pareto optimal outcome. The present trading system is far from "free trade" in any event, and market conditions are imperfect. *See* Pascal Lamy, Dir.-Gen., World Trade Org., Statement by the Dir.-Gen at the Roundtable on Aid for Trade: Why Aid for Trade? Why is the WTO Involved? And What Now (Sept. 18, 2006) (noting that many "developing countries have been unable to benefit from the market opening the WTO has achieved") *available at* [http://www.wto.org/english/news\\_e/sppl\\_e/sppl37\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl37_e.htm).

5. *See* Pascal Lamy, Dir.-Gen., World Trade Org., Emile Noel Lecture at the New York University Law School: Making Trade Work for Development: Time for a New Geneva Consensus (Oct. 30, 2006) [hereinafter "Lamy-Geneva Consensus"] (noting that DCs are disadvantaged by some of the WTO agreements, and indicating that this bias must be rectified as it will not be sustainable in the long-term) *available at* [http://www.wto.org/english/news\\_e/sppl\\_e/sppl45\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl45_e.htm).

ways to operationalize Aid for Trade can be seen as an effort to bridge the trade and development gap through providing supply side and capacity-building assistance to needy WTO members. The goal is to help these countries get the most out of the market access they have by enhancing their ability to export. This assistance—particularly if it is ultimately coupled with a successful Doha Round in which barriers to trade from DCs drop significantly—will certainly help countries in need benefit more from their WTO membership. However, Aid for Trade, as currently formulated, addresses only one part of the trade and development disconnect. In particular, Aid for Trade and other measures, such as trade-related technical assistance and capacity building, are designed to help members participate in international markets more successfully going forward. These measures do not, however, compensate members for the losses they are currently experiencing. By analogy, the WTO provides adjustment assistance analogous to the worker retraining programs the United States offers to those who experience NAFTA-related job losses, but it is not providing the equivalent of unemployment benefits.<sup>6</sup>

Even in the absence of high implementation costs, and even without the wealthiest countries maintaining their agricultural tariffs and subsidies, there would still be winners and losers under the current international trading system. In economic terms, the WTO is Kaldor-Hicks efficient; the system generates enough additional wealth in the aggregate that the winners could compensate the losers and still be better off. However, that compensation does not occur in practice. Aid for Trade will help some of the losers be able to participate more successfully in the international trading system, but it cannot change the reality that at any given time some WTO members may not be benefiting from the system.<sup>7</sup> For example, while the removal of tariffs is good

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6. Director-General Pascal Lamy has implicitly acknowledged this distinction, at least at the micro level. *See id.* (“For the poor in such [developing] countries, losing their job as a result of trade reform can cause severe hardship. It is one thing to lose your job when you are entitled to unemployment benefits or to trade adjustment assistance, but it is quite another thing to become unemployed when this reduces your income to zero.”).

7. To be sure, many countries would be able to export more if the developed countries would remove agricultural subsidies and tariffs; avoid tariff escalation (schemes that disadvantage value-added products); and open markets without reservation to the LDCs. But even so, the benefits of trade are not experienced evenly. There are always going to be winners and losers. Who those winners and losers are may change over time with the eradication of certain preference schemes and changes in comparative advantage. *See, e.g.,* SANDRA POLASKI, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE WINNERS AND LOSERS: IMPACT OF THE DOHA ROUND ON DEVELOPING COUNTRIES (2006) (identifying different groups of countries as winners and losers under different

for domestic consumers, it can be a significant loss of revenue for countries such as the Pacific Island members. Similarly, changes in preference schemes will likely spell the end of Fiji's sugar exports. As free trade agreements proliferate, LDCs' preferential access is no longer preferential. These are just a few of many examples.<sup>8</sup> Accordingly, the WTO membership needs to go beyond Aid for Trade. It should reorient its modus operandi to develop a mechanism whereby losers are more directly compensated by the winners as a part of an understanding that producing a bigger pie means all members must get a bigger slice. In particular, the Kaldor-Hicks framework provides a conceptual basis that the membership could adopt to harmonize its trade and development goals. If WTO members elected to utilize some of the gains from trade liberalization to compensate the members that are not benefiting, the institution's aims would converge rather than clash.

Part II of this article explains the trade and development disconnect in more detail. Part III sets forth the economic rationale underlying the current system and sets forth economic, moral, and pragmatic justifications for transferring some of the gains from trade from the winners to the losers. Part IV identifies different methods by which the WTO membership can minimize the need for compensation, and examines various issues relating to the provision of the compensation that will still be required.

## II. THE TRADE AND DEVELOPMENT DISCONNECT

When the current round of WTO negotiations was initiated at Doha, Qatar in 2001, it was deemed a development round and the goals for the round have been labeled the Doha Development Agenda ("DDA"). The impetus for a development-focused round was in large part the need to provide a form of payback to the LDCs and poorer developing countries for their concessions made in the Uruguay Round negotiations. In the Uruguay Round DCs agreed, among other things, to the creation of new agreements on intellectual property and services—the TRIPS Agreement and GATS respectively—which were primarily of

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potential Doha Round outcomes, and finding that some losers would exist under each of the scenarios modeled).

8. See Pascal Lamy, Dir.-Gen., World Trade Org., Opening Remarks at the 53rd session of the UNCTAD Trade and Development Board meeting (Sept. 27, 2006) (noting that there may be scenarios where, due to domestic inefficiencies, opening a country's markets to trade could harm the domestic economy) *available at* [http://www.wto.org/english/news\\_e/sppl\\_e/sppl40\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl40_e.htm).

interest to the industrialized developed members.<sup>9</sup> This consent was given with the understanding that developed countries would, in exchange, liberalize the textiles and agriculture sectors. DCs went into the Doha process angry that the promises to improve market access in these sectors had not been sufficiently fulfilled and resolved to get commitments of real benefit to them this time around.<sup>10</sup>

Notwithstanding the launch of the DDA six years ago, no clear mandate has emerged as to what specifically should and will be done to assist DCs. Thus while the WTO has been promoting development in name, in practice there is still no generally accepted framework or structure for undertaking this effort.<sup>11</sup> It is no wonder therefore that DCs have been unimpressed with the offers on the table in the Doha Round negotiations thus far, and that those negotiations have repeatedly stalled and floundered. The impasse is in part a reflection of the fact that the United States and EC are not willing to sacrifice their own protectionist measures, and as such any statements they make regarding the importance of development assistance ring hollow. The problem goes beyond the motivations of individual members though, as it would be in the interests of the United States and EC for poorer members to wholeheartedly embrace the WTO and to have the purchasing power to buy more American and European products. Instead there is a disconnect whereby the WTO is talking the talk of development—and where substantively advancing development would actually benefit all members—but the Organization does not seem to know how to translate the rhetoric into appropriate action.

In a recent article, Tomer Broude identifies a possible reason for this disconnect. He argues that the WTO has legitimacy by virtue of its success in increasing market access opportunities for exporters—what

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9. DCs are more likely to have a comparative advantage in imitating than in innovating. The TRIPS Agreement, by raising the minimum level of intellectual property protection to that maintained by the developed countries, arguably advantages the developed country innovators at the expense of the developing country imitators. See, e.g., Jeffrey L. Dunoff, *Rethinking International Trade*, 19 U. PA. J. INT'L ECON. L. 347, 364 (1998).

10. See, e.g., Peter M. Gerhart, *Slow Transformation: The WTO as a Distributive Organization*, 17 AM. U. INT'L L. REV. 1045, 1051 (2002); Joseph E. Stiglitz, *Trade and the Developing World: A New Agenda*, 98 CURRENT HISTORY 387, 387-93 (1999); Joseph E. Stiglitz, *The WTO Millennium Round*, 3 SOCIAL DEVEL. REV. 6, 6-9 (1999) (documenting imbalances of the Uruguay Round and calling for a Development Round to redress them).

11. To be sure, the agenda includes areas of interest to DCs including improving market access and terminating agricultural export subsidies. But these are agenda items, not attempts to institutionalize a framework for ensuring positive outcomes for all members.

he terms “functional legitimacy.”<sup>12</sup> However, the WTO has recently engaged in a significant shift in institutional focus towards development goals. He argues that the WTO hasn’t figured out how to adapt its functional dimension—that being the traditional expanding market access focus—to meet its aspirational dimension—that being to promote development.<sup>13</sup>

Broude’s point can be illustrated through a number of examples. The first lies within the WTO legal texts themselves. In the Preamble of the Marrakesh Agreement creating the WTO, the signatories recognize the need “for *positive efforts* designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.”<sup>14</sup> While this language implies an understanding that market forces alone will not be sufficient to ensure the poorest countries benefit from trade liberalization, the Preamble goes on to indicate that the parties to the Agreement wish to “contribut[e] to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.”<sup>15</sup> The Preamble notably does not provide any additional explanation for how DCs will come to benefit, suggesting that while Members are not opposed *in principle* to taking affirmative steps to help countries reap benefits from increased trade, in practice the underlying assumption has been that the trade liberalization alone will effect the desired benefits.

