Options for Global Trade Reform

A View from the Asia-Pacific

Will Martin and Mari Pangestu

CAMBRIDGE
UNIVERSITY PRESS

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge CB2 1RP, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge CB2 2RU, UK
40 West 20th Street, New York, NY 10011-4211, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain
Dock House, The Waterfront, Cape Town 8001, South Africa

http://www.cambridge.org

First published 2003

Printed in the United Kingdom at the University Press, Cambridge

Typeface Plantin 10/12 pt *System* LaTeX 2ε [TB]

A catalogue record for this book is available from the British Library

ISBN 0 521 82124 X hardback

Contents

Figures

Tables

1 An overview: options for global trade reform – a view from the Asia-Pacific

Will Martin and Mari Pangestu

Introduction: the setting and major themes

Prior to the successful Doha Ministerial in November 2001, the Asia-Pacific had played host to three of the most influential meetings on international trade and investment cooperation in the 1990s – the APEC Leaders' meeting in Bogor in 1994; the Singapore Ministerial meeting of the World Trade Organization (WTO) in 1996; and the WTO Ministerial meeting at Seattle in November 1999. The first of these, the APEC Leaders' meeting at Bogor in 1994, set the extremely ambitious goal of free and open trade and investment in the Asia-Pacific by 2020. The second, the initial Ministerial meeting of the new WTO, built on the ambitions of the Uruguay Round and added investment and competition policy, trade facilitation, and transparency in government procurement to the agenda. The third of these meetings, proved to be important in an entirely different way, and was unable to adopt even an agenda for further discussions. Only after a long period of hard work and preparation could agreement on a Doha Development Agenda be reached in November 2001 (WTO 2001a).

The failure of the Seattle Ministerial involved a number of elements, the most important of which related to poor preparation, the breadth of the agenda, and the approaches to be adopted in particular areas (Schott 2000). Inside the meeting, a key source of discord and dismay was the traditional divide on agriculture, between the group of industrial countries that protect their agricultural sectors, and the agricultural exporters – both developed and developing. A number of other sources of tension within the meeting were development-related. These included the slow phase-out of the quotas imposed by the industrial countries against developing-country exports of textiles and clothing, and the

problems created for developing countries by industrial country abuses of anti-dumping rules. Another set of development-related concerns focused on problems experienced by developing countries in implementing the commitments they undertook in the Uruguay Round, particularly in areas such as trade-related investment measures (TRIMs), Trade-Related Intellectual Property Rights (TRIPS) and the Customs Valuation Agreement. A final set of concerns – both inside the meeting and out in the streets – concerned rules for trade and the environment and the protection of workers' rights.

As Ruggiero (2000) has observed, the WTO is, in many respects, a victim of its own extraordinary success in being seen as relevant to many of the passionately held concerns of our era – vital issues such as development and poverty alleviation, protection of the environment, and protection of weak and vulnerable workers. Unlike the GATT, where faceless bureaucrats labored in obscurity on arcane issues of border protection on manufactured products, the WTO has succeeded in engaging the interests and attention of a wide range of activists and Non-Governmental Organizations (NGOs). This success has created an environment where it is much more difficult to make the compromises that are necessary to reach agreement. Clearly, it is likely to be much harder to reach compromises about methods of protecting much-loved endangered species than about tariffs on toasters.

At times, it has seemed that one of the few things uniting the protagonists is a shared recognition that there are many serious problems in the world trading system. Many deep divides, both within and between countries, had to be bridged before any agreement could be reached. As Wang and Winters (2000) predicted, a great deal needed to be done to even begin the process of "putting Humpty together again." Key elements in the success of the Doha Ministerial included good preparation, serious attention to developing country concerns, and a renewed focus on improving market access. An important feature was the agreement on TRIPS and public health, which was supported both by developing country trade policy makers and many western NGOs – two groups which shared little common ground in Seattle.

Developing-country concerns with the implementation issues arising from the Uruguay Round were dealt with through a special Ministerial Declaration (WTO 2001b) laying out the issues and proposals for dealing with each of them. Developing-country concerns about the risks of premature negotiations on the "Singapore Issues" of investment, competition, trade facilitation, and transparency in government procurement were allayed by agreement to defer negotiations on these issues until after the Fifth Ministerial in 2003. As Hoekman (2002) has emphasized, technical assistance and capacity building in developing countries

will be required if developing countries are to deal with many of the behind-the-border issues arising in areas such as trade in services, and the "Singapore Issues." The Ministerial Declaration recognizes this concern both through its commitments to provide technical assistance and capacity building in specific areas, and its built-in review of the adequacy of technical assistance.

Since the failure of the Seattle negotiations, and given the slowdown in progress on APEC-style concerted liberalization, there has been a dramatic upsurge of preferential regional arrangements in the Asia-Pacific. Scollay and Gilbert (2001) count over twenty such arrangements under consideration in the region. They note also that this, in many ways, reflects a return of the region to world-wide patterns of behavior. Between 1990 and 1998, the number of regional arrangements reported to the GATT world-wide more than doubled. While regional arrangements can have desirable economic features, this is largely the case where they take a form that will make them stepping stones towards broader liberalization (World Bank 2000). However, there is a serious risk that this emerging network of regional arrangements will introduce serious distortions into the world trading system. These distortions are likely to include the trade diversion that often eliminates meaningful gains from trade liberalization (Fukase and Martin 2001), and problems associated with differing rules of origin and standards measures.

