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Beyond Doha's Promises: Administrative Barriers as an Obstruction to Development

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Beyond Doha's Promises: Administrative Barriers as an Obstruction to Development

By
Sungjoon Cho*

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I.

INTRODUCTION: BEYOND DOHA'S PROMISES

The World Trade Organization's (WTO)¹ Doha Round of trade negotiations, was intended as a pledge to the world's poor (as its soubriquet – the “development round” – insinuates). In 2003, the World Bank presented a sanguine forecast: developing countries would gain as much as \$350 billion by 2015, lifting 140 million people above the two dollar per-day poverty line.² The resulting optimism, while tempered and challenged subsequently,³ has been an enduring life-force of the Doha Round negotiation. The guiding vision is that in response to continued reductions in developed countries' tariffs and subsidies, developing countries will dramatically increase their exports, moving them closer to their development goals. This *conviction*, more than a prediction, may nonetheless have poor countries staying close to the negotiation table despite recent deadlocks.⁴

However, even if the Doha round delivers on its original promise to reduce tariffs and subsidies, which developing countries would heartily welcome, other types of trade barriers, that is, “administrative barriers,” are likely to continue impeding developing countries' ability to export certain products to developed countries' markets.⁵ Even the benefits of the least-developed countries' (LDCs') duty- and quota-free market access, part of the face-saving package negotiated at the Hong Kong Ministerial Conference,⁶ may be negated by antidumping or

1. Marrakech Agreement Establishing the World Trade Organization, April 15, 1994, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations [hereinafter WTO Agreement], LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND [hereinafter RESULTS OF THE URUGUAY ROUND], 33 I.L.M. 1140, 1144-1153 (1994).

2. WORLD BANK, GLOBAL ECONOMIC PROSPECTS 2004: REALIZING THE DEVELOPMENT PROMISE OF DOHA AGENDA xxix (2003), <http://siteresources.worldbank.org/INTRGEP2004/Resources/gep2004fulltext.pdf> [hereinafter WORLD BANK 2003]. According to the UN Millennium Campaign, nearly half the global population lives on less than \$2 a day. Millennium Campaign, About the Goals, available at <http://www.millenniumcampaign.org/site/pp.asp?c=grKVL2NLE&b=185518>.

3. The World Bank's later projection based on sophisticated and realistic multiple scenarios delivered a starkly contrasting prospect; one scenario predicts that developing countries would gain only US\$16 billion by 2015. WORLD BANK, AGRICULTURAL TRADE REFORM AND THE DOHA DEVELOPMENT AGENDA 456 (Kym Anderson & Will Martin eds. 2005), <http://siteresources.worldbank.org/INTRADERESEARCH/Resources/AgTradeBook.pdf>. Timothy Wise and Kevin Gallagher cast an even darker outlook than the later World Bank estimate criticizing the World Bank's neglect to take into account “costs” incurred by developing countries such as compliance and administrative costs, tariff losses and adjustment costs. Timothy A. Wise & Kevin P. Gallagher, *Doha Round's Development Impacts: Shrinking Gains and Real Costs*, RIS Policy Brief No. 19, Nov. 2005, at 3, <http://ase.tufts.edu/gdae/Pubs/rp/RISPolicyBrief19WiseGallagherNov05.pdf>.

4. See generally Sungjoon Cho, *Doha's Development*, 25 BERKELEY J. INT'L L. 165 (2007).

5. See *infra* Part II (discussing administrative barriers).

6. WTO Ministerial Conference (Sixth Session, Hong Kong, Dec. 13-18, 2005), Doha Work

sanitary measures imposed by developed countries.

Frustratingly, these non-tariff, non-subsidy trade barriers remain veiled even through rich countries' liberal trade policies, not only because they are hard to measure, but also because they are shrouded in legitimate social regulations.⁷ Wealthy democracies seem to have done very little to crack the hardest protectionist nuts. On the contrary, such countries tend to pursue "optimal obfuscation" by replacing conventional barriers, such as tariffs, with more esoteric administrative barriers.⁸ This is a bad omen for poor countries whose economic growth hinges on access to rich countries' markets.