The 2005 Consultative Board Report “The Future of the WTO” is another case in point. Then-WTO Director-General Supachai Panitchpakdi commissioned a group of trade experts to undertake a review of the institutional structure of the WTO and to report on its strengths and weaknesses, particularly identifying any problem areas that should be addressed.<sup>16</sup> The resulting Report, which is over 60 pages long, makes only a few references to “developing countries,” and one gets the impression that the Board has shied away from addressing the implica-

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12. Tomer Broude, *The Rule(s) of Trade and the Rhetos of Development: Reflections on the Functional and Aspirational Legitimacy of the WTO*, 45 COLUM. J. TRANSNAT’L. L. 221, 227 (2006).

13. *Id.*

14. Marrakesh Agreement, *supra* note 2 (emphasis added).

15. *Id.*

16. Supachai Panitchpakdi, Dir.-Gen., World Trade Org., *Foreword to Consultative Board, The Future of the WTO: Addressing Institutional Challenges in the New Millenium* 2, 2-3 (2004) [hereinafter Consultative Board Report].

tions of the WTO's development aims.<sup>17</sup>

Furthermore, notwithstanding the current Round's stated focus on development, it is incongruous that the WTO has not made any official mention of the United Nations ("U.N.") Millennium Declaration or its associated Millennium Development Goals ("MDGs").<sup>18</sup> These eight goals target areas, such as eradicating hunger and poverty, in which to achieve significant improvements by 2015.<sup>19</sup> One of the goals is to "[D]evelop a global partnership for development."<sup>20</sup> The November 2001 Doha Declaration failed to acknowledge the MDGs,<sup>21</sup> as did the Hong Kong Ministerial, even in the context of discussing the Aid for Trade initiative.<sup>22</sup> Yet the U.N. itself considers the WTO as one of the keys to achieving this goal. In the U.N.'s 2005 progress report on the MDGs, the potential promise to DCs of the Doha Development Round—and the slow progress thus far—is explicitly discussed.<sup>23</sup> Similarly, in his 2005 report "In Larger Freedom," U.N. Secretary-General Kofi Annan linked the ability to meet the MDGs by 2015 with, among other needs, "a new development-oriented trade round."<sup>24</sup> Yet the WTO has not, for its part, acknowledged any link between the DDA (or the WTO more generally) and the MDGs.

Following the disastrous ministerials in Seattle and Cancun, and only minor progress in Hong Kong, the developing country members have made clear that existing programs<sup>25</sup> are insufficient to meet their

17. See *id.*; Donald McRae, *Developing Countries and The Future of the WTO*, 8 J. INT'L ECON. L. 603, 603-04 (2005).

18. See Steve Charnovitz, *The World Trade Organization in 2020*, 1 J. INT'L L. & INT'L REL. 167, 178 (2005) (noting the lack of acknowledgement by the WTO of the Millennium Declaration as of early 2005); United Nations Millennium Declaration, G.A. Res. 55/2, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/2 (Sept. 18, 2000).

19. United Nations Millennium Declaration, *supra* note 18.

20. For a full list of the MDGs, see UN Millennium Development Goals, *available at* <http://www.un.org/millenniumgoals/>.

21. See Charnovitz, *supra* note 18, at 178.

22. World Trade Organization, Ministerial Declaration of 18 December 2005, WT/MIN(05)/DEC. The first report of the Aid for Trade Task Force does make brief mention of the MDGs. See Aid for Trade Task Force, *Recommendations of the Task Force on Aid for Trade*, WT/AFT/1 (July 27, 2006).

23. U.N. Dep't of Econ. & Soc. Aff. & U.N. Dep't of Pub. Info., *Millennium Development Goals: Progress Chart*, U.N. Doc. DPI/2363/Rev. 2 (Sept. 2005), *available at* [http://www.un.org/millenniumgoals/mdg\\_chart\\_sept.pdf](http://www.un.org/millenniumgoals/mdg_chart_sept.pdf).

24. The Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, ¶ 32, *delivered to the General Assembly*, U.N. Doc. A/59/2005 (Mar. 21, 2005).

25. Such as the Integrated Framework and Joint Integrated Technical Assistance Program, both discussed in Part IV, *infra*.

needs. Attention in the WTO is now being given—both within and outside the context of the current trade liberalization negotiations—as to how to address the concerns of the members that are currently recognizing the least benefits from trade. At the same time, the broader community of international financial institutions has recognized the magnitude of the benefits poorer countries would realize if they were able to trade more, and more effectively. This recognition has led to new efforts to increase funding for trade and development projects in the form of the Aid for Trade movement.

The WTO's uncertainty over how to reconcile its goals is further illustrated by its confusion over how to participate in Aid for Trade efforts. Unlike the hands-off approach taken with respect to the MDGs, the WTO initially plunged headlong into the Aid for Trade process, seemingly attempting to determine how to participate in Aid for Trade's substantive operations. It is appropriate and desirable for the WTO to marshal efforts to attract contributions for Aid for Trade and to provide relevant data generated through its existing trade policy review and other mechanisms. However, it does not make much sense for the WTO to attempt to determine what projects should be funded and to what degree given the WTO's lack of institutional capacity or mandate to provide substantive development assistance.

Although Aid for Trade does not seem to have a single definition, it generally appears to encompass traditional trade-related capacity building as well as more expansive forms of assistance directed at improving countries' trade-related infrastructure and other supply-side capacities.<sup>26</sup> The movement to greatly enhance funding for Aid for Trade gained momentum in early 2005, first with the G-7 calling for additional assistance for DCs, then with the OECD committing to improve aid quality, and in April 2005 with the World Bank and IMF issuing a joint note on a plan for Aid for Trade. Although Aid for Trade does not encompass anything new in terms of the types of projects funded by aid agencies and international financial institutions,<sup>27</sup> historically the WTO has not been involved in such efforts beyond the narrow scope of trade-related technical assistance and training. The WTO became formally involved in Aid for Trade (as more broadly defined) in late 2005, when Director-General Lamy pledged to work with the IMF and World Bank to advance an Aid for Trade initiative in 2006. The Hong

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26. See, e.g., Aid for Trade Task Force, *Communication from the Bank Integration and Regional Programmes Department*, at 2, WT/AFT/W/13 (May 11, 2006).

27. See *id.*

Kong Ministerial welcomed the expansion of Aid for Trade and authorized the Director-General to create a task force to provide recommendations on how to operationalize Aid for Trade. Further, the Ministerial directed that:

Aid for Trade should aim to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade. Aid for Trade cannot be a substitute for the development benefits that will result from a successful conclusion to the DDA, particularly on market access. However, it can be a valuable complement to the DDA . . . We also invite the Director-General to consult with Members as well as with the IMF and World Bank, relevant international organisations and the regional development banks with a view to reporting to the General Council on appropriate mechanisms to secure additional financial resources for Aid for Trade, where appropriate through grants and concessional loans.<sup>28</sup>

In February 2006 the WTO duly launched an Aid for Trade Task Force, comprising thirteen members including the United States, EC, Japan, India, China, Brazil, and coordinators of the ACP, African Group, and LDC Group.<sup>29</sup> The Task Force was asked to provide recommendations to the General Council by July 2006 on:

- 1) How Aid for Trade can best contribute to the development dimensions of the Doha Development Agenda;
- 2) How to operationalize Aid for Trade; and
- 3) How to help developing countries address their supply-side constraints, in order, in the words of Director-General Lamy, “to translate the market access gains they make from the Doha Round, from theoretical into real commercial possibilities.”<sup>30</sup>

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28. World Trade Organization, Ministerial Declaration of December 2005, ¶ 57, WT/MIN(05)/DEC.

29. The Task Force comprises: Barbados, Brazil, Canada, China, Colombia, the European Union, Japan, India, Thailand, the United States and the coordinators of the ACP, the African Group and the LDC Group. The Permanent Representative of Sweden, ambassador Mia Horn Af Rantzien, chairs the Task Force ad personam.

30. Pascal Lamy, Dir.-Gen., World Trade Org., Address at the 5th Munich Economic Summit: Europe and the New Division of Labour, (May 2, 2006) *available at* [http://www.wto.org/english/news\\_e/sppl\\_e/sppl24\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl24_e.htm).

The expectations for the Task Force were unrealistically high, particularly given that the WTO has not yet come to terms with how to fulfil its development goals. In a period of only five months, the Task Force was expected “to provide concrete and results-oriented proposals to fulfil its objectives.”<sup>31</sup> In practice, the Task Force has generated some recommendations that do not go particularly far in terms of concrete proposals and do not do much in the way of answering the three questions posed by the Director-General. In fact, the Task Force’s nine-page report concludes with the suggestion that, after completion of the Doha Development Agenda, the “[S]ecretariat conduct an assessment of associated Aid-for-Trade needs in developing countries, particularly those most affected, including LDCs, and of how Aid for Trade can contribute to the development dimension of the DDA.”<sup>32</sup> The Task Force thus recommended precisely the assessment it itself had been tasked with providing, suggesting that the process has done no more than come full circle.

The specifics of the recommendations give no real sense that there is a coherent plan in mind for what the WTO’s role should be in the Aid for Trade process. The recommendations outline numerous actions that should be taken by entities other than the WTO, such as “Urge donors and agencies together with regional banks and organizations, to step up their efforts to identify regional, sub-regional and cross-border needs, including those related to regional integration”<sup>33</sup> and “Donors and agencies should . . . use needs assessment processes . . . and their results, as a basis for their programming.”<sup>34</sup> These are not isolated examples. One is left wondering in what ways the Task Force thinks it can provide expertise on such issues beyond that existing within the organizations that specialize in providing development assistance.