It is frequently forgotten that the Most-Favored-Nation (MFN) principle enshrined in Article I of the GATT was not handed down *ex cathedra* but rather was found to be the most practical procedure for dealing with multiple regional arrangements in nineteenth-century Europe (Irwin 1992). Unless the reinvigoration of the multilateral system is maintained, however, it appears that the world may be set on a long and costly path to rediscovering this fundamental principle the hard way – through the operation of a plethora of uncoordinated regional arrangements. Analysis of the type presented in this volume of what might, instead, be achieved through multilateral negotiation, and how regional initiatives might complement multilateral initiatives, could have substantial payoffs.

It is now clear that lasting progress is to be made on today's enormously wide trade agenda needs the involvement and support of a range of organizations at the national, regional, and global level. In the Asia-Pacific, the inter-related institutions of Asia-Pacific Economic Cooperation (APEC) and the Pacific Economic Cooperation Council (PECC) are particularly important for a number of reasons. First, they provide fora in which developed- and developing-country members that account for close to 50 percent of world trade can meet and attempt to develop common understanding of issues in a non-confrontational environment. Secondly, an important component of their agenda is economic and technical

cooperation that helps developing countries strengthen their trade-related institutions in a way consistent with their development needs – helping to avoid or diminish many of the implementation problems of the type arising from the Uruguay Round.

The trade-related institutions of the Asia-Pacific will clearly face many opportunities and challenges in the coming years. The accession of China and Chinese Taipei to the WTO during 2001 will have major implications for world trade (Ianchovichina and Martin 2001), and for the world trading system (Martin and Ianchovichina 2001). Further, the crucial Fifth Session of the Ministerial Conference, at which it will become a little more clear whether the WTO has been able to adapt successfully to the changes in its environment, will be held in Mexico in 2003.

The present volume draws primarily on the expertise of authors from APEC member countries – expertise honed through participation in PECC fora. Preparation of most of the chapters involved authors from both developed and developing countries, and all of the studies take into account the needs and concerns of developing countries. Market access and related issues in agriculture, non-agricultural merchandise, and in services trade receive particular attention. Also examined in detail are the "Singapore" issues of investment, competition, and trade facilitation, on which WTO members are committed to deciding on modalities for negotiation in mid-2003. All of these critically important issues are analyzed in this volume with a view to identifying approaches by which progress might be made.

The primary aim of this volume is to improve understanding of the issues, the objectives of policy, and the options for trade policy reform. The volume is presented with sufficient rigor to be useful for the specialist in international trade, but in a manner that is accessible to the informed lay person. Since the trade agenda is so broad, no one person can be fully abreast of all its dimensions. For this reason, this volume brings together contributions from specialists in the major topic areas. Furthermore, since the development dimension is so important, it brings together contributors from both developing and developed countries, and draws on extensive background research undertaken by the trade team at the World Bank and the many analysts with which it works (see, for example, Hoekman and Martin 2001).

Six key themes emerge from the volume:

- ***Improving market access*** remains extremely important There remains a strong case for lowering the barriers that hinder access to markets, particularly where these barriers disproportionately hinder the exports of developing countries, as they do in all the major areas – agriculture, manufactures, and services.

- Some of the ***complex rules governing trade*** need to be rationalized in order to achieve greater transparency and better outcomes. This is particularly important in areas such as agriculture and services, where the regulatory framework is new.
- ***A broad agenda*** is likely to be needed to ensure that the now much broader export interests of developing countries are addressed (World Bank 2001), and the opportunities for coalition formation and bargaining across sectors and issues come fully into play.
- The ***development dimension*** is crucial, and needs to include improvements in market access for products of interest to developing countries, assistance to developing countries in implementing new and proposed policy reforms, and to ensure that future rules take into account the developing countries' capacity and needs.
- Policies on ***investment and competition*** are increasingly important at a national level, but progress on multilateral rules is likely to be very slow. Incremental reforms that build on current WTO agreements, and particularly on the investment provisions of the General Agreement on Trade in Services (GATS), might allow significant progress even in the absence of negotiations.
- On ***trade, the environment, and labor standards***, it is clear that the WTO cannot resolve all of the problems, although it may make some progress in the areas covered by the Doha agenda. The WTO and other organizations dealing with environmental and labor issues must cooperate in dealing with the critical problems that have emerged.

In the remainder of this introduction, we survey the issues covered in the volume.

