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The Current Trade Context

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Market Access as a Substitute for Development?
North-South Regionalism in Latin America

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The Current Trade Context

Since the collapse of the August 2003 Cancun meeting, it has become clear that a significant group of developing countries have suffered a sea change in their trade negotiation strategy and in the execution of trade agreements. The formation, coherence and persistence of coalitions such as the G-20 and its unwavering refusal to cede on agricultural issues or the inclusion of Singapore agenda items reveals a growing recognition by trade policymakers that developing countries should be alert, flexible, agile and prepared to adjust trade policy directions. This signalling shows that developing countries are juggling in all arenas to offset the mushrooming of Preferential Trade Agreements (PTAs). Trade relations have ceased to be one-dimensional; they have now become an open-ended series of choices which demand agile non-scripted reactions.

This potential shift makes it essential that organizations and individuals monitoring trade and development remain attentive to positions taken in both the multiple PTAs discussions now taking place as well as to the on-going Doha Round negotiations. Assumptions based on past trade strategies and the pre-eminence of the WTO are a vast over-simplification of the current context. Apparently contradictory emphases are being simultaneously deployed and responses are far more rapid than has been the case in modern trade negotiating experience.

In the early times of the Uruguay Round, developing countries had concentrated their efforts and rested their hopes for greater trading benefits within the multilateral framework. When it became evident that the Uruguay Round failed

to deliver a balanced outcome, developing countries became more receptive to PTAs both as a means to enhance their mutual trade relations and as a second-best but realistic route for extracting concessions from the developed nations.

The new generation of PTAs, mainly involve developing and developed countries (North-South agreements) as well as moving beyond the reduction of tariffs and into areas that comprise the so-called deep integration. It is this new brand of regionalism that has been actively promoted by the US and the EU in Latin America. In this quest to expand PTAs, Latin American countries have been the preferred partners. While the average African country belongs to four different trade agreements, the average Latin American country belongs to eight. Nonetheless, at best such asymmetric preferential deals offer small benefits beyond some improved market access.

After more than a decade of proliferating PTAs, it also now seems clear that developing countries encounter often painful tradeoffs in negotiating agreements with economically and technically more powerful nations. This awareness and the continued unwillingness of the United States and the European Union (EU) to meet developing country expectations for greater access and reduced barriers to agricultural trade helps explain the emergence of coalitions such as the G-20 and the changing complexion of deliberations within the WTO and the Doha Round.

Most governments in developing countries continue to make single-track analyses, merely taking into account costs and benefits related with tariffs and quotas in the trade-offs involved in the negotiations. However, the thrust of current negotiations is less and less about mere market access; it is increasingly driven by international investors seeking to protect their assets abroad and bind regulations that favour their interests. In this sense, the paper has selected two paradigmatic issues where these trends are clearly manifest, i.e., investment and intellectual property rights.

The paper will analyze the current context of trade negotiations and the state of tension between multilateral and bilateral/regional agreements. It will assess

how unequal bargaining power has materialized in these negotiations and how the agenda of developed countries remains solidified, yielding few concessions. These processes will be examined in greater detail by looking at the EU-Mercosur and the CAFTA-US efforts to reach trade accords. A series of observations is offered to indicate what positions, actions, and agreements are present in the issues of investment and intellectual property rights in both negotiations analyzed. Both topics may be harbingers of what lies ahead in international trade negotiations in the medium term.

Creative or Destructive Tension: Bilateral/regional versus multilateral agreements

The “regionalism versus multilateralism” debate pits those who consider Preferential Trade Agreements (PTAs) harmful to the international trading system against those who believe that PTAs will increase global commerce. The question remains: are PTAs building blocks or stumbling blocks in constructing economic integration? Less examined is the issue of the relationship between PTAs and economic development.

As integration deepened and international trade volumes grew, trade related imbalances and instabilities became more transparent, fostering tendencies to support domestic market protection in the more vulnerable countries. In this context, regionalism seemed to offer governments an easier way to resolve, if not side-step, issues pending in the multilateral arena. As a result, today almost all countries belong to one or more PTAs and more than one-third of world trade takes place within them as trade on a most-favoured-nation basis (MFN) becomes more an exception rather than the norm. This regionalist trend was reinforced in the 1990s, according to WTO statistics, with a majority of such agreements signed in the latter half of the decade. A recent World Bank report counts a total of 230 RTAs having been finalized since 1990, which account for more than one-third of world trade. (World Bank, 2004)

The acceleration of PTAs was first a reaction to the Uruguay Round's slow pace in reaching consensual agreements, side-tracking developing countries for their lack of negotiating expertise and leaving them without any grounds for linking trade issues to pressing demands for economic and social payoffs. These obstacles remained in force after the Doha Round was launched, leading to a deepening of the trend in trade negotiations towards regional and bilateral trade agreements. Paradoxically, the most powerful actors, the United States and the EU, which most encouraged the multilateral system, are the principal drivers behind North-South preferential negotiations. Many of these negotiations are giving rise to 'WTO plus' agreements, raising serious concerns that unequal bargaining processes are giving rise to unequal outcomes, with richer countries gaining disproportionately.

At a time when new coalitions appear to be shifting the balance-of-power in the WTO, regional negotiating processes could be simultaneously reinforcing the old inequalities. Moreover, the present generation of PTAs could herald a new model insofar as they extend geographically beyond adjacent countries. PTAs, such as the ones being negotiated between the US and a myriad of Latin American countries or the one between EU and Mercosur, reflect the imperative to push trade liberalization beyond neighboring regions, while avoiding the transaction costs of a WTO multilateral round.

What is clear in the current environment is that both the US and the EU are engaged in a race to sign WTO-plus bilateral trade agreements with developing countries. Why are these bilateral agreements proliferating so intensively? In this paper the cases of the US-CAFTA agreement and the EU-Mercosur agreement will be considered for the perspectives they can yield on this issue.

Rodrik (2000) argues that the world economy presents a political trilemma, centred on three nodal points: international economic integration, the nation-state¹ and mass politics². The argument claims that it is impossible to

¹ "Territorial jurisdictional entities with independent powers of making and administering the law" (see Rodrik, 2000, p. 180)

implement policies for these three areas at the same time. An implication of this trilemma is that the only way to reach a truly economically integrated world is to create regional markets on a global scale. National sovereignty poses constraints on economic integration that can be overcome through the spread of regional agreements. Governments do not disappear but their powers become severely circumscribed by intergovernmental accords. Even in the absence of supranational institutions a process of mutual interpenetration and socialization is opened leading to gradual meshing and coordination of policies and procedures. (Tussie, 2003)

This trilemma can be observed in the current bilateral negotiations. For example, Latin American countries engaged in the process have experienced a reduction in political maneuverability. The bilateral agreements, particularly the ones encouraged by the US, mandate a very rapid pace and contain confidentiality clauses that impede publicizing draft agreements before they are signed. When finally publicized, only export gains are highlighted. This combination of time constraints and lack of transparency, not only hide real costs but also narrow the political and economic choices for developing countries.