Similarly, the generality of the recommendations do not provide much in the way of tangible, focused, next steps. There are a very few suggestions directly linked to the WTO. These include having a global periodic review of Aid for Trade to be convened by a monitoring body within the WTO, with reports to be provided at the country, donor, regional, multilateral agency, and private sector levels and holding an

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31. Press Release, World Trade Org., Composition of Aid for Trade Task Force announced (Feb. 8, 2006), available at [http://www.wto.org/english/news\\_e/pres06\\_e/pr434\\_e.htm](http://www.wto.org/english/news_e/pres06_e/pr434_e.htm).

32. Aid for Trade Task Force, *Recommendations of the Task Force on Aid for Trade*, at 9, WT/AFT/1 (July 27, 2006) (emphasis added).

33. *Id.* at 4.

34. *Id.* at 5.

annual debate on Aid for Trade in the WTO General Council “to give political guidance on Aid for Trade.”<sup>35</sup> With respect to the first suggestion, while it will clearly be necessary and useful to review Aid for Trade on a regular basis, it is entirely unclear why the WTO—rather than the World Bank, for example—would be the competent body to monitor the overall efforts. The recommendations do not suggest that the WTO administer the aid, determine who will receive the aid, nor play the primary role in deciding what aid is needed. These actions are presumably (though the recommendations are unclear about this) going to be undertaken primarily by other agencies and organizations. The motivation for the second suggestion likely is to demonstrate a willingness to be transparent, but the proposal itself does not provide a substantive role for the WTO. Perhaps the most tangible proposal for substantive action by the WTO that does not also require significant work by other, more competent bodies, is the recommendation that WTO Trade Policy Reviews should include assessments of Aid for Trade from the donor or recipient standpoint as appropriate.<sup>36</sup> This suggestion makes good sense and is consistent with the actions the WTO already undertakes.

Although the report recognizes that the “scope for Aid for Trade should be defined in a way that is both broad enough to reflect the diverse trade needs identified by countries, and clear enough to establish a border between Aid for Trade and other development assistance of which it is a part”<sup>37</sup> the recommendations themselves do not make the distinction particularly clearly. For example, trade-related infrastructure “including physical infrastructure” and “building productive capacity” are deemed to be areas that should be reported as Aid for Trade “when these activities have been explicitly identified as trade-related priorities in the recipient country’s national development strategies, such as the [Poverty Reduction Strategy Papers] PRSP.”<sup>38</sup> These seem to be fairly arbitrary distinctions, and ones that will not be consistent among countries.

If the Recommendations have served a valuable purpose, it has perhaps been to make Pascal Lamy realize that Aid for Trade needs to be managed by the development community and that the WTO has its own, different work to take care of. In a recent speech to the World Bank-IMF Development Committee, Lamy stated that the “WTO’s role

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35. *Id.* at 8.

36. *Id.*

37. *Id.* at 2.

38. *Id.*

in Aid for Trade is predominantly one of advocacy for additional resources and enhanced coordination both at the multilateral level and at the domestic level in the case of beneficiary countries.”<sup>39</sup> He went on to say that when WTO Members meet in October to consider the recommendations of the Aid for Trade Task Force, “I expect their consideration of any institutional role for the WTO on Aid for Trade to focus on monitoring, using our Trade Policy Review process for example. No direct development assistance role is foreseen for the WTO.”<sup>40</sup> This significant backtracking from the February 2006 mandate to the Aid for Trade Task Force should be seen as a positive development. The WTO should not be in the business of trying to do the substantive work of aid agencies, though it should be fully supportive of those agencies’ efforts. However, while the WTO should not be providing direct development assistance, it can and should do more within the framework of its own competence to assist members through, for example, enhanced trade-related technical assistance.<sup>41</sup>

These examples reflect the fact that the WTO’s current approaches are not succeeding in reconciling its functional and aspirational ideals. Some may, as an initial matter, question why, if “the rising tide raises all boats,” there is a need for a separate development agenda at all. However, evocative though the expression may be, it does not accurately describe the outcomes of trade liberalization across the WTO membership. In reality, the international trade regime as presently constituted does not raise all boats. To be sure, removing tariffs and facilitating cross-border trade does result in more global wealth. The overall pie is bigger. But a bigger pie does not mean all members are getting a bigger slice or even as big a slice as before. A variety of factors—ranging from the most developed countries successfully pushing an agenda in the Uruguay Round that preferenced industrialized country interests over those of the poorer members, to the inability of many LDCs to take advantage of improved market access—exacerbates this problem. But even absent such factors, the international trading regime still would not have the full employment and costless movement of labor necessary to make the principles of comparative advantage fully operable.<sup>42</sup> Thus at any given time some member countries are

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39. Pascal Lamy, Dir.-Gen., World Trade Org., *WTO to Press for Additional Aid-for-Trade Resources* (Sept. 18, 2006) available at [http://www.wto.org/english/news\\_e/sppl\\_e/sppl36\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl36_e.htm).

40. *Id.*

41. See part III, *infra*.

42. See, e.g., Sara Dillon, *A Farewell to “Linkage”: International Trade Law and Global Sustainability Indicators*, 55 RUTGERS L. REV. 87, 112 (2002) (discussing Ricardo’s theory of comparative

not being made better off—and could even be worse off—than they were before.<sup>43</sup> In other words, globalization is not what economists would call Pareto-efficient, meaning that an outcome has been achieved whereby no participant can be made better off without making another participant worse off. Nonetheless, going ahead and taking the actions that increase the size of the pie can still be rationalized because doing so is Kaldor-Hicks efficient, meaning that the gains are such that the winners could—and should—compensate the losers and still be better off.<sup>44</sup>

### III. GOING BEYOND KALDOR-HICKS EFFICIENCY AND THE INVISIBLE HAND<sup>45</sup>

Kaldor-Hicks efficiency has primarily been discussed in the context of an individual country choosing to liberalize trade. In this regard, there is an understanding that while some will be made worse off within the country, overall wealth will rise and the government can use some of this increased wealth to compensate the losers. There has been little discussion of Kaldor-Hicks efficiency outside of the domestic context. However, winners and losers exist not only within each country, but in the international arena as well.<sup>46</sup> This article argues that the concept of Kaldor-Hicks efficiency should be applied in the international context to examine how to address trade liberalization inequalities that arise at the macro level.

While some countries have done quite well as a result of trade liberalization, others, particularly some of the least developed countries and some of the smallest countries such as the Pacific Island WTO

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advantage as being primarily theoretical and inappropriate to rely upon given the absence of the perfect conditions necessary for the theory to hold).

43. This article does not attempt to canvass the economic data to determine the extent to which particular countries have been advantaged or disadvantaged. However, it is not hard to imagine that if the WTO's poorer members took steps to implement the TRIPS and SPS Agreements these members might well view the WTO Agreements as having a net negative effect. One real-life example invoked by Director-General Lamy involved cashew nut farmers in Mozambique. The gains resulting from liberalization of this sector were almost entirely offset—save for approximately \$5 per year per farm—by the costs associated with increased unemployment amongst the nut processors. See Lamy – Geneva Consensus, *supra* note 5 at 6.

44. Kaldor-Hicks efficiency merely requires the gains to be such that the winners could compensate the losers and still be better off; it does not require that compensation actually occur. This is often referred to as the potential Pareto principle.

45. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (Regnery Publishing, Inc. 1998) (1776).

46. The focus of this article is on winners and losers at the international level, rather than on how individual countries address disparities within their borders arising from trade liberalization.

members,<sup>47</sup> have not necessarily seen gains from trade and could even be worse off at various times.<sup>48</sup> This is not because trade is inherently negative—though the conclusion of trade agreements with high implementation costs such as the TRIPS and SPS Agreements has exacerbated the problem—but is simply because the gains from trade are realized unevenly among countries just as they are within countries.<sup>49</sup> This does not mean that the situation is acceptable or even tolerable. All WTO members have signed on with the understanding that the liberalization is going to be to *all* members' benefit. This does not happen simply through letting the market work its magic. And it certainly does not happen when the negotiated agreements are not actually trade-liberalizing.<sup>50</sup> But we tolerate this because we tell ourselves that the overall pie is bigger and therefore that is good. But it is only good if everyone gets a bigger piece of the pie than before. That outcome cannot be achieved without taking affirmative steps to ensure the losers become winners.<sup>51</sup>

Recognition of this reality may finally be sinking in at the WTO. In a recent speech discussing prospects for concluding the Doha Round,

47. The Pacific Island members of the WTO are Papua New Guinea, Fiji, the Solomon Islands, and, as of July 2007, Tonga.

48. By at least some accounts, the Uruguay Round will have resulted in some of the world's poorest countries being made worse off. *See, e.g.,* U.N. Dev. Programme, *Human Development Report 1997* 82-84 (1997).

49. While the increase in trade liberalization brings about an increase in global wealth, that increase is not evenly distributed.