Despite their potentially fatal affect on development, administrative barriers (such as antidumping measures, various regulatory standards, and complicated rules of origin) remain largely unaddressed in the current Doha round. As negotiators have focused mainly on conventional barriers such as tariffs and subsidies, administrative barriers have failed to occupy their rightful place on the negotiation agenda, receiving instead only nominal treatment.⁹

This lack of attention, albeit understandable from a practical standpoint, is nonetheless problematic. Empirical data demonstrate that administrative barriers are being applied "in a systematic pattern" which unfairly blocks exports from developing countries.¹⁰ It is widely known that the Uruguay Round's innovations in the form of technical standards and sanitary measures have already imposed tremendous costs on poor countries.¹¹ These barriers allegedly cost developing countries 100 billion dollars a year, which is twice as much as they receive in aid.¹²

More seriously, these administrative barriers tend to disproportionately af-

Program: Draft Ministerial Declaration (Revision), WT/MIN(05)/W/3/Rev., Dec. 18, 2005, available at http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_e.htm.

7. See notably Daniel Y. Kono, *Optimal Obfuscation: Democracy and Trade Policy Transparency*, 100 Am. Pol. Sci. Rev. 369 (2006).

8. *Id.*

9. WTO Ministerial Conference (Sixth Session, Hong Kong, Dec. 13-18, 2005); World Trade Organization, Ministerial Declaration of 22 December 2005, WT/MIN(05)/DEC [hereinafter Doha Work Program] at para. 22, http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm. ("We note that the Negotiating Group has made progress in the identification, categorization and examination of notified NTBs [non-tariff barriers]. We also take note that Members are developing bilateral, vertical and horizontal approaches to the NTB negotiations, and that some of the NTBs are being addressed in other fora including other Negotiating Groups. We recognize the need for specific negotiating proposals and encourage participants to make such submissions as quickly as possible.").

10. See Andrew Mold, *Non-Tariff Barriers – Their Prevalence and Relevance for African Countries*, African Trade Policy Center, Work in Progress No. 25, Oct. 2005, at 10, available at <http://www.uneca.org/atpc/Work%20in%20progress/25.pdf>.

11. Joseph E. Stiglitz & Andrew Charlton, "A Development Round of Trade Negotiation?", *Initiative for Policy Dialogue Working Paper Series*, May 11, 2004, at 4.

12. *Maran Criticises Hike in Non-Tariff Barriers*, REDIFF.COM, Jun. 24, 2002 (quoting the Indian Commerce and Industry Minister Murasoli Maran), available at <http://www.rediff.com/money/2002/jun/24maran.htm> [hereinafter Maran].

fect *small* producers in developing countries. By imposing tremendous administrative and compliance costs, administrative barriers tend to deprive these small players of the ability to explore subtle niches in the global production chain. These lost opportunities gravely undermine the ever-increasing developmental potential which the recent phenomenon of global sourcing offers to the world's poor.

Against this alarming background, this Article articulates the potentially fatal effect that imposing administrative barriers has on the goal of developing poor countries, and suggests retooling the current trade norms and policies in order to make them more conducive to the WTO's development goals.

Part II of this Article begins by conceptualizing administrative barriers. It notes that the conventional notion of non-tariff barriers (NTBs) could be both over-representative and under-representative in capturing the developmental dimension of trade-restrictive domestic regulations. The Article proceeds to construct a concept of administrative barriers centering on domestic regulations, such as antidumping measures, regulatory standards, and rules of origin, which have the most potential to obstruct development.

Part III highlights developmental hazards created by administrative barriers. It observes that both protectionist antidumping duties and excruciating investigative procedures tend to offset developing countries' comparative advantages in favor of developed countries' domestic producers. It then argues that under-capacitated developing countries suffer from developed countries' high-end regulatory standards which are often disguised protectionism. This part also contends that most preferential trade agreements between developed and developing countries are not a solution but create yet another problem for development because of their complicated rules of origin, which cancel out most opportunities for development through trade.

Part IV suggests ways of retooling the current trade norms and policies to remedy this situation. First, antidumping investigations could be suspended or curtailed for low-income developing countries. Second, regulatory dialogue could be pursued between rich importing countries and poor exporting countries in order to streamline standards and build capacity. Third, the rules of origin could be loosened and simplified to offer developing countries expanded access to rich countries' markets.

The Article concludes by arguing that administrative barriers will mainstream the once marginalized world poor into the currents of global commerce and thus help them help themselves, which will tend to promote global peace and security.

II.