Built-in agenda one: the negotiations in agriculture

In chapter 2 of this volume, Kym Anderson, Erwidodo, Tubagus Feridhanusetyawan, and Anna Strutt examine the potential for the ongoing negotiations in agriculture. They begin by examining the barriers in world agricultural trade, and observe that the price distortions resulting from these barriers are substantially larger than those in manufactures trade, in both industrial and developing countries. Globally, the average tariff rate on agricultural products is twice as high as in textile and clothing, and four times as high as on other manufactures. Given these very large distortions, they find that the global gains from agricultural trade reform will exceed those from liberalization of manufactures trade, despite the small share of agricultural products in world trade.

While the gains from further liberalization of agricultural trade are enormous, the difficulties associated with reform are also substantial.

These difficulties arise both from the political strength of high-cost agricultural producers in the European Union and Japan, and the special nature of the rules governing agricultural trade. The special nature of these rules is evident in each of the three broad areas of the Uruguay Round Agreement on Agriculture – export competition, market access, and domestic support. The fact that frequently discriminatory export subsidies continue to be tolerated distinguishes the rules on agricultural trade sharply from those governing trade in all other merchandise. The market access reforms involved sharp reductions from initial levels of protection – but these levels were inflated by devices such as "dirty tariffication" and the use of ceiling bindings. Further, the market access opportunities provided under the agreement are subject to a range of constraints that frequently result in these tariff rate quotas going unfilled.

The authors argue for an ambitious and broad agenda that would sharply reduce barriers to agricultural trade and allow the difficult decisions that need to be taken on agriculture to be balanced by benefits from increased market access in other areas. Reducing protection in agriculture will be difficult because so many of the tariff bindings in agriculture are far above current, or likely, levels of protection. This problem might be dealt with by formula-type reductions that reduce higher rates of protection more than lower rates. While the tariff rate quota system has many undesirable features in terms of transparency and equity, the best approach for dealing with it might be to expand the quotas in order to compensate some who lose from reductions in quota rents (Elbehri, Ingco, Hertel, and Pearson 2003). A broader agenda of the type adopted in Doha is seen as vital for success.

On agricultural trade rules, the authors believe that there is a strong case for adopting a generic approach, rather than attempting to devise agriculture-specific rules. The rules on domestic support for agriculture might, for instance, usefully be merged with the general rules on subsidies. Similarly, the rules on state trading might be integrated with future rules on competition policy and on domestic regulatory policies. Rules on trade and environment, and the range of other non-trade concerns identified in the negotiations to date, should also be generic, rather than agriculture-specific.

Market access in manufacturing

Florian A. Alburo in chapter 3 of this volume examines the reductions in protection brought about by the Uruguay Round. From this assessment, he concludes that substantial progress was made in the Uruguay Round in reducing tariffs, in increasing the share of products entering duty-free,

and in reducing tariff escalation. Despite this, it is clear that considerable potential gains remain available in the negotiations on market access for non-agricultural products initiated at Doha. Developing countries, in particular, pay relatively high duties on their exports of manufactures to both developed and developing countries. The use of contingent protection, and particularly anti-dumping measures, has also been increasing, imposing additional barriers on developing-country exports, and creating serious concerns about the value of market access offers.

The interests of East Asian developing countries in improved market access for manufactures are particularly strong, and have become much stronger in recent years as the shares of manufactures in their exports have risen. Since the barriers that they face in other developing countries are large, it is important that liberalization of manufactures trade should include developing countries as well as industrial countries. A key question that arises in this context is how liberalization might be achieved.

Alburo believes that the experience of the East Asian countries in achieving liberalization is likely to be a useful source of guidance in the design of policies for future reductions in manufactures trade. Here, he points to the experience of the ASEAN countries in designing modalities for a number of initiatives including the ASEAN free trade area, the Information Technology Agreement, and the APEC experience with concerted liberalization. The ASEAN free trade area built on an earlier, unsuccessful, scheme, and has been able to achieve substantial reductions in barriers through a scheduling procedure that provides incentives to include products of export interest, but also restricts countries' ability to exclude sensitive products in the longer term. The APEC experience with economic and technical cooperation provides a potential basis for trade capacity building, of the type highlighted in the Doha Ministerial.

Another key issue in manufacturing trade is the abolition of the quota regime that currently prevails in the market for textiles and clothing. Agreement to do this was reached in the Uruguay Round, with a ten-year phase-out period for the quotas under the Agreement on Textiles and Clothing (ATC). This agreement allowed the industrial country importers a substantial degree of flexibility in meeting their commitments to phase out the regime, flexibility that they used to delay most of the liberalization to the very last moment of the phase-out period, December 31, 2004. A consequence of this delayed reform is a heightened risk of backsliding in the industrial countries, and policy uncertainty that inhibits both adjustment in the industry and further progress in international negotiations.

In chapter 4 of this volume, Nattapong Thongpakde and Wisarn Pupphavesa examine the issues involved in returning textiles and clothing

to GATT disciplines. They first examine the nature of the adjustment process involved in the industry, noting that the outcome was considerably worse than the developing countries had expected in terms of the timing of liberalization. The text of the agreement specifies that textile and clothing products will be returned to GATT disciplines in four steps. But because the integration process involves all textile and clothing products, not just those under quota, the developing countries were able to select primarily unrestricted products for the first three stages of integration, thereby delaying the abolition of the quotas. On the other side of the coin, the disciplines of the ATC, and some key dispute settlement cases, made it much more difficult than expected to introduce new quotas under the safeguards provisions of this agreement. This has slowed the previously break-neck pace of introduction of new quotas against exports of textiles and clothing from developing countries.