50. For example, the TRIPS agreement, which sets forth minimum standards for intellectual property protection, is not inherently designed to free up trade flows. Yet the costs of implementing this agreement have been significant.

51. At the national level this has occurred more within certain countries than in others. Brazil, for example, has done very little to redistribute the gains from trade or economic growth generally. Likewise in the United States the winners have generally not been taxed to compensate the losers. The U.S. government provides limited aid through the Trade Adjustment Assistance Program, but this is to help displaced workers find new jobs, and does not actually provide compensation. Joel R. Paul, *Do International Trade Institutions Contribute to Economic Growth and Development?* 44 VA. J. INT'L L. 285, 303 n.32 (2003). Latin American or Caribbean ("LAC") countries have also not done much to redistribute the gains from trade. *See, e.g.,* Inter-Am. Dev. Bank, Integration and Reg'l Programs Dep't, *Aid for Trade: The Inter-American Development Bank's Experience in Latin America and the Caribbean*, at 5, WT/AFT/W/13 (May 11, 2006) (in describing domestic responses to trade liberalization in Latin American and Caribbean countries, the IADB reported that "trade opening was only rarely accompanied by mechanisms for compensating inevitable losers in the process and boosting the opportunities of potential winners"). By contrast, some of the "Asian Tigers" have implemented strategies to redistribute wealth that have in fact decreased the degree of inequality. Michael J. Trebilcock, *Critiquing the Globalization Critics*, 1 J. INT'L L. & INT'L REL. 213, 226 (2005).

Director-General Lamy acknowledged that: “Today it is not only global income growth that matters, it is also who shares in that growth and how. Politically, we cannot leave the question of “who gains what?” from trade liberalization up to market forces only.”<sup>52</sup> This public recognition marks an important first step in remedying the disconnect between trade liberalization and development goals within the WTO.

Since the Members have chosen a system that increases the pie with the known side effect of some losing out, the system can best be justified by using some of the gains from trade to turn the current losers into winners. Different possible mechanisms for achieving this goal are set forth in Part IV, *infra*. This article does not seek to determine a single best way to provide compensation or other adjustments. Instead it has the more modest goal of offering the concept of such mechanisms as a possible framework for linking the functional with the aspirational. In other words, we can define the WTO’s functional goal as increasing the pie, and its aspirational goal as ensuring all Members get a bigger slice than before.

This article argues that in practice the WTO membership should adopt measures to ensure, through some form of direct or indirect compensation,<sup>53</sup> that the losers under the current trading regime are made to become winners, so that they too receive a bigger slice of the pie.<sup>54</sup> In short, the trade and development disconnect could be harmonized if WTO members approached trade liberalization from the mindset that all must benefit. To the extent that this does not happen “naturally”, it should be made to happen through concerted action by the members. This could be compensation in the wealth transfer sense, or it could be some other forms of action (such as Aid for Trade and other forms of technical assistance) that makes members better off. For purposes of this article, the amount and method of compensation are of secondary importance; the key point is that a common mindset would help bridge the current divide. Whatever form of compensation is adopted to help those that are not benefiting from the multilateral trading system, the important thing is that this affirmative step be

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52. Lamy, *supra* note 39.

53. In contrast, economists would leave the argument at the fact that the WTO is Kaldor-Hicks efficient and therefore justifiable on efficiency grounds whether or not compensation is paid.

54. RICHARD E. JUST ET AL., *THE WELFARE ECONOMICS OF PUBLIC POLICY* 45 (2004) (noting that economists tend to avoid the debate over what “ought to be” and accordingly do not attempt to answer the question of whether the potential gains that underlie Kaldor-Hicks efficiency should be turned into actual gains through the paying of compensation).

taken. Utilizing some of the wealth created by increased trade to balance the results that occur through market forces can be justified on economic, moral, and pragmatic grounds.

A. *Economic Justifications*

Efficiency values and distributive values are often portrayed as being in conflict.<sup>55</sup> However, they need not be. Ensuring that all parties benefit from trade liberalization is rational from an economic perspective. Increased trade increases overall wealth.<sup>56</sup> Thus increasing the ability of the poorest countries to produce and consume will lead to further increases in overall wealth. If sharing the wealth will facilitate the continuation of further trade liberalization, this is to the advantage of those countries that are currently the winners.<sup>57</sup> In other words, Kaldor-Hicks efficiency remains efficient even when the winners decide in practice to compensate the losers.<sup>58</sup>

Furthermore, to the extent the benefits of trade are shared, countries that would not have benefited will have resources to spend money in other members' markets and to enhance their citizens' ability to generate new wealth. On the flip side, the financial implications of failed economies spread far beyond national borders. The direct and indirect financial costs of third-world poverty on the developed world, including the cost of development assistance, the risks associated with political instability, and higher worldwide incidences of disease, are not insignificant. Ensuring that all WTO members share in the economic gains of trade is not only equitable, but is also good business.

A further economic argument is grounded in public goods theory.

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55. See, e.g., Gerhart, *supra* note 10, at 1048.

56. Ernst-Ulrich Petersmann, *Introduction: Mini-Symposium on Developing Countries in the Doha Round*, 8 J. INT'L ECON. L. 347, 351 nn.16-17 (2005) (detailing positive effects of trade on DCs, particularly India and China).

57. See William R. Cline, *Doha and Development*, FOREIGN AFF. Dec. 2005, available at <http://www.foreignaffairs.org/20051201faessay84707/william-r-cline/doha-and-development.html> (calculating that income gains to DCs from global free trade would be approximately \$200 billion annually—in 1997 dollars—or over twice as much as the benefit developed countries currently provide through development assistance.).

58. See, e.g., Robert Howse, *From Politics to Technocracy – and Back Again: The Fate of the Multilateral Trading Regime*, 96 AM. J. INT'L L. 94, 116 (2002) (“[A] genuine, mutually self-interested bargain may still be possible, provided that one can assure the kind of capacity for adjustment to the would-be ‘loser’ countries that would allow them to become ‘winners.’”). There is no single economic answer to the question of degree – how much winners should compensate losers, or in what way. This is a question of policy and welfare preferences, which members will have to negotiate. See Part III, *infra*.

Public goods (which in the domestic setting could include clean air, street signs, or a national defense system) are characterized as being non-excludable (if available to anyone it is available to everyone) and non-rival (one person's use does not prevent another person's use).<sup>59</sup> Because of these characteristics, market forces alone often do not lead to sufficient contributions to provide optimal levels of public goods.<sup>60</sup> To avoid this market failure, government intervention through taxation or similar measures is generally required to ensure that public goods are not underprovided. Some have argued that a free trading system is a *global* public good, meaning a good that is experienced across borders, such as the eradication of an infectious disease or world peace. To achieve a global public good requires the cooperation of many, if not all, countries.<sup>61</sup> Thus supranational oversight is needed, via the WTO, to coordinate the members' agreements to open their markets.<sup>62</sup> Although this oversight already exists, the WTO arguably must also coordinate adjustments within the Organization to ensure that the system is a global public good in substance as well as form.<sup>63</sup>

### B. *Moral Justifications*

The moral justification is relatively straightforward. All WTO members join the Organization with the knowledge that trade liberalization efforts will result in a bigger pie. The pie grows as a result of the participation of all the members. However, as explained above, all members will not get a bigger slice of the pie automatically. Some slices will be larger than before, but others smaller. However, the bigger slices are big enough that the winners can compensate the losers and

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59. See, e.g., Petersmann, *supra* note 56, at 361 n. 57.

60. The non-excludable and non-rival nature of public goods means that an individual can "free ride" on the provision of the good by someone else. Because it is rational to wait until others provide the good and then to enjoy it for free, market failure can result, meaning that no one provides the good.

61. Other examples of global public goods include environmental sustainability and peace.

62. See, e.g., Daniel C. Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, 115 YALE L. J. 1490, 1560-61 (2006) (arguing that success in producing global public goods such as trade liberalization will best be achieved by ensuring the effective operation of international policymaking institutions).

63. See generally Ronald U. Mendoza & Chandrika Bahadur, *Towards Free and Fair Trade: A Global Public Good Perspective*, CHALLENGE: THE MAG. OF ECON. AFF., Sept.-Oct. 2002, at 21; see also Petersmann, *supra* note 56, at 361 (contrasting the explanation for international cooperation as being based on self-interest and power concerns with the explanation that the international rule of law and non-discriminatory global trading system are global public goods and are necessary preconditions to world peace).

still have more pie than they would have had without the trade liberalization. Accordingly, the just outcome is for the winners—who would not be winners but for the participation of the losers—to use a portion of the increased gains to compensate the losers. To put the argument into Rawlsian terms, if countries joined the WTO from a presumption of initial equality and a “veil of ignorance” as to what their prospects were for becoming a winner or loser under the system, they would insist upon a structure whereby “inequalities of wealth. . . are justified only if they result in compensating benefits for everyone, and in particular for the least advantaged members . . . . [T]here is no injustice in the greater benefits earned by a few provided that the situation of [members] not so fortunate is thereby improved.”<sup>64</sup> As Rawls points out, a party would not (if in the original position of equality described above) agree to incur enduring losses so that wealth could be increased in the aggregate.<sup>65</sup> Parties would not consider the agreement fair—and would not agree to it—unless the promise was that all the parties would actually benefit from that increased wealth. To put Rawls’s theory into economic terms, parties would only agree to a scenario that resulted in Kaldor-Hicks efficiency if there were an accompanying agreement that the winners would in fact compensate the losers out of the profits. Although Rawls declined to extend his theory to the international arena, for which he was much-criticized,<sup>66</sup> the logic seems eminently applicable and translatable in the WTO context. Although the idea of the WTO making such a value judgment will undoubtedly make some uncomfortable, it is important to recognize that *not* compensating the losers under Kaldor-Hicks efficient conditions is a value judgment as well.<sup>67</sup>

### C. *Pragmatic Justifications*

Perhaps the most compelling reason for institutionalizing methodologies to ensure all WTO members gain from trade is the pragmatic one. The DCs have figured out how to use their numbers within the WTO to their advantage and are increasingly negotiating in blocs on a strategic basis.<sup>68</sup> There is widespread dissatisfaction among these countries with

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64. JOHN RAWLS, A THEORY OF JUSTICE 10-13 (rev. ed., Harvard Univ. Press 1999) (1971).