CONCEPTUALIZING ADMINISTRATIVE BARRIERS

Conceptualizing and defining administrative barriers, for the purpose of this Article, is a task that should go beyond merely creating a taxonomy of such

barriers. It should capture often hidden and embedded obstacles to market access in a way that can highlight development concerns from the standpoint of developing countries rather than from the standpoint of developed countries. For example, complicated rules of origin applied to textile imports may not be a big problem to developed countries since they are not big producers of such labor-intensive items. However, many developing countries rely heavily on these industries for their hard currencies, and thus, they truly suffer when labyrinthine rules of origin stymie their access to rich countries' markets.¹³

The concept of administrative barriers includes both protectionist and non-protectionist measures. Measures such as complex rules of origin and antidumping rules are obviously meant to protect domestic producers from foreign competition. However, certain domestic regulations, such as those related to social hygiene, carry with them legitimate policy objectives, such as protection of human health, labor and the environment. Nonetheless, these seemingly innocuous, and often moralistic, domestic standards often create trade barriers against developing countries that are incapable of meeting these commonly demanding standards.

Concomitantly, some of those domestic regulations may hide protectionist motives under the auspices of health, safety and fair trade. For example, strict labor and environmental regulations may be used to deter developing countries' from exporting products to developed countries. For example, in the early nineties, Representative Richard A. Gephardt, leader of the Democratic majority in the U.S. House of Representatives, proposed the "Blue and Green 301," which would penalize exporting countries that fail to meet certain environmental and labor standards.¹⁴

Admittedly, these administrative barriers may overlap with a conventional classification for trade barriers, such as "Non-Tariff Barriers (NTBs)." Yet, the term NTB may be under-inclusive as well as over-inclusive for the purpose of this Article. It may be under-inclusive in that it often focuses narrowly on customs regulations such as import licensing and customs charges, paying little attention to internal administrative regulations.¹⁵ At the same time, it may be over-inclusive in that it possibly connotes any domestic regulation which potentially hinders or impedes poor countries' market access, ranging from subsidies to government procurement rules.

Taking into account its purpose of underscoring development failures, this Article tackles three main concerns of developing countries regarding their ac-

13. See *infra* Part III.C, for a definition and discussion of rules of origin.

14. Reginald Dale, *No 'Blue-Green' Protectionism, Please*, INT'L HERALD TRIBUNE, Mar. 29, 1994. Section 301 refers to the U.S. statute which authorizes the U.S. government to impose sanctions against foreign trading partners in case of their breach of international trade law or any other unreasonable trade practices which harm the U.S. trade interests. 19 U.S.C. §§ 2411-2420 (2000).

15. See, e.g., OECD, *Looking Beyond Tariffs: The Role of Non-Tariff Barriers in World Trade* (2005), http://www.oecd.org/document/51/0,2340,en_2649_36251006_35795315_1_1_1_1,00.html.

cess to developed countries' markets: antidumping rules, various standards, and rules of origin. These three areas also correspond roughly to the main complaints against developed countries' NTBs as listed by twenty-one non-OECD (developing) countries' in a survey conducted by the Organization for Economic Cooperation and Development (OECD) (see Table 1).¹⁶

TABLE 1
NON-TARIFF BARRIERS OF MAIN CONCERN TO DEVELOPING COUNTRIES

Type	Gov't Procurement	Customs; Admin. Reg.	Quotas	Tech. Barriers	Sanitary Measures	Trade Remedies	Total
Complaints	25	376	49	531	135	35	1196

(Source: OECD)

III.

DAMAGING EFFECTS OF ADMINISTRATIVE BARRIERS ON DEVELOPMENT

A. Antidumping Measures

Even if rich countries grant poor countries duty and quota-free market access in the Doha negotiation, the former can always impose prohibitively high tariffs on the latter's clothing or shoes on the ground that the latter *dump* these products in the former's markets. Dumping occurs when imported goods are sold in a foreign market at cheaper prices than they are sold in a home country or third-party market.¹⁷ Dumping also occurs when foreign products are sold at prices below their production cost regardless of their home sale prices.¹⁸ Although this price discrimination or discounted sale is a perfectly legitimate business strategy in the domestic arena (unless predatory intent is involved),¹⁹ the very same practices are nonetheless regarded as "unfair" in international trade and thus counteracted by importing countries. As many commentators have observed, the antidumping regime is not based on a sensible rationale, but only on protectionism.²⁰

16. OECD, Analysis of Non-Tariff Barriers of Concern to Developing Countries, OECD Trade Policy Working Paper No. 16, TD/TC/WP(2004)47/FINAL, Jun. 3, 2005 [hereinafter OECD (2005)]. Those twenty-one non-OECD countries represent a "geographically and economically diverse and balanced sample." *Id.* at 16-17.