The empirical studies reviewed by Nattapong and Wisarn conclude that abolition of the MFA was one of the most important components of the Uruguay Round Agreement, accounting for between a half and a third of the global welfare gains. Interestingly, the welfare gains from abolition of this iniquitous quota regime were largest for the industrial countries that imposed this regime and resisted its abolition for so long. The other group of important gainers from abolition is highly efficient exporters such as China, Indonesia, and the Philippines. Even for these efficient exporters, the market for textiles and clothing becomes much more competitive after abolition of the quotas. This increase in competitiveness both increases the return from productivity-enhancing reforms, and increases the losses from inaction or policy changes that raise costs. Exporters such as Hong Kong, whose comparative advantage has moved to other areas, and are continuing in this industry in large part because of the quotas, do suffer some static welfare losses from abolition. However, this reform allows them to move resources out of what are, for them, "sunset" industries.

Since the Uruguay Round agreement was reached, the market for textiles and clothing has evolved rapidly. Exporters such as Hong Kong have continued to lose competitiveness, a phenomenon that is manifested through a fall in the prices of quotas in Hong Kong. Another important development has been increased penetration of the quota-restricted markets by beneficiaries of regional arrangements. In the US market, for example, Mexico managed to more than double its export volume shares for both textiles and clothing in the four years from 1994, and both Mexico and Canada are now larger exporters of textiles and clothing to the United States than China. This outcome was clearly in large part a consequence

of trade diversion, despite the costs imposed by restrictive rules of origin that, in a sense, export US protection of its textile sector to Mexico.

Nattapong and Wisarn conclude that reform of this sector, and the progress of the current negotiations, could be improved if the industrial countries were to show leadership by speeding the process of integration, and by being willing to make further reductions in tariffs on textiles and clothing. To their own cost, and to that of developing countries and the trading system as a whole, the industrial countries have repeatedly – and most recently at Doha – refused to accelerate this process in any meaningful way. Abolition of these quotas and reductions in tariffs will be important for reducing the costly trade diversion inherent in the expansion of regional preferences in a situation characterized by serious distortions. This is an important illustration of the general principle (World Bank 2000), that the costs of trade diversion are likely to be particularly large when trade barriers are high.

Built-in agenda: trade in services

Because trade in services was included in the built-in agenda from the Uruguay Round, negotiations have been underway in the Services Council since early 2000. Relatively broad agreement appears to have been reached on the objective of including all service sectors, and on using the broad "architecture" of the GATS. There appears to be considerable support for using reciprocal "request and offer" approaches to the negotiations, and for providing some type of credit for autonomous negotiations. In chapter 5 of this volume, Low and Mattoo provide recommendations consistent with this broad framework that would allow for considerable progress to be made on these important negotiations.

One of the key issues identified by Low and Mattoo is a need to step back and increase the clarity of the GATS process. There is frequently a lack of clarity in the rules and their interpretation, and in the scheduling of countries' commitments, that considerably reduces their value. In the rules, they point out that there is frequently considerable ambiguity in the distinction between national treatment and market access. Another source of confusion that became clear in the negotiations on financial services was between modes of supply, and particularly between the provision of services by cross-border trade and by consumption abroad. Other problems that have been identified since the completion of the Uruguay Round include a lack of clarity in the relationship of commitments to domestic regulation, and in the legal interpretation of particular commitments. In all of these cases, much can be done to increase the clarity

of the commitments, and this would appear to be a high priority for the current negotiations.

Assuming these problems can be overcome, a key challenge for the negotiations on services will be to increase the quality and coverage of the commitments given. One clear objective in this regard should be to focus on using commitments to increase competition, rather than on allowing a particular degree of foreign ownership. Another approach, used extensively in the telecoms agreement, was for governments to use the process to make credible pre-commitments to future liberalization. A further challenge will be to increase the extent to which domestic regulations support, rather than inhibit, the process of trade liberalization.

The broad preference for a "request and offer" approach in the current negotiations on services is only a broad guide to sentiment on the negotiating approach, and considerable effort will be needed to define more specific procedures for negotiation. Drawing on experience with the negotiations on maritime services and on basic telecoms, Low and Mattoo consider three potential approaches by which the negotiating methodology might be made more effective. The first would be through development of agreed model schedules for some subsectors. A second would be through development of an understanding covering a range of subsectors and issues acceptable to a broad range of members. A third approach might build on the success of the regulatory white paper in the telecoms agreement. It seems clear that institutions like APEC might, as suggested by Alburo in the case of manufactures, play a key role in the process of developing and obtaining agreement on such common approaches.