Attempts by policy-making bodies to insulate themselves from political participation and debate during negotiations leads to the sense that developmental goals are reduced to market access for certain products and the necessity of maintaining market confidence for external investors. In this context, microeconomic pressures capture the decision-making process. The tradeoffs in a negotiation are analyzed as bargaining chips rather than on their developmental merits.

The difficulties surrounding information and transparency can be quite clearly seen in examining the CAFTA negotiating process. From the beginning, the CAFTA negotiations have been criticized for their lack of transparency. The U.S. insisted on a confidentiality clause that insured the secrecy of the

² "Political systems where a) the franchise is unrestricted; b) there is a high degree of political mobilization; and c) political institutions are responsive to mobilized groups" (op cit).

negotiating texts. Salomon Cohen, initially the Guatemalan lead negotiator, stated that, "Ms. Regina Vargo (USTR negotiator) requested that the Central Americans sign a confidentiality agreement to ensure that what gets put on the table does not leave the room, or else the process would be interrupted." Cohen was subsequently replaced as Guatemala's lead negotiator. Even though Costa Rica's Economy Minister confirmed Cohen's remarks, the USTR publicly denied such a proposal ever existed. (McElhinny, 2004) Similar confidentiality clauses were agreed to during negotiations between the U.S. and Chile and are in place with the on-going negotiations with Andean countries. The controversial nature of these negotiations is best exemplified by the ministerial crisis in Costa Rica once the agreement was concluded and made public.

Central American legislators in every country within the CAFTA have complained about being shut out of the process. The CAFTA negotiating rounds established a mechanism for distributing information and for consultation called the "room next door". It was designed to provide civil society representatives and private sector observers with periodic updates by country negotiators. The first Costa Rica round inaugurated this mechanism and approximately eighty representatives of the business communities and 21 members of social sector organizations participated. As an element in the USTR's five part public outreach strategy, the 'rooms next door' were to counter accusations by civil society organizations that there was a lack of transparency. However, its purpose was not necessarily to provide information regarding the details of the agreement under discussion.

The strategy was not able to prevent enough information becoming available for interested parties to understand the general scope of the issues being negotiated. It did, nonetheless, circumscribe information to those with relatively easy access to alternative information sources and, thereby, discriminated against poorer sectors of the populations with limited ability to tap into such networks.

Generally speaking, the information made available in the rooms next door and through formal briefings was superficial. The quality of these exchanges varied considerably from country to country and with the nature of the relationships between civil society groups and private sector groups and the official negotiating team. Beyond the minimal amount of information provided, the principal utility of the “next door” arrangement was to neutralize opposition from business and to legitimate the process. (McElhinny, 2004)

The political economy of unequal bargaining

When a country wishes to further liberalization it can stick to a single route (be it unilateral, bilateral, plurilateral or multilateral) or it can mix and match along the way. In general, there is a consensus over the superiority of the multilateral approach. However, given that the current international policy environment is not fully favorable to multilateralism, PTAs appear as an alternative route, at times supplementary and at times competitive, to expand liberalization. The problem is that PTAs are not necessarily welfare-enhancing. The potential negative effects led WTO Director General Supachai Panitchpakdi to recently warn that the present juxtaposition of criss-crossing regional trade agreements creates a complex network of trade regimes that pose systemic risk to the global trading system. Besides such systemic risk, at in-country level PTAs add a heavy administrative burden on the limited resources and skills available for trade negotiations in developing countries.

By definition, inter-state coalition-building is not feasible when only two countries are engaged in negotiations. PTAs appear to be driven by two opposite but in the end convergent forces. From a developing country perspective, PTAs offer an opportunity to gain additional access to highly regulated markets, such as textiles and foodstuffs, and to lock-in discretionary preferential access. From the US and EU perspective, the opportunity of obtaining a WTO-plus regulatory setting for intellectual property rights, investments and services provision holds out obvious advantages and asserts the primacy of market confidence over development and welfare goals. In this sense, bilateral trade agreements tend to overcome the absence of a minimal

degree of international consensus to smooth problems of governance and compliance within the WTO.

Bargaining power depends heavily on market size; a regional trading unit tends to have more weight than its individual members. While bilateral initiatives tend to encourage cooperative solutions, at the same time they have the potential to weaken the bargaining power of developing countries. Moreover, bilateral negotiations often include non-trade issues that are pursued by special business interests and other powerful interest groups. Some of the difficulties encountered in the Doha round and the FTAA negotiations can be attributed to efforts to place non-trade specific issues on the table by such interests groups from the developed countries. In bilateral negotiations, developing countries, though aware of their unequal bargaining status, are less able to resist these impositions, as will be seen in the section on intellectual property and investment.*

Drahos (2003) has broken down bargaining power in trade negotiations singling four basic dimensions:

- First, the state's share of market power. A country (or region in the case of the EU) with a larger domestic market that other countries seek greater access to or upon which other countries are trade dependent is in a more favorable position in trade negotiations.
- Second, commercial intelligence networks. Networks composed of national trade bureaucracies, business organizations and individual corporations. They gather, distribute and analyze information related to their domestic and international markets which inform and shape the negotiating positions of policymakers.
- Third, coalition building capacity. State ability to include other actors, both public and private, in coalitions strengthens negotiating power.
- Fourth, the state's domestic institutions. The rules that prevail over internal decision-making and the delegation of negotiating authority affect bargaining power. A country that binds its negotiators may in some

contexts increase their ability to determine the outcome of trade agreements.

When these dimensions are taken into account, it becomes easier to understand why the US and the EU have strong bargaining power and developing countries, particularly when negotiating alone, are weaker in PTAs negotiations. Bilateral or interregional negotiations undermine networks of cooperation among countries with similar interests in order to resist the impositions of developed countries in trade negotiations. This is the strategy used by the United States offering bilateral agreements to Latin American countries with a view to encircle Mercosur and gradually erode its resistance to the FTAA. Moreover, an offer of market-access for a particular good or sector creates a vested interest that will lobby in the country. That lobby will push the PTA vigorously against all other interests, even as many of these interest groups are seldom aware they will be paying a cost by virtue of the principle of reciprocity in trade negotiations. The entrenched emphasis on reciprocity has added an omnipresent domestic dimension to all trade negotiations.