17. Under the current U.S. statute, dumping occurs when a foreign producer sells his/her product in the U.S. market at "less than fair value." Tariff Act of 1930 as amended, 19 U.S.C. §§ 1637-1673h, §§ 1675-1675b, §§ 1677-1677n.

18. *Id.*

19. 15 U.S.C. §13a (2007) (requiring that the purposes behind underselling be to destroy competition or eliminate competitors).

20. Kenneth Dam, a renowned international trade law scholar, earlier observed that "the concern with dumping is . . . a concern with the protection of domestic industry from international com-

The following example illustrates this dynamic: the United States imposed high tariffs on Vietnamese catfish based on the assumption that the Vietnamese catfish producers must have engaged in certain unfair practices without which they could not have produced such cheap catfish.²¹ The United States believes that foreign producers should compete on a "level-playing field" where conditions for production are identical to those of domestic producers.²² Consequently, the United States neutralized this alleged unfair price advantage by imposing extra duties at its border. However, trade occurs in the first place precisely because and when countries' production conditions are *different*, reflecting their comparative advantages.

Vietnamese catfish are cheaper than Mississippi catfish not because Vietnamese catfish producers and the Vietnamese government clandestinely pursue some dishonest policies in their "sanctuary market,"²³ but because Vietnamese farmers can produce better quality catfish in a more productive way than the Mississippi catfish farmers, thanks to the Vietnamese comparative advantage in catfish farming that is the product of lower labor costs and natural endowments such as the Mekong Delta.²⁴

It is important to point out that final antidumping duties are only the tip of the iceberg for developing countries. Domestic antidumping proceedings are basically unilateral since importing (developed countries') governments play the multiple roles of police, jury, and judge without a due process mechanism.²⁵ These antidumping rules are rife with "devilish details" yet without any rational foundations.²⁶ Often, antidumping authorities rely heavily on biased data which petitioners (domestic producers) provide themselves.²⁷ Also, responding to anti-

petition." KENNETH W. DAM, THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION 168 (1970). Likewise, the former Federal Reserve Board Chairman Alan Greenspan submitted that antidumping measures are "just simple guises for inhibiting competition" imposed in the name of fair trade." Richard J. Pierce, Jr., *Antidumping Law as a Means of Facilitating Cartelization*, 67 ANTITRUST L.J. 725, 725 (2000) (quoting Federal Reserve Board Chairman Alan Greenspan, Remarks Before the Dallas Ambassadors Forum, Dallas, Texas (Apr. 16, 1999)).

21. See generally Sungjoon Cho, *A Dual Catastrophe of Protectionism*, 25 NW. J. INT'L L. & BUS 315 (2005) [hereinafter Cho, *Protectionism*].

22. See BRINK LINDSEY & DANIEL J. IKENSON, ANTIDUMPING EXPOSED THE DEVILISH DETAILS OF UNFAIR TRADE LAW, xi (2003).

23. "A government's industrial policies or key aspects of the economic system supported by government inaction can enable injurious dumping to take place. Although these policies take on many different forms, they can provide similar artificial advantages to producers. For instance, these policies may allow producers to earn high profits in a home "sanctuary market," which may in turn allow them to sell abroad at an artificially low price. Such practices can result in injury in the importing country since domestic firms may not be able to match the artificially low prices from producers in the sanctuary market." WTO, Negotiating Group on Rules, *Communication from the United States: Basic Concepts and Principles of the Trade Remedy Rules*, TN/RL/W/27, Oct. 22, 2002, at 4.

24. Cho, *Protectionism*, *supra* note 21, at 316.

25. *Id.*, at 329-30.

26. *Id.*, at 334.

27. 19 U.S.C. § 1677e(b) (regarding "best information available"). See Wesley K. Caine, *A*

dumping authorities' voluminous questionnaires may be agonizing for respondents, which are typically developing country producers, since doing so usually requires translators, accountants, economists, and lawyers, all of which can be expensive.²⁸ This is why so many developing countries' producers are forced to raise their export prices upon a mere threat or prospect of an antidumping complaint by domestic producers.