While Low and Mattoo see some merit in a shift from the current positive list approach to scheduling commitments on services, they do not, on balance, feel that such a profound shift from the current "architecture" of GATS would be warranted. Rather, they feel that effort should be focused on reducing the limitations on many of the commitments currently included in schedules. They see a key ingredient for success being a revival of reciprocity. To achieve this, they suggest a range of approaches, including pressure for a broad range of commitments from all countries in areas such as environmental services, and reciprocity between countries for services within a particular mode. For example the United States might provide cross-border access to the Philippines for insurance and audiovisual services in return for a reciprocal commitment on software and data-processing services.

Some important areas for negotiations in which these approaches might be given effect are: air transport, maritime transport, and telecommunications. All three are network industries where the potential gains from

reform are particularly large, but have been relatively difficult to achieve because of vested interests and pre-existing regulatory frameworks that are based on principles quite far removed from the nondiscrimination principles at the heart of the GATS.

Air transport

Only a limited set of air transport services are currently included under the GATS, and issues relating to traffic rights are largely excluded. However, the annex on air transport services calls for review at least every five years to consider broader coverage within the sector. Chapter 6 of this volume, by Findlay and Nikomborirak, looks at this sector and suggests potential approaches by which reform might be attempted. They begin with an examination of the current bilateral arrangements, which involve over 3,500 bilateral agreements covering terms for operation between bilateral partners and third parties. These agreements violate basic GATS principles of MFN and national treatment, since they involve discrimination between foreign suppliers, and provide different terms for domestic and foreign firms.

The resistance to liberalization in this sector will be strong, and governments will need to prepare carefully if negotiations are to have any prospect of succeeding. The benefits of greater openness are clear – it could allow increased competition and reduced price mark-ups, cost reductions owing to greater efficiency, and increased ability to take advantage of differences in factor prices. Findlay and Nikomborirak then analyze three broad approaches to liberalization of the sector. The first is the bilateral "open skies" approach, which removes restrictions on access between and beyond the negotiating countries for their airlines. The authors point out that the main problem with this hub and spoke approach is that it does not really achieve openness. Under the second, regional, approach the "spokes" cooperate among themselves using similar terms as those negotiated with the hub (for example, the United States). While this approach provides greater competition within the region, there is still discrimination against operators outside the region and there is a danger of protectionist regional blocs with large internal markets using their power to disadvantage smaller third parties.

Given the limitations of these two approaches, the authors recommend a multilateral approach to opening up the air transport sector. They propose doing this either through extension of the GATS or by imposing multilateral disciplines on regional blocs. The built-in review for air transport and services negotiations could consider how to extend the coverage of the current annex on air transport in the GATS. The present coverage is not

sufficient since it is limited to provision of complementary services such as aircraft repair and maintenance, selling and marketing of air transport services, and computerized reservation services, and excludes air traffic rights. A review of the current commitments by ASEAN members shows that these countries are still resisting opening up even in these areas. The authors recommend that the annex should ultimately be reviewed and reformed so that all GATS rules would apply to air transport. Some intermediate steps that might be used to reach this objective would include extending the annex, and modifying it to carve out separate modes of delivery.

An alternative to the multilateral approach could be to impose multilateral disciplines on regional blocs by adopting an "open-club" framework. The principles of such a club should include non-discrimination among members, open accession to those who meet the conditions, transparency, and a review process.

The authors conclude that governments in East Asia should respond to the pressure for reform and the need to strengthen airlines in the region by taking the following steps. First, increasing the value of their national carriers by transforming them into business entities, through privatization if necessary. Second, setting a time frame for opening up market access, taking into account competition policy issues in the early stages of privatization, and finding strategic partners or alliances and diversifying/expanding markets to help increase the value of the resulting airlines. Third, preparing themselves to be part of the GATS negotiations on air transport, with a broader, economy-wide approach, rather than one focussed on this particular sector.

Maritime transport

One of the key service sectors for developing countries is maritime transport, the only service sector for which serious negotiations at the multilateral level have been attempted and failed. Recent research has shown that reform in this sector is of enormous importance to developing countries (Fink, Mattoo, and Neagu 2001). This sector is also important because of the strong interaction between reform, competition policy, and other regulatory interventions.

Chapter 7 of this volume, by Chia, Onyirimba, and Akpan, begins by examining the structure of the market for provision of maritime services, and the rapid changes taking place in this market. Because of its importance for competition, they consider the changing structure of the shipping industry, and the emergence of consortia and global alliances analogous to those more recently established in air transport. Another

important feature of this market is the responses by developing countries to the dominance of industrial countries. Some of the responses with important implications for market structure and conduct include the establishment of shipping registries, the promotion of national shipping lines, liner codes of conduct, and bilateral cargo reservations.

Chia, Onyirimba, and Akpan examine the reforms undertaken by the United States in some detail. They see the open conference system long practiced in the United States as important for maintaining competition, and trace the history of reform attempts in this context. Despite their ultimate failure, the negotiations on Maritime Services under the WTO are of considerable interest because of the progress they made in identifying positions and the commitments countries were prepared to offer, commitments that have been augmented by those given by acceding members. It is clear that these negotiations were extremely ambitious, seeking quite comprehensive reform in a sector that has long been a hotbed of discriminatory practices and bilateral arrangements. The authors see these negotiations as having made considerable progress before their suspension, with twenty-two countries offering commitments in the 1996 negotiations. However, US insistence on achieving a substantial agreement failed to elicit sufficient commitments to bring these negotiations to a successful close.