From the point of view of the US, Robert Zoellick, USTR Representative, has explained clearly what the country seeks through expanding its range of bilateral trade negotiations. In Zoellick's view, PTAs will trigger competitive liberalization as an alternative route to global free trade that cannot be reached in other forums. As the USTR Representative recognized, "America has stated its intentions plainly. We will promote free trade globally, regionally and bilaterally, while building support at home. By moving forward on multiple fronts, the U.S. can exert its leverage of openness, create a new competition in liberalization, target the needs of developing countries, and create a fresh political dynamic by putting free trade on to the offensive." (Zoellick, 2002) Facing a lack of progress in the FTAA and multilateral negotiations, the US turned to bilateralism, often as a means of favoring loyal allies and punishing indecisive friends. The intrusion of domestic political considerations into the choice of trade patterns and the agendas covered by bilateral and regional agreements may favor particular business interest but often has negative impacts on long-term development goals.

As Winters (2000: 4) pointed out “the benefits of regionalism are likely to depend on finding the best partners. However, the popular notion of a natural trade partner is not useful in this regard. Neither large existing trade volumes nor are low transportation costs good reasons for artificially favoring a particular trade flow.” In this sense, PTAs might encourage intra-hemispheric agreements but extra-hemispheric agreements (such as South-South agreements) might have better potential returns as they usually encompass trade that is subject to higher barriers and is usually composed of higher value-added goods.

At the same time, the coexistence of overlapping agreements poses dilemmas and challenges to developing countries. Latin America is a glaring example of Bhagwati’s spaghetti bowl metaphor: the criss-crossing of so many regional agreements that simply serve to open very specific and sometimes narrow markets. The FTAA was meant as a clearing house but the rush to a wide hemispheric free trade area was captured by bilateralism. Until the early 1990s most of the PTAs in the hemisphere were partial agreements, covering just a few sectors as had been the model under the 1960’s Latin American Free Trade Area which was supplanted in 1980s by the Latin American Integration Association. NAFTA and Mercosur represent turning points for the new patterns of integration in the region as both agreements are more ambitious in seeking economy-wide coverage. Another element in the regional trade picture is the role of Mexico and Chile which, by virtue of concluding networks of bilateral agreements, have become strategic hubs for trade expansion.

This regional dynamic is also driving US trade policy which experienced a radical shift during the decade. Formerly regarded as the locomotive of multilateralism, the US joined the rush towards bilateral and regional trade agreements, playing a catch-up with the rest of the world. The USTR Representative made the American strategy clear when in 2001 he lamented, “There are over 130 PTAs in the world today and the US is a party to only two of them.” (Zoellick, 2001).

Since then, the US has concluded negotiations with twelve countries: The US Congress has been notified of negotiations with Morocco, the South African

Customs Union and Andean countries. It is also considering entering into PTAs with South Korea, Taiwan, New Zealand, Egypt and at least three members of ASEAN (Indonesia, Philippines and Thailand). In these negotiations, the US has pursued a variety of national interests that former aide to the Clinton Administration, Richard Feinberg (2003) categorizes in the following way:

- Asymmetric reciprocity to open markets that take into account the interests of US traders and investors.
- Competitive liberalization as means to establish precedents for wider trade agreements and to soften opposition to them.
- Using trade negotiations to lock in of domestic market-oriented reforms.
- Strengthening strategic partnerships.

As a defensive reaction, the EU, by proposing the creation of a “strategic partnership” with Latin America and the Caribbean, is trying to avoid having its presence on the continent reduced. It also wants to avoid being isolated from participation in the development of the new international trade rules. A rivalry has surfaced between the US and the EU for such intermediary inter-regionalist projects. The EU, following a path similar to that of the US, has, since the mid 1990s, pursued a policy of replacing non-reciprocal preferential agreements with developing countries in the Mediterranean, Latin America and South Africa, with bilateral PTAs. Ten agreements have been concluded under the EU's Euro-Mediterranean Partnership Programme and three further agreements were reached with South Africa, Mexico and Chile. At the same time, the EU is conducting negotiations with Mercosur and 77 African, Caribbean and Pacific (ACP) countries to replace non-reciprocal preference accords under the Cotonou Agreement (Mc Queen, 2002). While the agreement with Mediterranean countries seemed to be encouraged by security and immigration imperatives³ and the African one by political concerns⁴, the agreements with Latin American countries are best interpreted as driven by economic reasons.

*Attempts on the part of the EU to include animal welfare on the agenda of international trade negotiations is a case in point. Determined lobbying by groups led to the Treaty of Amsterdam including a “Protocol on the Protection and Welfare of Animals” and several CAP statutes refer to animal welfare and even establish minimum standards. Including animal welfare has been resisted by farmers who view it as an additional cost and by developing countries who tend to

BOX 1: EU INVESTMENT IN MERCOSUR

To understand the EU's pursuit of a trade agreement with Mercosur it is important to keep in mind the increased exposure of European firms in the region. Since the early 1990s foreign direct investment from Europe grew dramatically, as firms saw opportunities created by privatizations, economic opening and increased stability in macro-economic policies. This development has led to what can only be described as corporate driven negotiating tactics and goals. The FDI flows from Europe have been concentrated at two levels. First, Spain took the lead ahead of other heavily exposed national investors, with Italy, France, Germany and Holland trailing behind. The wave of Spanish investments in LA in the 1990s is unprecedented for its magnitude and pace, representing a turning point and contributing to the internationalization of the Spanish economy. These investments represent a high proportion of the firms' turnover. Second, there has been a heavy emphasis in certain sectors with investment in the telecommunications, financial services, electricity generation and distribution standing out. Trade in goods also increased exponentially. This increase follows the classic model of North-South trade patterns. While the EU accounts for approximately 26 percent of Mercosur's external trade, making it the region's principal trading partner, the South American bloc represents only 2.9 percent of the EU's trade. Moreover, the exchange is skewed in terms of the traded products with Mercosur's sales concentrated in agricultural products and Europe in high added value goods.

EU bilateralism is more timid than that of the US, but after the failure of the FTAA negotiations in Buenos Aires in 2001, the bloc tried to speed up negotiations with Mercosur. Some analysts pointed out that the EU is planning to offer Mercosur "tempting" preferential market shares in order to soften Argentina's and Brazil's fight to reduce agricultural subsidies in the WTO and thus drive a wedge in the G-20. In fact, during the EU-Mercosur Ministerial meeting that took place in November 2003 the EU policymakers insisted on the necessity of obtaining a WTO-plus agreement with Mercosur in contrast to the so-called FTAA "light" that grew out after the disagreements in the Miami meeting in 2003. In fact, the EU negotiating stance has always reacted to the

see the whole broadening of agricultural functions as an attempt of freeze their products out of Europe's markets.