65. *Id.* at 13.

66. This seems to have been a matter of choice rather than a determination that the principles would not translate. For critiques of Rawls on this point, see THOMAS POGGE, WORLD POVERTY AND HUMAN RIGHTS 15-19 (2002); Petersmann, *supra* note 56.

67. JUST ET AL., *supra* note 54, at 8.

68. Such as the different negotiating groupings within the current Doha Round.

what they perceive to be a lack of sufficient attention to the “development” focus the DDA is meant to have. These countries have signalled—first in Seattle and next in Cancun—that they are unlikely to consent to an agreement that doesn’t provide them with meaningful benefits.<sup>69</sup> Thus as a practical matter, if the countries currently benefiting from trade liberalization want to benefit further, they are going to have to become more responsive to the demands of a sizeable portion of the WTO membership.<sup>70</sup> Furthermore, the current winners—particularly the United States and EC—would likely gain in terms of security if the wealth generated through trade was enjoyed more widely by the membership as a whole.<sup>71</sup>

#### IV. OPTIONS FOR TURNING LOSERS INTO WINNERS

This article takes the position that the winners in the WTO should compensate the losers up to a level where they too become winners. There are an infinite number of ways this could be achieved, and I do not seek to identify any single solution as optimal. Instead, this section first suggests the steps WTO members should take to minimize the need for compensation, then sets forth various considerations with respect to who should receive compensation and in what manner. Finally, it critiques a nonexclusive range of compensation options.

##### A. *Minimize the Need for Compensation*

The need for compensation can be minimized through a combination of demand-side and supply-side measures. On the demand side, the more market access is provided, the more DCs will benefit. On the

69. See Lamy – Geneva Consensus, *supra* note 5, at 3 (noting the importance of spreading the benefits of trade liberalization broadly “to avoid social resistance leading to a backlash against trade liberalization”).

70. In addition, the longer it takes to accomplish a successful trade round, the more members will turn their backs on the multilateral system and pursue bilateral and regional free trade agreements (“FTAs”). The proliferation of FTAs is already making it harder to negotiate multilaterally. See, e.g., Meredith Kolsky Lewis, *The Free Trade Agreement Paradox*, 21 N.Z. U.L.R. 554, 561 (2005) (linking the recent increase in FTAs to the failed Seattle and Cancun ministerials); Peter Sutherland, *The Doha Development Agenda: Political Challenges to the World Trading System – A Cosmopolitan Perspective*, 8 J. INT’L. ECON. L. 363, 366 (2005) (same).

71. Although it has been noted that some members of Al Qaeda have come from affluent families, the general incidence of war and terrorism historically has been greater in countries with weak economies. See, e.g., S. Brock Blomberg et al., *Economic Conditions and Terrorism*, 20 EUR. J. POLIT. ECON. 463, 463-78 (2004) (linking economic weakness with incidences of terrorism and discussing empirical evidence linking adverse economic circumstances with incidences of war).

supply side, Aid for Trade and more traditional forms of trade-related technical assistance can help members take advantage of new market access opportunities. These measures should not be considered to be the compensation, but rather as ways the WTO can reduce the need for compensation.

### 1. The Demand-Side Constraints on DCs

With respect to the demand side, in the first instance, WTO members should reflect upon their institutional and aspirational goals and determine what forms of trade liberalization would and would not meet these dual goals.

The most significant gains to DCs could be realized on the demand side through the lowering of agricultural tariffs and subsidies, doing away with the tariff escalation that hampers struggling countries' ability to export value-added products, simplifying methods for complying with rules of origin requirements, and through liberalizing the movement of people as service suppliers under GATS Mode 4.<sup>72</sup> Those problems can perhaps be characterized as "us against them" issues, in that the developed and less developed countries largely see, whether rightly or wrongly, one side's gain on these issues as the other side's loss. However, for purposes of minimizing the number of members getting a smaller slice of pie and thus requiring compensation, these issues need to be considered in the context of ensuring that trade negotiations are beneficial to all WTO Members.

While it is the case that trade benefits are recognized unevenly, that unevenness can be exacerbated or ameliorated depending on the types of liberalization undertaken. The TRIPS Agreement, for example, provides little in the way of benefit to the WTO's poorest countries, and indeed may not even have a positive effect on aggregate global welfare.<sup>73</sup> Yet it can be very costly to implement the legal and administrative reforms necessary to comply with that Agreement. The WTO

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72. See, e.g., Cline, *supra* note 57 (estimating that a shift to global free trade would lift 500 million people out of poverty within fifteen years); U.N. Conference on Trade and Dev. [UNCTAD], Div. on Int'l Trade in Goods and Services, and Commodities, *Export Performance and Its Determinants: Supply and Demand Constraints* 25, U.N. Doc. UNCTAD/ITCD/TAB/27 (2004) (prepared by Marco Fugazza), available at [http://192.91.247.38/tab/pubs/itcdtab27\\_en.pdf](http://192.91.247.38/tab/pubs/itcdtab27_en.pdf) (finding that supply capacity is related to market access because "[b]etter access to international markets would imply higher expected returns from export activities") [hereinafter "UNCTAD Export Performance Report"].

73. See Howse, *supra* note 58, at 102 (observing that certain of the new WTO rules, including TRIPS, have more ambiguous welfare effects than do traditional rules limiting or removing tariffs

membership could build into the trade negotiation round process an analysis of what the round as a whole is aimed towards delivering in terms of better market access or other benefits to members. This analysis would give enough room for an agreement such as TRIPS that primarily benefits developed members to be entered into, but would require concessions on market access and other issues likely to generate increased trade flows for the countries that would not stand to benefit—and those that would in fact likely only incur expenses—as a result of the TRIPS-type agreement.<sup>74</sup> While this is arguably what happens in practice through the negotiating process, at present this occurs in an us-them/give-take posture. The process could be reformed to make it a prerequisite for a deal that clear benefits be attained by the DCs, rather than this being something which members must fight to obtain.

Likewise, member countries should assess concessions critically in light of the WTO's development objectives and the need to have all countries benefit. For example, members need to ensure that the agreement reached in Hong Kong to provide all LDCs with duty-free market access on 97 percent of products by 2008 is not rendered inutile by countries retaining protective tariffs on precisely the products LDCs wish to export.<sup>75</sup> One study demonstrates that this three percent carve-out may lead to the exclusion of as many as 330 tariff lines.<sup>76</sup> One

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and quotas, and that such rules cannot be justified by Kaldor-Hicks efficiency as there may in fact not be an increase in overall welfare).

74. Stiglitz and Charlton suggest that an impact assessment be conducted to determine how different proposals would affect different countries. They would also require that any package deal—at least in a development round—be progressive, with the benefits accruing more to DCs. See JOSEPH E. STIGLITZ & ANDREW CHARLTON, *FAIR TRADE FOR ALL: HOW TRADE CAN PROMOTE DEVELOPMENT* 68-77 (Oxford University Press 2005). While there would be obvious problems with determining in an objective way whether countries would benefit, it might aid the DCs in the negotiating process if there were some formalized expectation with respect to the substantive outcomes.

75. This three percent loophole is big enough to protect certain sensitive industries in developed countries, such as textiles in the United States and leather and rice in Japan. See *Daily Update on the Sixth Ministerial Conference*, BRIDGES (Int'l Centre for Trade & Sustainable Dev., Geneva, Switz.), Dec. 15, 2005, available at [http://www.ictsd.org/ministerial/hongkong/wto\\_daily/15\\_December/en051215.htm](http://www.ictsd.org/ministerial/hongkong/wto_daily/15_December/en051215.htm).

76. *Daily Update on the Sixth Ministerial Conference*, BRIDGES (Int'l Centre for trade & Sustainable Dev., Geneva, Switz.), Dec. 19, 2004, available at [http://www.ictsd.org/ministerial/hongkong/wto\\_daily/19percent20December/en051219.htm](http://www.ictsd.org/ministerial/hongkong/wto_daily/19percent20December/en051219.htm). The United States has already managed to exempt textiles from this concession, arguing that such countries as Bangladesh and Cambodia are too competitive. See Briefing by Senior U.S. Gov't Officials, Office of the U.S. Trade Representative (Dec. 15, 2005), available at [http://www.ustr.gov/Document\\_Library/Transcripts/2005/December/](http://www.ustr.gov/Document_Library/Transcripts/2005/December/)

option in this regard would be to ensure that each LDC be able to identify a certain number of lines of tariff code—let’s say ten, for argument’s sake—that are the most important for their potential export success. The developed countries could then agree to bring tariffs on those lines to zero for exports from that particular country (in other words this would not be on an MFN basis across LDCs). In that way the members could permit protection for sensitive products while ensuring that the three percent clawback could not be used to essentially shut the LDCs out of all potential export markets.