It seems clear that achieving a substantial agreement in Maritime Services in the current round of negotiations will be difficult, despite the demonstrably large gains from an agreement that reduced the cost burdens created by both policy distortions and anti-competitive practices. Even many of the countries that made liberalization offers in the WTO negotiations included significant numbers of *caveats* and restrictions in their offers. Chia *et al*. see international transport as more open, and perhaps more promising for liberalization, than auxiliary and port services, the other pillars of the negotiations. They conclude that regional associations of developing countries, and particularly ASEAN, should attempt to develop harmonized positions on reform proposals as a way to help speed progress in the multilateral negotiations.

Telecoms

Telecom services can be counted as one of the more successful GATS agreements in terms of the commitments made by members. This is perhaps because telecom services are different from many other network services in that rapid technological change and growth in market demand have eliminated their historical natural-monopoly status. Technological change and growth in demand are expected to continue, with the growing

convergence of telecommunication, broadcasting, and information technology providing new opportunities for growth. Furthermore, it is now widely recognized that an efficient telecom infrastructure is necessary even to enter many of the most dynamic export sectors, as well as to improve economic efficiency, and to reduce the emerging digital divide.[1]

In chapter 8 of this volume, Abrenica and Warren look at the extent to which East Asian developing economies have committed themselves to reforming their telecom sectors and assesses the policy environment in these economies. A review of the GATS commitments on basic telecoms in East Asia reveals that commitments on market access and national treatment have a substantial distance to go. The offers made have been subject to many *caveats* and the coverage of commitments is lower than the APEC average, or for the world as a whole. Furthermore, not all of the East Asian countries have attached the reference paper on regulatory principles that would help ensure a more neutral regulatory environment.

The authors provide a useful survey of the experiences of selected East Asian developing economies in liberalizing and reforming their telecom sectors, including the lessons that need to be drawn in preparation for future negotiations. The first set of lessons draws from experiences in increasing competition, often beginning from a monopolistic state-owned incumbent. In some countries the sector has remaining relatively closed, and in others it has been opened up, but the effectiveness of the policy changes in inducing competition has been mixed. For instance, in the Philippines, opening up of licenses has been tied to geographical areas without considering economies of scale. In Malaysia, many license conditions and restrictions on foreign ownership impeded the ability of new carriers to compete with the incumbents.

A second set of lessons focuses on the ability to interconnect that is so important in a network industry. A number of policies has been used to address this issue, such as requiring transparency and standardization of interconnection charges; requiring incumbents to show a fair allocation of costs; using an efficient-operator yardstick; and separating infrastructure ownership from supply provision. However progress has been slow, regardless of whether the regulator is located in the government or not. Implementation of effective interconnection regulations is likely to be particularly difficult under conditions of partial privatization and unclear policy direction. Liberalization of some activities without liberalizing

[1]As pointed out by Sieh Mei Ling, University of Malaya, a discussant of the telecoms paper in its initial presentation.

others can be the source of severe distortions and undesirable side-effects. A major difficulty has been balancing the need to curb market power of the incumbent at the early stages of competition with ensuring that there is healthy competition.

A third set of lessons relates to the policies needed to allow universal service provision in a competitive system lacking the sources of excess profits used to fund these activities under a traditional national monopoly. A number of approaches have been tried in the region, including attaching universal service conditions to licenses (as in the Philippines) and through establishing a universal service fund (as in Malaysia). The authors point out that technological convergence may alleviate this problem in the future by reducing the cost of adding poorer people to the network. However, to achieve this outcome, regulatory impediments such as those on geographical segmentation of markets, restrictions on cross-sector service provision, and on cross-ownership likely need to be removed.

The chapter concludes that, despite the problems and constraints and the mixed progress on reforms, there is likely to be support for further liberalization of telecoms in the current negotiations. The main source of this optimism is the recognition in most countries of the compelling need to build up an efficient telecoms infrastructure and the role of foreign investors in doing this. No country can afford to be left out of the global information revolution; and the process of opening up has begun in most countries. As in the negotiations on basic telecoms, the focus is likely to be more on the pace and extent of liberalization than on whether to liberalize or not. Developed countries, as exporters of many of these services, are likely to be *demandeurs*, pressing developing countries to accelerate their reforms.

An important lesson from the East Asian experience to date is that market liberalization needs to be within an appropriate regulatory framework if effective competition is to be achieved. The authors argue that the checklist for regulatory governance embodied in the telecoms reference paper provides a partial answer. However, the best approach to achieving the goals of the regulations will depend on each country's circumstances and level of development, and it would not be appropriate to specify a uniform approach to regulation. Technical cooperation is needed to build up capacity and to help sequence the reforms in line with the development of institutions and the legal system. The issue of regulating competition and ensuring market contestability arising in this industry relates to the broader issue of competition policy, and this is an area where APEC can contribute and complement the negotiations at the WTO.