³ See the Barcelona Declaration of 1995 and the Common Strategy adopted by the European Council in 2000.

⁴ Reinforcement of democracy, peace and stability in the region.

status of FTAA negotiations. When, after Miami and to this date, FTAA stalled, the Europeans became more intransigent in their demands on Mercosur.

EU pressure on Mercosur is taking place in two different dimensions. First, it insists that issues of investment and government procurement, though left aside after the Cancun meeting, are still key elements of the bilateral negotiations. In this vein, the aim is to bind market regulations that protect European corporations which compete with the US in Latin America. These are touchy issues for Mercosur given that a common policy is still fledging. Second, it has claimed that the EU-Mercosur negotiations are in a decisive stage and that without rapid progress, the EU would lose interest in pursuing an agreement. Such urgency is tied to the idea of developing an alliance that can be useful in the Doha round by undermining the leadership role Brazil has played in the G-20 coalition.

In line with this position, the EU attempted to make an appealing offer in April 2004 that, for the first time since the negotiations began, included 950 sensitive foodstuff products. Mercosur, in turn, is offering concessions on investment rules and services. However, the informal basis of the talks, plus the lengthy schedules proposed for liberalizing tariffs on these sensitive items, created doubts that a deep agreement would be reached any time soon. In addition, most of the items in which the liberalization offer was improved favor Brazilian interests. The EU has proposed a tempting offer to Brazil because it concluded that more benefits can be obtained in this country compared to Argentina, where most services were liberalized during the 1990s. In this sense, Argentina has a weaker trade-off capacity at the negotiating table. Even though the EU offer signified important progress, exporters in Mercosur fear that such concessions may turn out to be quite worthless in practice because of non tariffs barriers and subsidies to domestic production.

This strategy is not new in the region. The first free trade agreement signed by the EU with a partner outside Europe was with Mexico. In this case, the creation of NAFTA triggered the interest as the EU wanted to prevent discrimination against its producers and exporters in that market. These negotiations

advanced quite fast and in March 2000, after nine rounds of negotiations, an agreement was signed that included a democratic clause, a point over which Mexico initially expressed reluctance. The agreement included a schedule for free trade in goods, dispositions about government procurement, cooperation in policy competition, consultations about intellectual property and dispute settlement.

In the same vein, the EU signed a Framework Agreement for Cooperation with Chile to achieve a political and economic association. Contrary to expectations, the negotiations with Chile advanced faster and over-took the on-going talks with Mercosur: the Association Agreement was signed in November 2002.

These agreements with Mexico and Chile were concluded more easily for specific reasons. Mexico has a non-conflictive agenda with the EU as its potential exports do not impinge on EU protectionism. In the Chilean case the agreement was facilitated not only by the non-sensitive agenda but also by Chile's already very open trade policies. In addition, the coetaneous free trade agreement negotiations between Chile and the US whetted the EU's appetite to sign the agreement promptly.

Mercosur is only a pawn in the EU's strategy of signing bilateral agreements. In fact, the EU trades on a most-favoured-nation basis with only selected countries (among them Australia, Canada, China, Japan, New Zealand, Taiwan and the US). Interest in Mercosur is the product of mixed motivations, strategic calculations and market interest. The EU-Mercosur case seems to have clear strategic calculations as it could imply the weakening of the G-20 alliance in the WTO and avoiding the costs of exclusion the FTAA might bring about.

BOX 2: AGRICULTURE AS A STUMBLING BLOCK

To no one's surprise, the potential deal breaker in the EU-Mercosur talks is agriculture. Europe's Common Agricultural Policy (CAP) is responsible for the South American region's widening trade gap with the EU and although there appeared to be some flexibility within the Union, repeated stonewalling by the Dutch, French and Irish ministers of agriculture and fisheries, backed by special interest groups, have repeatedly blocked any serious openings, especially in the areas where the Mercosur countries are most competitive (beef, cereals,

sugar). The EU has employed a number of strategies to stall, without outright killing, an agreement. By way of example three can be mentioned: the arguments supporting the “multifunctional” role of agriculture in Europe, the insistence on only dealing with agricultural subsidies within the WTO, and the demand that mutual openness should advance proportionally in both blocs. The latter procedure was rejected because each block has a different initial average tariff level: while the EU has an average of 6 percent, Mercosur applies a 14 percent charge; this difference poses a greater burden on Mercosur which has been demanding special and differential treatment. As it now stands, the EU offer to increase quotas for specific agricultural products has proved insufficient. For one thing, its offer to increase quotas would go into effect for only half the affected products at the conclusion of the EU-Mercosur negotiations while the other half would come into force only with the conclusion of the Doha Round. Afraid that domestic subsidies might neutralize access, Mercosur has dug in its heels, insisting on broader concessions on non-tariff barriers and seasonal price adjustments. Mercosur has also made clear that the zero-by-zero reciprocal offer on 326 processed agricultural products (dairy, cooking oil, chocolates etc.) is unacceptable because Mercosur does not have the equivalent panoply of domestic subsidies. In addition, Mercosur has made a reservation stipulating that its own offer is made conditional to a revision of results of accession of the ten new members to the EU as most of new entrants have similar competitive structures.

The bilateral trade agenda is dominated by the comparative advantage of Mercosur, particularly in agricultural products, and the protection and subsidies the EU applies to these product categories. This helps explain why it is impossible to understand the reasoning behind such a bilateral agreement without taking into account other strategic negotiations that are taking place. The FTAA negotiations launched in Miami in December 1994 and the myriad bilateral negotiations the US is conducting with Latin American countries forced the EU to look for a balance in the trade relations between Mercosur and the EU. The EU wants to prevent any potential trade diversion that the FTAA and the bilateral agreements could produce in the hemisphere.

For Mercosur, negotiations with the EU also have political meaning. Formal conversations with the Bloc imply recognition for its customs union. Moreover, it signals Mercosur's preference for the EU model of integration in contrast to models, such as that of the US, that are narrowly market based. While the EU is perceived in Mercosur as less threatening than the US, this perception owes more to the aggressive image that the US government has in the region than to an actual assessment of EU trade and investment policies. The EU has used its

pro-development approach to promote its external trade policies as evidenced by the Inter-regional Association Agreement's inclusion of chapters on cooperation and political dialogue.