As a practical matter this proposal should not have strong opposition. The amount of trade impact any one LDC could have on a developed country through improved access on ten tariff lines would be quite low. However, the benefits to the LDC would be quite high. Yet such ideas need to be given prominence on an agenda in order to gain momentum. In this respect it is of critical importance to build into the negotiating ethos the need to ensure beneficial outcomes for DCs.

## 2. The Supply-Side Constraints on DCs

While market access is of significant importance to DCs, it alone is not enough to significantly enhance the export performance of some countries, particularly the LDCs. Studies have demonstrated that even schemes such as the European Union’s Everything But Arms (“EBA”) initiative and the United States’ Africa Growth and Opportunity Act (“AGOA”), which give duty-free access to the vast majority of products from LDCs, have done little to improve these countries’ export performance.<sup>77</sup> Supply-side constraints are often too significant to take advantage of increased market access. LDCs have weak investment climates and it is often costly to operate a business or run a farm with

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Briefing\_by\_Senior\_US\_Government\_Officials,\_World\_Trade\_Ministerial,\_Hong\_Kong\_Convention\_Exhibition\_Center.html.

77. JOSEPH E. STIGLITZ & ANDREW CHARLTON, A DEVELOPMENT ROUND OF TRADE NEGOTIATIONS? 8 n.24 (2005), available at [http://www2.gsb.columbia.edu/faculty/jstiglitz/download/2004\\_Charlton\\_Stiglitz.pdf](http://www2.gsb.columbia.edu/faculty/jstiglitz/download/2004_Charlton_Stiglitz.pdf) (noting the minimal effect these initiatives have had for recipient countries. In particular, EBA only liberalized market access on 919 products that had not previously been given duty-free status pursuant to other preferential arrangements, and of these products, LDCs exported only 80 to the EC in 2001). See also UNCTAD Export Performance Report, *supra* note 72, at iii (identifying poor supply side conditions as a factor constraining the ability of certain countries, particularly in Africa and the Middle East, to take advantage of foreign market access).

export markets in mind.<sup>78</sup> These countries need better roads, ports, and production capacity, access to technology, and government policy support among other things, in order to expand their production for export.<sup>79</sup>

Accordingly, trade-related aid is often discussed in the context of improving supply side factors. The Aid for Trade movement has led to vast sums of money being promised for trade-related capacity building and other efforts to assist countries in taking advantage of market access opportunities.<sup>80</sup> As outlined in Part II, *supra*, the Aid for Trade initiative is designed to provide significant levels of supply-side assistance to LDCs and certain developing countries. In addition to Aid for Trade, there are at present a variety of other initiatives underway to help DCs integrate themselves further into the world trading system. Two that are of particular importance are discussed briefly below.<sup>81</sup>

a. *The Integrated Framework for Trade-related Technical Assistance to Least-Developed Countries*

The first initiative is the Integrated Framework for Trade-related Technical Assistance to Least-Developed Countries (“IF”), which was launched at the December 1996 Singapore Ministerial Meeting. The IF brings together six agencies— the IMF, World Bank, WTO, U.N. Conference on Trade and Development (“UNCTAD”), the International Trade Centre (“ITC” - the technical cooperation agency of UNCTAD and the WTO) and the U.N. Development Program (“UNDP”)— to

78. See Bernard Hoekman, Paper Presented at Trade Meeting: Assessment of the Hong Kong Round 1: *Moving Forward After Hong Kong: Beyond Market Access*, (Feb. 2-3, 2006), available at <http://www0.gsb.columbia.edu/ipd/programs/item.cfm?prid=24&iyid=5&itid=795>.

79. See Joseph E. Stiglitz & Andrew Charlton, Aid for Trade: A report for the Commonwealth Secretariat, Presented at Conference on Trade and Development 18 (Mar. 21-22, 2006) available at <http://www.globalpolicy.org/soecon/trade/2006/03tradeaid.pdf>.

80. The EC, Japan, and United States have each announced very significant planned spending on Aid for Trade over the next several years. At the Hong Kong Ministerial the EC announced planned spending of \$2.4 billion a year by 2010. The United States indicated its intention to reach \$2.7 billion per year in Aid for Trade grants by 2010. And Japan committed to spending \$10 billion over three years. It is unclear how much of these pledges represent funds already committed in other contexts. See AGENCY FOR INT’L TRADE INFO & COOPERATION, BACKGROUND NOTE: AID FOR TRADE: A MOVING TARGET (2006), available at [http://www.odi.org.uk/iedg/Projects/Aid4trade\\_files/aitic.pdf](http://www.odi.org.uk/iedg/Projects/Aid4trade_files/aitic.pdf).

81. Donor countries and organizations have also pledged money through the WB and IMF Aid for Trade initiative and to the DDA Global Trust Fund, which also provides trade-related technical assistance, particularly to LDCs and countries without representation in Geneva.

collaborate with donors to ensure greater coherence.<sup>82</sup>

The IF has four main processes: 1) Awareness, which entails building on the importance of trade for development; 2) Diagnostic Trade Integration Studies (“DTIS”) to identify constraints to traders, sectors of greatest export potential, and a plan of action for integrating into the global trading system; 3) Integrating the plan of action into the national development plan, such as the Poverty Reduction Strategy Process (“PRSP”); and 4) Implementation of a plan of action in partnership with the development cooperation community.

The concept is that through multiple agencies coordinating there will be more coherence, less waste, and less overlap in the provision of trade-related technical assistance.

b. *Joint Integrated Technical Assistance Programme*

The second initiative is the Joint Integrated Technical Assistance Programme (“JITAP”), which was launched by the WTO, UNCTAD and the ITC to provide technical assistance to selected LDCs. At present all of the participating countries are in Africa.<sup>83</sup> Initially there were eight countries participating and this has now been expanded to include an additional eight. The focus of JITAP is primarily capacity building to help participating countries with the following:

- Participate in the World Trade Organization;
- Integrate into the new Multilateral Trading System; and
- Take advantage of new trade opportunities arising from the globalization of world markets.

Through this program, the WTO has provided reference centers in the selected countries.<sup>84</sup> JITAP operates through a Common Trust Fund (“CTF”) funded by donor countries. The CTF operates through two windows. Window one, which started with three countries and expanded to 14 in 2003, applies donor contributions towards diagnostic studies, program development, and other preliminary activities in needy countries. For window two, up to \$1 million in bridging funding can be provided for priority needs in specific countries. Window two activities only take place once case resources have actually been re-

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82. Gregory Shaffer, *Can WTO Technical Assistance and Capacity Building Save Developing Countries?* in *DEVELOPING COUNTRIES IN THE DOHA ROUND: WTO DECISION-MAKING PROCEDURES AND NEGOTIATIONS ON TRADE IN AGRICULTURE AND SERVICES* 185, 204 (Ernst-Ulrich Petersmann ed., 2005).

83. See Joint Integrated Technical Assistance Program General Information, *available at* <http://www.jitap.org/info-e.htm>.

84. Shaffer, *supra* note 82, at 204-05.

ceived from donors.<sup>85</sup> Although this program has been well received, there have been some implementation problems. In particular, following the window one diagnostic studies, the LDCs did not receive the window two funding from donor organizations that had been anticipated.<sup>86</sup>

### 3. Improving the Supply-Side

The WTO has taken a number of steps in recent years to address supply-side capacity of LDC and DC members, including trade-related technical assistance and capacity programs. This section proposes some further measures the WTO could take institutionally with the assistance of available funds from Aid for Trade that would enhance DCs' trade performance and WTO participation.

#### a. *Additional Technical Assistance and Capacity Building*

##### i. More Representation in Geneva

Within its traditional competence, the WTO could provide funding to give the LDCs and other needy countries more representation in Geneva. There is always much talk about ownership and capacity building, and many resources have been spent on capacity building programs. But ownership would be greatly strengthened if every WTO member had some real opportunity to participate in Geneva.<sup>87</sup> This is a problem because there are a number of countries that currently have no representation at all in Geneva and others that have only a skeleton staff of one or possibly two individuals. None of the Pacific Islands (PI) WTO members (PNG, Fiji, Solomon Islands, Tonga) or observers (Samoa, Vanuatu) has permanent representation. The cost, financially and in terms of resources, is too high. The WTO has addressed this problem in part by helping to establish the PI Forum Representative Office in Geneva, which has recently started facilitating rotating six month placements in Geneva for PI trade officials. Nonetheless, most

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85. See Joint Integrated Technical Assistance Programe, *supra* note 83.