Responding to new issues: investment

The Ministerial Declaration at Doha proposes that negotiations on this issue be undertaken after the Mexico ministerial in 2003. This makes it critical that WTO members carefully consider the form of any such negotiations in the lead up to this meeting. In chapter 9 of this volume, Bora, Chia, Freeman, and Urata examine the options open to the East Asian economies on TRIMs, and investment measures more generally, in a new round of negotiations. The chapter begins by emphasizing the importance of foreign direct investment (FDI) for East Asia's development in the past, in its recovery from the financial crisis, and in the medium-term future. Having seen the potential role of FDI in their development, East Asian economies have liberalized their FDI regimes to attract increased foreign investment. Since the financial crisis in mid-1997, FDI flows have declined and, in some countries, even become net outflows. However, the subsequent rebound since 2000 has been remarkable and is in no small measure owing to these countries undertaking to remove various restrictions and performance requirements on FDI and, more generally, by taking a more comprehensive approach to policy reforms. However, impediments remain as a survey of Japanese investors indicates, including lack of MFN treatment concerning right of establishment, and performance requirements linked to right of establishment.

The authors also note that regional initiatives, notably the ASEAN Investment Area (AIA) and the APEC Non-Binding Investment Principles (ANBIP), support more open investment regimes. The AIA is a bold initiative since it gives national treatment to investors from member countries subject to a negative list of sectors and makes no mention of performance requirements or fiscal incentives. It also includes a phase-out of temporary exclusions for members and non-members by 2020. Its effectiveness depends on the presence of the political will to minimize the negative list. The ANBIP, which were endorsed in 1994, provide a set of principles to guide investment policies, including national treatment, transparency, non-discrimination, and discipline on the use of incentives. However, implementation appears to have been confined to facilitation and capacity building.

Despite considerable progress on the unilateral and regional fronts in forging more open investment regimes, the authors conclude that there is unlikely to be much progress on trade-related investment issues, or on a broader approach to investment, in the negotiations proposed to begin after the WTO Ministerial in 2003. They see three potential options for negotiations. The first would be to do nothing and not add

to the illustrative list of trade-related investment measures included in the Uruguay Round agreement. Under this scenario, negotiations would probably focus on the conditions under which extensions of TRIMs would be allowed, and on dealing with countries that have not notified their TRIMs. A second approach would be to expand the illustrative list of TRIMs, and to define new rules for transition and notification periods. A third option would be to seek an over-arching investment agreement at the multilateral level that would include MFN and national treatment for foreign investors, disciplines on the use of performance requirements and incentives, and dispute resolution.

The authors argue that a broad agreement is unlikely to be accepted at this stage. Seeking to do so would reopen the debate during the TRIMs negotiations as to what constitutes directly and indirectly trade-related measures, and many members would resist losing the flexibility of using performance requirements and incentives, which are still seen as a tool for industrial policy. The authors conclude by suggesting that national treatment and MFN for foreign investors should be pursued based on a positive list approach, and negotiated separately from the performance requirements. A separate negotiation could subsequently be conducted on whether to add to the illustrative list of TRIMs and on phase-out periods for measures of this type.

The chapter also examines the desirability of binding unilateral liberalization. There is a stark contrast between what countries have done unilaterally and what they have committed to do under the TRIMs agreement. Binding clearly has the benefit of locking in reforms and reducing uncertainty by limiting the likelihood of reversals. This, in turn, should attract more investment. However, in negotiations, the issue is always what one gets in return for agreeing to binding liberalizations already undertaken. Further, many developing countries still see flexibility as desirable in allowing them to utilize performance requirements and incentives to attracting "quality" investments.

Responding to new issues: competition policy

Chapter 10 of this volume, by Vautier, Lloyd, and Tsai, deals with another issue on which WTO members need to formulate a position prior to the 2003 Ministerial Meeting. The chapter examines the need and scope for developing new trade rules on competition policy. The authors take a broad view of competition policies as encompassing all policies and instruments that impact upon market entry and competition. In this view, competition law is a subset of a broader approach to competition

policy. Their approach emphasizes core principles for competition policy, rather than advocating specific approaches to achieving them. These principles include non-discrimination/competitive neutrality, transparency, accountability, and comprehensiveness (i.e. competition policy should apply to all goods and services, and to all sources of supply). Furthermore the authors underscore the importance of being clear that competition policy should have only one objective, that of efficiency. Additional goals, such as equity or distributional goals, require additional policy instruments.

Since international rules must build on national policies, laws, and institutions, the chapter begins by examining the different approaches to competition and regulatory policies currently being used in the Asia-Pacific. While these economies share the common goal of increasing competition, it is evident that there are substantial differences in their economic structures, stage of development, and competition policy approaches. The range is wide, from transition economies trying to introduce a market oriented system, to those at the level of expanding the market system, and finally to those which have successfully implemented a framework of competition laws. These differences underscore the difficulty of identifying a starting point in any potential negotiations on competition policy.