**How it works: Unequal bargaining in practice -
The EU-Mercosur agreement and CAFTA**

Why do Latin American countries agree to bilateral agreements that undermine their bargaining power in the FTAA and the WTO? One important explanation is rooted in the fact that several countries fear the phase-out of non-reciprocal agreements which contain preferences granted on a discretionary base. The most widespread example is the General System of Preferences, which coexists with the US and Canada Andean Trade Preferences Act and the Caribbean Basin Initiative. Bilateral trade agreements are a way of guaranteeing these benefits on a binding basis. Binding, in turn, requires reciprocity. Most important in the case of Central American and the Caribbean is the panic provoked by the phase out of the Textile and Garment agreement at the end of 2005 that will eliminate quotas, which, restrictive as they might have been, guaranteed access to the US market. The elimination of quotas, it is feared, will lead to a free-for-all with China's highly competitive industry.

In this vein, microeconomic export interests exert powerful pressures on the conclusion of agreements. Paradoxically, these microeconomic interests are sometimes represented by multinational corporations that are dominant in the Latin American markets. In other words, business interests are represented on both sides of the negotiating table. Fruit companies Chiquita and Del Monte are prominent examples in Central America, companies that for decades controlled Central American republics, and gave origin to the epithet "banana republic". In Mercosur investment by Spanish firms has transformed the ownership structure of major sectors such as telecommunications, electricity, natural gas, financial services and hydrocarbons posing a major challenge to regulatory authorities.

According to the Economic Commission for Latin America (ECLAC,2003), in the last decades three trends of export specialization can be identified in the Latin American region. First, there is integration in the North-South trade flows of manufactured goods mainly destined for the US market and characterized by the off-shore processing industries of Mexico and some Central American and Caribbean countries. Second, South American countries are integrating into to South-South trade flows. These countries have more diversified trade based on exports to regional markets. Even though basic product exports have been reduced in total regional trade, in Mercosur and the Andean Community exports of basic products and manufactured goods based on natural resources still represent a high percentage in the total external sales (58% Mercosur, 86% Andean Community). Third, in some Caribbean countries and Panama, the export of services, particularly those related to tourism, finance and transportation, are becoming very important.

While this is a very simplistic classification of export specialization, it sheds light on the potential interests of each group of countries in the FTAA and bilateral negotiations. In sum, except for Mercosur which has a special economic relationship with the EU, the rest of Latin America remains highly dependent on the US as a destiny for its exports and source of direct investment flows.

In the case of CAFTA countries, which already have duty-free access to the US market for many of their exports, the free-trade pact is supposed to further reduce barriers, cutting the Central American countries' tariffs on 80 percent of US-made industrial and consumer goods, and phasing out the remaining tariffs over 10 years. The CAFTA sectors with greater opportunities in the agreement are mainly textiles and garment producers which are present in all the countries, but are more prominent in Honduras and El Salvador. Other industrial sectors expected to gains are the electronics industry (Costa Rica), medical equipments (Costa Rica), pharmaceuticals (Costa Rica, El Salvador and Guatemala), chemicals and chemical by-products (El Salvador and Costa Rica), paper and paper by-products (El Salvador and Nicaragua) (Nowalski and Osterlof, 2004). In some of these sectors American presence is dominant. In the agricultural sector, fresh and preserved foods are stand to gain, including pineapples,

melons, flowers, plants, cigars, vegetables and pulses, tubers and roots. In some cases the commercialization of agricultural products depends on transnational enterprises such as Chiquita and Del Monte.

US offensive interests have been satisfied by the elimination of duties on 80 percent of all industrial goods exported to CAFTA countries. The big winners of the agreement are information technology, construction equipment, paper products, chemicals, medical and scientific equipment. In addition, the agreement wipes out duties on US (subsidized) farm exports, including cotton, rice, wheat, soybeans, as well as processed foods, fruits and vegetables and cuts of beef. CAFTA also agrees to open its market to US telecoms, banks, insurers, retailers, express-delivery couriers, travel and transport firms, advertising agencies,. It also allows freer movement of professional services such as engineering and accounting. At the same time Zoellick pointed out that the deal would give WTO-plus protection for patented drugs, copyrighted movies and software, internet domain names and other intellectual property.

In the case of Mercosur-EU agreement, Europe's mercantilist interests are not only related with the increased access to the markets and natural resources in the area. Brazil and Argentina have been a focal point of European FDI investment outside the OECD area. For an indication of the significance of EU penetration, half of FDI in Argentina and Brazil is European and half of that is Spanish. These investments have been concentrated in the manufacturing sector and particularly in chemicals, machinery and transport equipment. Privatization of state-owned companies since the early 1990s led to new FDI opportunities in services, strengthening the focus that EU investors have had on Brazil and Argentina. EU investors taken together hold around 35 percent of the FDI stocks and were in the first half of the 1990s more important than US investors in Argentina and Brazil. (Nunnenkamp, 2002) This trend grew throughout the second half of the 1990s led by Spain. Spain became in both larger countries of Mercosur the most important EU investor replacing traditional German and Italian leadership. (See Box below.) Largely due to Spanish FDI the sectoral composition of the EU's total FDI in Mercosur veered heavily toward the service sector. Hence trade agreements are heavily inclined to

protect the business climate for such interests, with a concern for continuous opening of market segments for European utility providers and banking.

It is important to take into account that trade with the EU accounts for one-fourth of Mercosur imports and exports. However, Mercosur exports are concentrated in a narrow group of products. The majority of these products are associated to agricultural commodities and foodstuffs. In this sense, Mercosur gains with an interregional agreement are much more concentrated while EU gains are more evenly spread as they comprise a large portfolio of diversified exports plus all regulations related to investment and services. In order to protect its food production the EU has made its offer of market access conditional on the strict protection of denominations of origin for wines, spirits, dairy products, cold cuts, etc. Were this provision to be accepted, it would apply to approximately 600 products. In fisheries the offer was made conditional on access to fishing rights in coastal waters.

Prime movers of the trade agreement are the chemical, petrochemical and related industries, in which EU enterprises, such as Bayer and Unilever, dominate the Mercosur market and are keen to streamline investments. Mercosur's products with export opportunities that have received stingy market access offers are in sectors such as beef and edible meat offal; poultry, fish, crustaceans and mollusks and vegetables, fruits, nuts and food preparations. As can be seen, the predominance of the food and agricultural products is remarkable. Brazil is today a leading producer of sugar, poultry and by-products while Argentina and Uruguay have great potential in beef and dairy products. Particularly important for Brazil are textiles and some products in the electrical and electronic equipment sector (Valladao, 2004).

A case in point: TRIPS in CAFTA and the EU-Mercosur negotiations

Intellectual property was first introduced as a trade issue in the Uruguay Round during which agreement on Trade Related Intellectual Property (TRIPs) was reached. In regional and bilateral agreements the objective is often to deepen these existing provisions, i.e., they are WTO-plus.