86. The World Bank blames donors for not coming through. *Id.* at 210 & n.105.

87. See Ann Capling, *The Multilateral Trading System at Risk? Three Challenges to the World Trade Organization*, in *THE WTO AND THE DOHA ROUND: THE CHANGING FACE OF WORLD TRADE* 37, 52-53 (Ross P. Buckley ed., 2003) (noting that many developing and least-developed countries have no delegation in Geneva or only a skeleton staff of one or two people).

of the countries have no direct participation most of the time.<sup>88</sup> The Consultative Board report acknowledges that WTO members can not fully participate without Geneva representation, but frames the problem more in terms of the poorest countries' failure in not having officials in Geneva rather than as a significant resource problem.<sup>89</sup>

The WTO could address this problem in a number of ways. One option would be, for each country not currently represented, to fund a full-time representative to live in Geneva. But there are also more cost-effective options. One of these would be to expand the PI Forum Representative Office program to fund multiple individuals from each of the regions that currently do not have full representation. So there would be, for example, housing for x representatives from Africa, x from the Caribbean, and x from the Pacific, and those countries could rotate representatives. Another option would be to install and maintain internet/WAN connections in the relevant ministries of the PI and other low-income members such that these countries would have closed circuit access in their relevant ministries to WTO proceedings and could participate via video conference. This way, even if Geneva representation is not always possible financially or in terms of physical resources, at least countries could meaningfully participate in WTO proceedings.<sup>90</sup>

ii. E-training

The second suggestion follows on the video conference concept described above, but is in the context of providing training. Capacity building through training has been fairly labor intensive thus far. More people could be trained, however, and in a more timely fashion through the addition of videoconference training sessions in which officials and other interested parties from multiple countries could participate. At present, regional training sessions only make it to regions such as the South Pacific or the Caribbean every few years. If instead there were sessions held by time zone band and by video conference, more training would be available and accessible to the countries that don't have significant representation in Geneva. Since

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88. A number of Latin American and Caribbean countries also lack permanent representation in Geneva. See Aid for Trade Task Force, *Communication from the Inter-American Development Bank Integration and Regional Programmes Department*, at 4, WT/AFT/W/13 (May 24, 2006).

89. See McRae, *supra* note 17, at 607; Consultative Board Report, *supra* note 16.

90. International organizations could work together to provide such connectivity, which could then be used for virtual participation in the meetings of various organizations, including the World Bank and IMF as well as the WTO.

these sessions generally go over a number of days, questions could be handled by having them be submitted via e-mail at the end of each day, and then the presenters could answer them on the last day, or answer questions from each region in turn.

These two technology-related initiatives could be pursued jointly with the World Bank and IMF such that access is also provided to relevant meetings and trainings conducted by those organizations.<sup>91</sup>

iii. Expanding JITAP

A further step the WTO could take to enhance technical assistance would be to help (through funding and otherwise) expand the JITAP to other LDCs. Logical next steps would be to have a Caribbean initiative and a South Pacific one.

b. *Increasing Coherence*

The second category of measures the WTO could take would be designed to increase coherence in the trade-related technical assistance process. As noted above, the IF is designed in part to minimize duplication and to provide the right training to the right recipients. Likewise, the WTO and OECD secretariats launched a DDA Trade Capacity Building Database in 2002 to assist development and trade policy communities in achieving higher levels of coordination and coherence, information sharing, and avoiding duplication. Notwithstanding these efforts, something further is necessary to increase coordination and coherence. A small personal anecdote illustrates the point.

In 2005 a colleague and I were funded by the New Zealand aid agency, NZ AID to provide Vietnam with capacity-building workshops on WTO issues. On our first day of workshops in Hanoi, we learned that in the conference room adjacent to ours, a team of Australian lawyers—funded by an Australian government agency—was providing training on antidumping law. While our sessions did not overlap significantly in substance, they easily could have. We had not known about the Australian training nor they of ours. Our primary contact at the New Zealand Embassy also knew nothing of the other training. If it had been

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91. The WTO has recently initiated an online distance learning project entitled “WTO eTraining.” See generally the Committee on Trade and Development’s 2007 Technical Assistance Training Plan WT/COMTD/W/151, available at [http://www.wto.org/english/tratop\\_e/devel\\_e/teccop\\_e/tct\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/teccop_e/tct_e.htm). This is a positive development but does not obviate the need for other forms of remote-access training.

requested, we could have included antidumping in our training. Presumably there were attendees at each of the workshops that would have benefited from going to the other one. This is not an isolated phenomenon. When this point was raised at a recent WTO conference, several attendees chuckled knowingly and indicated that they too had recently provided training in Vietnam, in one case a program lasting several months. Some of this training has clearly overlapped, and it is unlikely that Vietnam is alone in this regard.

As such it would be valuable both for the recipients of training and donors if there were better, or perhaps more accessible, information exchange. Although some bilateral assistance is reported in the OECD/WTO database, this is not done comprehensively. It would therefore cut down on duplicative efforts to have a common repository of information that donors should contribute to when they have provided training and can access when discussing what training will be provided. While one can currently access some information through the OECD/WTO database, it is at a macro level and needs to be more specific.

c. *Adjustment Assistance*

A further area in which the WTO could act is in adjustment assistance. There is a cost-benefit problem of implementing some of the Uruguay Round Agreements for the smallest and poorest WTO members. Implementing certain agreements—particularly TRIPS and the SPS and TBT Agreements—are resource intensive. This is problematic for small economies because they will not recognize substantial gains from these agreements, at least not in the short run, and therefore they do not want to have to implement them.<sup>92</sup> For example, as of January 2000 it was estimated that up to ninety WTO Members had failed to bring their domestic regulations and facilities into compliance with the SPS, customs valuation, and TRIPS agreements. This is unsurprising given the significant investments needed in some instances to upgrade existing mechanisms.<sup>93</sup> The high cost of meeting regulatory requirements such as health and safety standards may also prevent DCs from taking advantage of market access opportunities.<sup>94</sup>

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92. See Bernard Hoekman, *Operationalizing the Concept of Policy Space in the WTO: Beyond Special and Differential Treatment*, 8 J. INT'L ECON. L. 405, 407 (2005).

93. Stiglitz & Charlton, *supra* note 79, at 16 n.29. For example, Hungary spent over \$40 million to improve the sanitation levels in its slaughterhouses, and Mexico expended over \$30 million to update its intellectual property laws. *Id.*

94. Hoekman, *supra* note 92, at 410.

In addition, for subsistence economies in particular, there is a disincentive to lower tariffs quickly because these countries rely relatively heavily upon tariff revenue.

In light of these problems, the WTO could take various steps to facilitate the adjustment burden on the LDCs and small economy members.

i. Compensate for Lost Tariff Revenue

The LDCs and small countries for which tariff revenue has historically been important could be compensated for the tariff revenue they will forego upon reducing tariffs. For many countries, including LDCs and the smaller island members, tariffs have provided an important component of national income. As such these countries are particularly reluctant to lower their tariffs and want to prolong the tariff reduction process as long as possible. However, these countries also have the potential to recognize meaningful gains upon the reduction of their tariffs. First, consumers will benefit from lower prices. Second, producers within the country will benefit from cheaper inputs. And third, the exporting countries—which are often LDCs as well—will benefit from increased trade flows. Accordingly it is worthwhile to encourage LDCs to reduce their tariffs more expeditiously. For this reason LDCs that reduce their tariff rates significantly and quickly could receive some form of compensation for the foregone revenue. This would allow the LDCs' consumers and producers to benefit immediately from lower prices but would not strip the country of important income. This aid could be in the form of a direct cash transfer, for it is cash into the governments' coffers that is being sacrificed. While there are obviously concerns about corruption and other reasons leading donors to be hesitant about untied aid, for this purpose—replacing foregone tariff revenue—the money arguably should be untied. Although this may not be politically feasible, it must be recognized that the more conditions that are put on aid to replace tariff revenue, the less willing the LDCs will be to lower tariffs more quickly and substantially.

ii. Identify economies of scale to reduce adjustment costs

The WTO could take steps to help countries identify economies of scale to reduce their adjustment costs. For example, if a group of countries in a region worked together, they could perhaps develop a unified SPS procedure. Thus the Pacific Island countries could agree that all agricultural exports would go through an agreed inspection process in Fiji which they would all fund so that each small country did

not have to have its own SPS facilities. The WTO could facilitate this process through regional studies modeled on the current trade policy review procedure or through coordinated studies with another organization such as the International Trade Centre.

B. *Determine Who Will Compensate Whom*

Once members have institutionalized a methodology for minimizing the number of losers through demand-side and supply-side measures, there will still—because perfect market conditions do not exist—be members at any given time that are not benefiting from trade liberalization. The next question therefore is who should compensate whom. Identifying the winners and losers may not be as straightforward as it may seem. For example, the United States and European Union would consider themselves to be making concessions if they agreed to cuts in agricultural subsidies and tariffs. Yet the biggest financial beneficiaries of such cuts would likely be the United States and EC themselves, as they would no longer be spending vast sums of money on these trade-distorting measures. One option therefore would be not to try to determine exact winners and losers, but instead to treat all developed countries as winners and all LDCs as losers. This would be highly inexact, however. It would also have the disadvantage of conceptually likening the compensation to a form of development aid. Rather than viewing the compensation as aid, or as a give away, it should be viewed as an appropriate mechanism to redress and therefore validate the inherent imbalances in the system. As such, it would be preferable to attempt to determine a mechanism that would measure winners and losers according to agreed-upon criteria. A further issue that would need to be resolved is whether all winners would contribute, and if so, would they contribute at equal rates. One possibility would be for winners to contribute progressively more based on their level of development. Another would be for DCs to contribute a much smaller, token percentage—or a modest flat fee—even if they were deemed to be major winners. Likewise, perhaps the LDCs and poorer DCs would not contribute even if they were showing gains from trade due to their current economic status and relative disadvantage in the global economic order.