The authors then provide a very useful discussion of how WTO is a set of binding rules relating to international trade in goods and services. Many of its agreements assume the existence of competitive markets, but it does not have the explicit objective of promoting competition. The GATT only explicitly addresses business conduct in the case of state trading companies. The GATS explicitly addresses competition issues in the reference paper on telecommunications. As such the current WTO framework is not suited for a comprehensive approach of competition policy.

Given these considerations, the authors conclude that the development of a multilateral competition law within the WTO is presently unrealistic and infeasible. Even though developing countries would like to address the restrictive business practices of multinational companies and discipline the use of anti-dumping measures, the appropriate response is unlikely to be multilateral rules on competition law. The United States and many other members are also not supportive of a multilateral approach, seeing it as encroaching on sovereignty. Another difficulty in having a multilateral competition law, given the different approaches to competition policy in each country, would be to develop a consensus among WTO members on the objectives, rules, and basis for analysis of competition cases and remedies. Other, more fundamental, objections are that WTO

deals with governments, and not private agents; and that WTO is a binding and rules-based institution whereas competition law is generally based on a rule-of-reason approach.

The authors recommend that more limited proposals on firm behavior could be introduced within the WTO. These might include prohibition of export and import cartels; revision of rules on anti-dumping actions; rules on parallel imports; and extending the fair competition provision in the reference paper on telecommunications to other service sectors. Meanwhile it is important to disseminate as widely as possible the application of the core competition principles to all other policy areas.

Government procurement

The Government Procurement Agreement (GPA) is considerably more comprehensive than is likely to be agreed by all members of the WTO. In consequence, it is now something of an oddity in the WTO in being a plurilateral agreement, applying only to those WTO members who elect to join it, even though an efficient system for government procurement is particularly important for developing countries, where government revenues are scarce and institutions relatively weak, providing scope for costly problems of corruption. Despite this, relatively few developing countries have chosen to become members of the agreement, and this has been one of its major weaknesses. Proposals for negotiations on Transparency in Government Procurement to begin after the Ministerial Meeting in Mexico seek to develop global rules by focusing only on transparency.

The GPA was expanded during the Uruguay Round negotiations, to cover subnational government and procurement of services listed in the agreement. Its basic principles are transparency and non-discrimination – goals with strong implications both for equity and for efficiency. In chapter 11 of this volume, Inbon Choi examines the experience of Korea's accession to the GPA to try to find reasons for the limited participation by developing countries in the agreement, and to provide some guidance to countries seeking to accede to the GPA.

Choi identifies two major potential sources of gain from the agreement. The first is the increased efficiency resulting from better rules on procurement in the home country. The second is improved access to foreign government procurement markets. On the cost side are the relatively minor costs associated with negotiating accession and enforcing the provisions of the agreement. Choi believes that the benefits of accession to the GPA generally exceed the costs, and the failure of most WTO members to join the agreement reflects more political concerns than economic costs.

Korea's process of accession was nothing if not tortuous. Between 1979 and 1982, Korea provided three different offers to the GPA. After a nearly ten-year hiatus, it announced its intention to join the GPA in 1990, and submitted its initial offer list. However, its accession became caught up in the Uruguay Round negotiations to broaden and strengthen the GPA, and Korea was unable to finally join the GPA until April 1994. Choi lays out the inter-linked steps that were taken in Korea both to prepare for the negotiations and for the implementation of the agreement. One problem that arose in Korea, and could easily arise in other countries, is that the decision to join was taken prior to any evaluation of the consequences – that is, the cart was put before the horse. This problem illustrates the importance of the need for coherent national policies and goals in trade policy identified by Hoekman and Kostecki (2001, ch. 14) as a precondition for successful multilateral policies.

Choi concludes that there is a strong case for moving ahead in the negotiations to be initiated after the 2003 Ministerial with an initial agreement on transparency in government procurement. This could be of considerable value to developing countries seeking to develop a clear and transparent government procurement system. Developing countries should also seek, and be encouraged, to join the plurilateral GPA as a means to improve the efficiency of their government procurement regimes.

Responding to new issues: trade facilitation

Chapter 12 of this volume, by Yuen Pau Woo, examines the debate on trade facilitation in the WTO. Like investment, competition policy and transparency in government procurement, the issue of trade facilitation was brought onto the WTO agenda at the Singapore Ministerial meeting in 1996. Clearly, there is broad agreement in the Asia-Pacific on the importance of facilitating trade by reducing trade transaction costs. This is reflected in the agreement by APEC leaders to pursue a 5 percent reduction in trade transaction costs during the five years to 2006 (APEC 2001). Recent work by Wilson *et al.* (2002) suggests that the gains from relatively modest trade facilitating reforms could be very large, with possible increases in intra-APEC trade of $280 billion, or over 10 percent of its level in 2001.

A key issue in the debate on trade facilitation is the extent to which international trade rules, as distinct from technical assistance and capacity building, might contribute to trade facilitation. A narrow view of trade facilitation would focus on the trade rules, such as GATT article V on freedom of transport, article VIII on fees and formalities, and article X on publication and administration of trade regulations. A broader view