The main objective of the draft of the chapter on IPRs in the Mercosur- EU Agreement is to ensure adequate and effective protection of IPRs in line with WTO standards. The scope of the proposal includes the same eight categories that comprise the TRIPs agreement (copyright, trademark, geographic indications, industrial designs, and patents, layouts designs of integrated circuits, undisclosed information and clause of control of anti-competitive practices in licenses). However, some substantial differences between both parties have come to light. The EU, on one hand, is seeking, among other things, the accession to thirteen international conventions related to intellectual property, including, for example, the Paris Convention's protection of industrial property, the Bern Convention's of artistic works and the Rome Convention's of phonograms and broadcasting. The EU is currently asking Mercosur countries to strengthen IPR law enforcement. The intention is to force Mercosur countries to establish a similar IPR enforcement law to the one put in force in Europe this year.

Mercosur, on the other hand, has asked for provisions stating the need for a balance between intellectual property rights, access to genetic resources and traditional knowledge. The Mercosur proposal aims to ensure exceptions and is based on the argument that nothing should prevent parties from taking measures which promote public health, nutrition and other areas of public interest in sectors of vital importance for development.⁵

Mercosur countries want to guarantee that they may take measures to prevent the unfair use of IPRs by rights holders or the use of practices that limit trade in an unjustifiable manner or adversely affect technology transfer. To those ends, they propose recognition of sovereign rights over natural resources, including

⁵ Mercosur has a Harmonization Protocol of Norms on Intellectual Property which has been waiting for ratification with other protocols dealing with non tariff trade issues, such as investment and trade defense measures. The Protocol on Intellectual Property addresses primarily trademarks (in some depth) and geographical indications, but touches on other IPR issues only briefly. The original MERCOSUR agreement did not explicitly make a reference to IPRs. A subsequent protocol, the Harmonization Protocol of Norms on Intellectual Property in the MERCOSUR Regarding Trademarks, Indications of Source and Denominations of Origin (1996), will, once it is in effect, ensure harmonisation in the treatment of certain IPRs issues among the parties to the agreement.

genetic resources and traditional knowledge. More broadly, the protection and enforcement of IPRs must contribute to the promotion of technological innovation and the transfer of technology.

Controversy concentrates on WTO-plus issues, in particular the EU “claw-back” policy to pursue recognition of geographical indications by means of bilateral trade agreements which supersede the obligations incurred under the WTO. The issues being faced can be seen most clearly in the discussion over trade in wine products. In the EU- Mercosur agreement, negotiations are being held at bi-regional and bilateral levels to facilitate and promote wine trade. The EU has a regional mandate to negotiate with Mercosur, i.e., it has no authorization to negotiate bilaterally with any of the Mercosur country-members. However, due to the strong competition between EU and Argentinean wine producing sectors, pressure was brought to bear during the Madrid Summit in 2002 and it was agreed that the Agreement on Wines and the Sanitary and Phytosanitary Agreement (SPS), would be negotiated bilaterally. At some future point, the agreement will become part of the bi-regional accord.

In the US-CAFTA Agreement the chapter on intellectual property rights required Central American governments to incorporate a number of new international protocols that favour the protection of trademarks and patent rules. (See Chart 1) These include new restrictions on and dispute facilities for electronic communications, such as the internet, and define communication frequencies as property. This area of negotiation was a one-way street given the highly unequal distribution of patents between the U.S. and Central America, or the capacity of the latter to acquire them.

Chart 1: Central America and US: Instruments of Intellectual Property included in the US-CAFTA Agreement and its necessities of ratification

Date to entry into force (agreed in CAFTA)	Convention or Treaty	Ratified by	Should ratify
At the entry into force of CAFTA	WIPO Copyright Treaty (1996)	Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and US	-
	WIPO Performances and Phonograms Treaty (1996)	Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, US	-
1st January 2006	Patent Cooperation Treaty,	Costa Rica, Nicaragua, US	El Salvador, Honduras,

	according to its revision (1970)		Guatemala
	Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure	US	Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua
1st January 2008	Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite	Costa Rica, Nicaragua, US	El Salvador, Honduras, Guatemala
	Trademark Law Treaty	US	Costa Rica, El Salvador, Honduras, Guatemala
Nicaragua 06/01/2010 Costa Rica 06/01/2007 All the others 06/01/2006	International Convention for the Protection of New Varieties of Plants (1991).	US	Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua
Each part should conduct the necessary efforts to ratify:	Patent Law Treaty (2000)	US	Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua
	Hague Agreement Concerning the International Deposit of Industrial Designs (1999)	-	Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua, US
	Madrid Agreement Concerning the International Registration of Marks (1989)	US	Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua

Source: Acuña-Alfaro, Nowalski-Rowinski and Osterlof-Obregon (2004)

The Central American governments initially signalled that they would not accept an intellectual property proposal that failed to reach a balance between the need for technological innovation and the socio-economic welfare of the region. In the end, CAFTA countries conceded to a TRIPs plus chapter that limits the grounds for revoking patents, secures protections for test data and trade secrets for 5-10 years and severely inhibits access to generic drugs. The agreement extends the rights of the holder of the patent from 50 to 70 years and also strengthens the position of multinationals in cracking down on copyright violations, ensuring the ability to award monetary damages even when assigning a monetary value to the violation is difficult.

Patents are the central focus. Patent rights were not extended and remain at 20 years. However, CAFTA commits Central American countries to protect “newly developed plant varieties,” an issue promoted by leading biotechnological firms such as Monsanto and Dow Chemical. Drug test data was also an issue of concern. As agreed, information submitted regarding the trials conducted will be prohibited from being made public for an additional number of years so as to ensure safety of any new drug introduced to local markets. The test data is considered a necessity for reproducing the drug by local firms. In this vein, the CAFTA countries have conceded that withheld drug and chemical test

information or trade secrets will be protected for five years for medicines and for ten years for agrochemicals. Royalty payments for surgical or therapeutic procedures patented in the US were not accepted. Costa Rica has resisted on its own the 5-year rule for test data, and insisted instead on three years and has also refused the 10-year protection for test data for chemicals and agrochemicals. Central American producers of generic medicines complain that the text extended the outreach of U.S. pharmaceutical monopoly to the region.

In the cases of both CAFTA and EU-Mercosur, private sector interests helped to shape and drive the positions on IPR issues. In the latter, the European negotiators are, at the general level, anxious to bring Mercosur into compliance with the enforcement mechanisms that the EU has recently adopted. However, many side issues, such as recognition of geographical indications, respond to the demands of specific business interests. Results of the discussions remain unclear as the EU does confront fairly sophisticated counterparts, especially in the Brazilian team. In CAFTA, on the other hand, U.S. pressure was almost invincible on every point. This is most clear with regard to patent protection where the power of pharmaceutical companies were able to weigh in, except on issues that Costa Rican negotiators stood firm. So while, CAFTA's IPR results confirm the difficulties of unequal bargaining in RTAs, it also shows that determined, well informed small country officials can make a difference.