Winners could be measured by increases in GDP due to trade over a period of time, and likewise for losers. This determination would encompass factors such as revenue lost as a result of lowering tariffs and could include adjustments to take into account trade distorting measures countries employ. Thus for example if a country were a net exporter but granted significant subsidies, it would be treated as a

bigger winner and thus be expected to contribute a higher amount than a net exporter that gave no subsidies.

C. *Determine the Form of Compensation*

Compensation could take a variety of forms, ranging from trade-related technical assistance to increased market access, to direct or indirect monetary transfers.

Indirect technical assistance is not an optimal form of compensation for a few reasons. First, the less direct compensation is, the more it will take to turn a loser into a winner. Second, winners in the WTO are not constrained by other WTO members in how they use their GDP; likewise countries that are made winners indirectly also should not be so constrained. Third, this approach would be duplicative of what the WTO is and should be doing already in the form of providing trade-related technical assistance, and would also be duplicative of efforts that will be undertaken pursuant to Aid for Trade. The compensation mechanism ideally should be a means unto itself, rather than being linked to supply-side assistance measures.

It could be argued that the WTO already incorporates adjustments to reflect the fact that there are winners and losers, particularly through the principle of special and differential treatment.<sup>95</sup> However, special and differential treatment is at best an incomplete solution. In its current form, the preferential market access that developed countries provide to LDCs (and in some cases to developing countries), often excludes the sectors of most importance to the purported recipients. Furthermore, preferential schemes pursuant to the Generalized System of Preferences often impose significant conditions before the benefits can be realized.<sup>96</sup> But more generally, whether one considers special and differential treatment to be helpful or harmful to DCs, this is a question that goes to the best ways to minimize the number of losers, not the question of how to compensate the losers.

A related issue is whether compensation should be provided for preference erosion. In the longer term, special and differential treatment, even when implemented without exceptions, will be less and less

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95. See, e.g., Frank J. Garcia, *Building a Just Trade Order for a New Millennium*, 33 GEO. WASH. INT'L L. REV. 1015, 1051-52 (2001) (identifying special and differential treatment as the "cornerstone" to the WTO's approach to addressing inequality).

96. For additional problems with special and differential treatment, see generally Frank J. Garcia, *Trade and Inequality: Economic Justice and the Developing World*, 21 MICH. J. INT'L L. 975 (2000).

meaningful as overall tariff rates come down. Some have therefore suggested that members should compensate DCs for the decrease in preferential access resulting from MFN-consistent trade liberalization.<sup>97</sup> Others do not believe DCs should be compensated for preference erosion because the countries who will suffer from preference erosion are not the countries most in need of assistance. It also can be argued that trade liberalization itself will result in benefits to LDCs that exceed the disadvantageous effects of preference erosion.<sup>98</sup> The issue of compensation for preference erosion is perhaps best addressed not in the context of compensating losers until they become winners, but rather in the context of determining whether or not a member is a loser at any given time.

Direct transfers of money would provide the most utility to recipient members, but would raise concerns about corruption and the potential for misuse. Accordingly, perhaps the best solution would be one whereby the losers would be given compensation in the form of money, but the money would be spent on projects or items identified by the loser countries with few limitations. In this way, there could be some controls to ensure the money wasn't going straight into the pockets of corrupt officials, but the losers would still maintain a significant degree of autonomy over how to use the compensation.

#### D. *Determine How Much Compensation*

Next, there needs to be agreement as to how much the winners should pay. This again is an issue for which there is no right answer, so long as the winners pay enough for the losers to also become winners. That said, the compensation should be a relatively small percentage of

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97. Some have argued that because further liberalization will have an adverse effect on those currently benefiting from preferences, the "obvious" solution is to compensate those suffering preference erosion through some sort of transfer mechanism. See, e.g., International Monetary Fund [IMF], *IMF Working Paper: The WTO and the Poorest Countries: The Stark Reality*, at 3-4, IMF Doc. WP/04/81 (May 2004) (prepared by Aaditya Mattoo & Arvind Subramanian), available at <http://www.imf.org/external/pubs/ft/wp/2004/wp0481.pdf>; Bernard Hoekman & Susan Prowse, *Economic Policy Responses to Preference Erosion: From Trade as Aid to Aid for Trade* 16 (World Bank, Working Paper No. 3721, 2005); SHEILA PAGE & PETER KLEEN, SPECIAL AND DIFFERENTIAL TREATMENT OF DEVELOPING COUNTRIES IN THE WORLD TRADE ORGANIZATION 16-17 (2004), available at [http://www.egdi.gov.se/pdf/study/40725\\_G1 percent20Dev percent20Stud percent202.pdf](http://www.egdi.gov.se/pdf/study/40725_G1%20Dev%20Stud%20202.pdf) (suggesting that, because MFN-based liberalization is a public good, compensating DCs in this fashion should not be considered aid but rather as a part of the trade liberalization process. Page and Kleen argue that a compensation fund could be operated out of the WTO, with funding allocated unconditionally to Members on the basis of their lost preferential access).

98. Cline, *supra* note 57.

the overall benefits from trade, such that incentives to export would still be high, and those not faring well in the system would still have an incentive to try to improve their performance. This would create a win-win situation whereby both winners and losers would stand to gain from increases in international trade.

Stiglitz and Charlton propose a three-part commitment, with the advanced industrial countries contributing 0.05 percent of their GDP to a new aid-for-trade facility, the Global Trade Facility, which would be administered by an independent secretariat within UNCTAD.<sup>99</sup> In addition, advanced industrial countries would be expected to commit a small percentage of the value of their exports to LDCs as additional payments. Finally, there would be a further commitment of five percent of the value of agricultural subsidies and 15 percent of arms sales to DCs.<sup>100</sup>

Stiglitz and Charlton go on to propose that middle-income countries also contribute to the LDCs, but with their contribution being at a significantly lower rate, perhaps 25 or 50 percent that of the wealthiest countries.<sup>101</sup>

The third requirement seems impractical as developed countries are unlikely to agree to such a calculus. More palatable could be agreeing, in the context of the Doha negotiations, to special remedies DCs could utilise to offset the impact of agricultural subsidies. Arms sales, while undeniably a political problem, are not an appropriate linkage for the provision of additional aid. The rationale behind the second requirement is not immediately clear. Countries that benefit from exporting will be contributing accordingly through the first mechanism. Requiring net exporters to pay more does not make sense, particularly if there is no nexus between the exports and the provision of any governmental aids to promote those exports. For example, New Zealand is a net exporter of agricultural products but grants no governmental subsidies or other support to its agricultural sector. Why should New Zealand have to pay an additional amount based on its fairly traded exports, when Japan, which imposes significant tariffs on agricultural imports, would not have to pay an additional amount?<sup>102</sup>

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99. Stiglitz & Charlton, *supra* note 79, at 24.

100. *Id.* at 25.

101. *Id.* Stiglitz and Charlton further suggest that middle-income countries could provide some of their assistance as in-kind aid rather than in financial contributions. *See id.*

102. A further problem with Stiglitz and Charlton's scheme is the suggestion that the governance structure for the GTF comprise a board of 24 with only eight seats for the advanced industrial countries (and eight each for LDCs and middle income countries). *Id.* at 24. While it is

Nonetheless, the first requirement has some appeal. Without expressing any view as to the appropriateness of the formula proposed, one can see the draw of linking commitments to GDP. A better formulation however would be one that explicitly linked commitments to the gains from global trade.<sup>103</sup> Likewise, a preferable compensation scheme would be one that wasn't linked to the provision of Aid for Trade or technical assistance but which instead was simply compensation.

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Pascal Lamy's recent speech recognizing the necessity of going beyond market forces to ensure that the gains from trade are realized equitably may represent the beginnings of a major shift in the WTO's institutional mindset. Such a shift would be welcome and timely. The WTO is currently floundering in its efforts to satisfy its aspirational goals while remaining true to its focus on opening markets. To move forward with the buy-in of all members, including the most vulnerable, the WTO membership needs to broaden its focus beyond merely expanding the size of the pie to also ensuring that each member receives a bigger slice. By adopting the Kaldor-Hicks framework and committing to actually taking some of the gains from trade to make the losers into winners, the WTO could go a long way towards reconciling its trade promotion and development objectives.

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desirable to have a structure that gives the recipients more control over the aid process than exists in, for example, the IMF, it seems highly unlikely that the major sources of the aid are going to agree to effectively cede all control over how that aid is distributed.

103. Stiglitz and Charlton state that commitments should be tied to the benefits attained through global trade, with particular focus on trade with DCs. However, the formulation based on GDP is not in fact directly linked to trade gains. *See id.* at 25.