Investment and Services: Two means to the same end

A brief review of Investment as a sub-category of trade negotiations clearly reveals the degree to which the issues involved are contentious and why many developing countries are resisting the inclusion of the so-called Singapore Issues, Investment being one, in the Doha Round.

In 1996, a Working Group was established during the Singapore Ministerial Conference to examine the connections between trade and investment. The principle question was whether or not to attempt to negotiate an agreement on investment within the multilateral negotiations. At Doha, the only step taken was to mandate a

study to clarify what would be involved in such negotiations. While a decision was to be taken in Cancun in September, 2003, the firm resistance by the G-20 to such a broadening of the agenda turned Investment into one of the main sticking points and a major reason for the acrimonious impasse that terminated the Conference.

Positions on Investment break down between developed countries and developing countries, in turn split into two camps.

Developed countries want safeguards for their external investments extended into the multilateral sphere. Moreover, multinational companies are pressing for investment security as part of their strategic expansion recognizing that the competition for future markets is less in access to market share or tariff considerations and more in security for direct foreign investments in emerging markets. This vision is also strongly shared by financial services firms which are eager to have portfolio investments included in the definition of the category

- The first group of developing countries are those that have already signed bilateral trade agreements that include Investment protection clauses. For them, the issue may be a dead letter with important trading partners and/or exclusively a question to be treated within the WTO.
- The second group of developing countries include some of the largest developing economies, that have limited bilateral accords and/or belong to regional trade and economic organizations that are sceptical of the Singapore issues. In addition, there are countries such as India, China and Brazil that reserve the right to treat investment security within the framework of national economic development plans.

Within this context, the G-20 Plus can be understood as an effort to arrive at a consensus among both sets of developing countries on how to approach Investment and the other Singapore Issues within the Doha Round and the WTO.

These tensions extended to the negotiations for the Free Trade Area of the Americas, where one of the most divisive issues has been whether investment should be treated in the chapter on services (under Mode 3) or in a separate chapter on investment. Where this question is addressed matters less than the disciplines

that are eventually agreed on the “right to commercial establishment”. Both approaches are compatible with GATS Article V on economic integration.

To look more closely at how the investment protection issue is currently being played out, it is useful to examine its place in CAFTA and in the EU-Mercosur discussions. The two agreements show contrasting approaches to the issue. In the case of CAFTA the US has sought a broad chapter on the regulation of investment with a definition of investment that goes far beyond GAT provisions on commercial establishment. This is coupled with widespread liberalization through negative lists in the services protocol, an approach that liberalizes all sectors except those specifically mentioned in reservations. This is known as the top-down approach. In the top-down approach all non-conforming measures for which no explicit reservations have been made must be eliminated. Known as the “list it or lose it” obligation, this approach does not allow for the introduction of future regulations for sectors on which there is no current clear definition of objectives and policies. It tends to favour those countries with a more developed regulatory framework since those with fewer regulations cannot register reservations in sectors without regulatory regimes. Because the approach is so wide-ranging it also hinders the evaluation of concessions. (Abugattas Majluf and Stephenson, 2003) Another consequence of regulatory agreements also needs to be flagged: they will make the strategic promotion of domestic firms in competition with foreign companies much more difficult.

In contrast, the EU, as the leading investor in Mercosur, has not been keen to significantly deepen the current level of liberalization but, rather, seeks to protect the status quo. In this vein, in the chapter on investment the EU demands the phasing out of several specific domestic regulations that interfere with EU investor interests in Mercosur, such as the banning of foreign investment in frontier areas, the commitment to hire a share of local workers in the labour force, non discrimination in investment and technological incentives, etc. In contrast to the agreements pursued by the US it excludes provisions on expropriations, which is unsurprising since the EC law has no rules in such areas and each member state retains full competence on these issues.

Liberalization is pursued in a bit-by-bit manner or bottom-up; it makes a targeted attempt to open very particular market niches that remain under government regulation: Through positive lists included in the services annexes, liberalization is undertaken only in the scheduled services items and the modes of supply for which countries adopt specific commitments. The risk with this approach is that the status quo may become bound – a risk that in the absence of competition policy, leads to favouring the incumbent players.

Turning first to CAFTA, the main goal of the US has been to establish standards for the protection of its foreign investors and to remain ahead in the strategic competition for rule creation on these issues. According to the USTR, the agreement will provide the full range of safeguards that the US has consistently looked for and received, most recently in the bilateral agreement with Chile. CAFTA has a separate chapter on investment which allows a very broad definition of investment, extending to debt, intellectual property, sub-contracting and concessions. Chapter 11 seeks to create favourable conditions for foreign investment, including national treatment and most favoured nation and allowing investor – state dispute settlement. US investors are, essentially, provided with the full rights to establish and conduct businesses in Central America on equal footing with national investors and any others with whom the countries have pre-existing agreements. The chapter specifies provisions for due process protection and reimbursement at fair market value in the event of direct and indirect expropriation. Interestingly, this policy thrust will also apply to financial services where Central America seems to have ceded access to US banking institutions in exchange for expanded market share in agricultural products.

In sum, the US signalled in CAFTA that, while, in the light of Brazilian objections, it backtracked in Miami on these issues being dealt with under FTAA, their inclusion remains a fundamental policy objective. Through CAFTA, it has shown how a regional agreement can open a back door to accords that cannot yet be reached in the multilateral arena.

A brief overview of the stalled negotiations between the EU and Mercosur reveal another potential pattern in dealing with Investment (and possibly other Singapore issues). Anxious to hold on to the advances made in the last decade by European

firms, especially Spanish and Italian, and defending its position as Mercosur's most important trading partner, the EU was anxious to show through this negotiation that it is more flexible and friendly than the US. For those reasons, many of the sticky issues effecting Investment were finessed. For example, portfolio investment was excluded, the positive list approach was accepted, and agreement on a state-investor dispute settlement mechanism and TRIMs modifications are not on the table.

What is interesting is that, even with the omission of these contentious points, the two blocs have been unable to overcome the essential impasse: investment protection versus increased opening of the European agricultural markets. The quotas for agricultural export were not generous enough to attract interested exporters. The internal asymmetries within Mercosur are an important factor. While Brazil had to make greater concessions in terms of liberalizing investment and services sectors, Argentina was dissatisfied with the European offer in fruits, dairy products and beef. Thus neither of them was in a position to prod the other and move the deal forward.

In an effort to side step the disagreements, the EU is attempting to achieve Investment safeguards under the Service chapter of the proposed agreement. The EU offer is conditional on concessions from Mercosur in the fields of maritime services (including feeder services, intra-Mercosur traffic and auxiliary services), telecommunications and financial services. For an idea of what is at stake one only needs to consider that Brazilian banks currently hold nearly \$300 billion in deposits, making the market extremely attractive, for example, to Europe's mature financial service firms.

A reduced list of horizontal reservations in the field of investment, notably that allowing discriminatory treatment of EU entities regarding incentive schemes and technological development, as well and the derogation of commitments to future MFN investment regimes within the WTO is countered by the approach in Services. There the EU commits only to liberalizing what is listed. The emphasis is on sectors in which European investments are dominant (electricity, gas, telecommunications,

banking) but in which there are strong pressures to tap into undeveloped market niches.

The result, if the EU approach is accepted, would make it the big winner in Investment and Services, if only by its having maintained the status quo. While the results may be similar, the CAFTA agreement includes very different mechanisms as it includes a generic chapter on Investment based on a negative list approach that achieves substantial market access for US firms across the entire Services chapter, admitting very few exceptions.

The EU has also requested further commitments in a limited number of areas. In the area of government procurement, for example, it has insisted on a market access component based on national treatment and MFN. Any offer on procurement, it proposes, should be commercially meaningful and cover the most important procuring entities. Brazil responded by offering a quota of 3 percent open to European firms with local presence. The EU appears to be willing to grant a preferential margin for Mercosur bidders as well as a safeguard clause. As with Services Protocols the approach is likely to yield success to the degree that accommodations with Brazil can be managed.

Conclusions

The world economy has become increasingly open making states more interdependent and exposing each country to unprecedented degrees of economic competition. The process has especially benefited the transnational economic actors. In this sense North/South regionalism contains strategic elements. It is distinguished by its pursuit of a particular set of institutional arrangements clearly leaning toward the protection of investor rights at the expense of developmental needs. This has emerged starkly in CAFTA showing how a regional agreement can open a back door to rule creation that cannot yet be reached in the multilateral arena. The agreements erode the rights of states to regulate, forbidding, for example, all types of performance requirements (barring reservations specified by each country), thus depriving countries of a right codified in the multilateral arena.

Rules make a difference not only in institutional terms but also for their distributional impact. Both the agreements on intellectual property and investment are a case in point. Transnational enterprises have gained most from this change, acquiring more and more power to influence the domestic policies of states and the international relations process. Business forums such as the MERCOSUR-European Business Forum (MEBF) follow the process closely and gain influence with regular contacts and agenda setting meetings. It is against this background – of accelerating global competition, the state’s weakened control over its national economy and the lack of satisfactory global structures – that the development of regional structures has become more important in the eyes of governments themselves. This is the basis on which Rodrik’s trilemma rests: the unstable cohabitation on international economic integration, the nation state and democratic politics. When the political and economic choices open to governments become constricted to such an extent, the essence of democratic processes is hollowed out.

On one hand, in the interest of “efficient” decision-making and in reaction to pressures from developed countries, governments in developing countries are more and more biased to maintain negotiations confidential, generating a critical democratic deficit. On the other hand, more people are now aware of the extent up to which their daily lives and social well-being are affected by secretive decisions made by international bureaucrats and demand new channels of participation in these decisions. Trade affects the distribution of income, raising questions of who gets what and what can be done about it in the political arena.

Markets are social constructions, embedded in sociopolitical systems. However developing country governments face less and less flexibility in establishing the parameters within which their markets function, taking into account domestic preferences. All in all these negotiations lead to a situation in which the strategic promotion of domestic firms vis-a vis foreign competition becomes more difficult. Moreover, the extrapolation of neoliberal values and beliefs from developed countries circumscribes taking into account that what can be considered “fair” in one country may not necessarily be considered in the same

way in another. If developing countries continue the race to sign asymmetric trade agreements, they will not wither, but their powers will be severely limited by the intricate patchwork of international rules that is emerging.

Nonetheless, PTAs continue to be pursued because they offer the ability to micromanage competition in order to create preferential markets on a global scale. The other side of the coin, however, is that in most PTAs reforms are oriented to creating conditions favourable to international investors and they tend to weaken the voice of labour and civil society actors at large. As a reaction, civil society has taken the road of also internationalizing its voice in order to increase its leverage against the naturally non-egalitarian thrust of global economic restructuring. Broad cross border social alliances respond to a political necessity. Transnational networks of this sort are trying to create new channels of participation in order to gain leverage and change the essentially anti-democratic nature of the process.

The towering presence of multinational corporations in developing countries affects the bargaining choices of host countries. National preferences are usually determined by the constraints and opportunities of economic interdependence while the outcomes of interstate bargains are determined by the relative bargaining power of governments and their need to expand markets and attract foreign investment. So far trade negotiations further integrating national economies have been corporate driven. Civil society, composed of people and groups seeking alternatives to the pressure of multinational firms, the erosion of the regulatory role of the state has come out as authorized voice of the opposition to the democratic deficit.

Red Lights in Negotiations

- The response of developing countries to inequalities of bargaining power should be to focus on negotiations where they can improve their power through alliances with other countries with similar interests. Negotiations in bloc are prone to obtain more equilibrated balances. Weaker countries

are likely to make the greatest gains through bloc coalitions. As market power is the most important source to shape bargaining power, alliances with other countries are the key to enhancing the power of the weak.

- Developing countries must learn to resist and negotiate very hard. Even though they face several asymmetries they should use bloc coalition strategies to overcome their lack of resources and strategic thinking. Coalition strategies may be inherently unstable but they serve to overcome relative weaknesses and reduced shares in international trade and investment flows.
- Trade policy is an inherently distributive instrument whereby employment in import competing sectors is exchanged for employment in export oriented sectors. The trade-offs are usually hidden from view resulting in a situation in which the compromises made come to the fore when the process is concluded and when compliance is socially and politically costly.
- If relevant sectors are left aside with no chance of winning distributional conflicts and, at the same time democracy does not improve the material conditions of losers, those who expect to suffer continued deprivation are forced to find alternative ways to channel their discontent. Such discontent has so far not been used by developing country governments to strengthen their bargaining power in the negotiating table. As democratic rule expands in developing countries, Congresses should be asked to play a role as a catalyst between dissatisfied local demands and the Executive leading trade negotiations in opaque manners.
- Developing countries should enhance cooperation among networks composed by civil servants, businesses, academics and civil society at large to pool resources, raise awareness of costs and benefits and to prop up their bargaining power.

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