All in all, rich countries cancel out poor countries' comparative advantage through the use of substantive and procedural protectionism established under the guise of antidumping measures. They base these measures on the groundless rationale of fair trade or leveling of the playing field. As a result, poor countries' economic development is seriously and adversely affected.

Data confirm the developmentally fatal effects of developed countries' antidumping measures. For the last decade, the world's wealthiest economies, such as the U.S. and the EU, have used antidumping as a weapon aimed primarily at low-income developing countries. Since the WTO's inception, the U.S. has initiated a total of 366 antidumping investigations, 215 of which targeted low-income developing countries.²⁹ In the case of the EU, during the same period it initiated a total of 345 antidumping investigations, 237 of which targeted low-income developing countries.³⁰

During the same period, antidumping initiations have concentrated on primary commodities and labor-intensive manufacturing goods on which developing countries hold a comparative advantage (see Table 2).³¹

TABLE 2
ANTIDUMPING INITIATIONS BY SECTOR (1995-2006)

Sectors	Chemical Products	Plastic; Rubber	Pulp; Paper	Textiles	Stone; Glass	Basic Metals	Total
No. of Initiation	578	389	126	209	104	844	2938

(Source: WTO)

Worse, the abovementioned developmentally fatal trend in antidumping initiations is expected to continue in the future as manufacturing products as a share of developing countries' exports increases (see Table 3).³²

Case for Repealing the Antidumping Provisions of the Tariff Act of 1930, 13 L. & Pol'y Int'l Bus. 681, 698 (1981).

28. See Elizabeth L. Gunn, *Eliminating the Protectionist Free Ride: The Need for Cost Redistribution in Antidumping Cases*, 28 B.C. INT'L & COMP. L. REV., 165, 175 (2005).

29. WTO, Statistics on Antidumping, http://www.wto.org/english/tratop_e/adp_e/adp_e.htm#statistics.

30. *Id.*

31. *Id.*

32. WORLD BANK 2003, *supra* note 2, at xx.

TABLE 3
AN INCREASING SHARE OF MANUFACTURING EXPORTS IN
DEVELOPING COUNTRIES (PERCENT)

	East Asia	Europe/ Central Asia	Latin America/ Caribbean	Middle East/ N. Africa	South Asia	Sub-Saharan Africa
Resources Export (1981)	30	20	51	94	10	67
Resource Export (2001)	6	8	20	65	10	52
Manufacturing Export (1981)	50	62	20	4	55	10
Manufacturing Export (2001)	88	85	60	30	80	28
Agricultural Export (1981)	20	18	29	3	36	23
Agricultural Export (2001)	6	6	20	3	10	20

(Source: UN, World Bank)

B. Regulatory Standards

Regulatory standards ranging from sanitary measures to labor standards often block developing countries' access to developed countries' markets. Even if some developing countries, such as LDCs, are granted tariff preferences, these regulatory barriers diminish the usefulness of such preferential treatment. These barriers include both technical and functional standards, such as technical and sanitary regulations, and social and moralistic standards, such as environmental and labor regulations.³³

A number of developing countries, given their current capacity and infrastructure, simply cannot afford to comply with sophisticated and demanding technical and sanitary regulations imposed on their imports by developed coun-

33. General Agreement on Tariffs and Trade, October 30, 1947, T.I.A.S. No. 1700, 55 U.N.T.S. 187, art. XX, para. (b) ("necessary to protect human, animal or plant life or health"), para. (g) ("relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption"); Agreement on Sanitary and Phytosanitary Measures, Annex 1 A, the WTO Agreement, *supra* note 1, art. 2.1 [hereinafter SPS Agreement] ("Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, ..."), available at http://www.wto.org/english/docs_e/legal_e/15-sps.pdf; Agreement on Technical Barriers to Trade, Annex 1 A, the WTO Agreement, *supra* note 1, art. 2.2 [hereinafter TBT Agreement] ("Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment."), available at http://www.wto.org/english/docs_e/legal_e/17-tbt.pdf.

tries.³⁴ This structural problem tends to deteriorate developing countries' terms of trade and prevents developing countries' producers from competing with those of developed countries on a level-playing field.³⁵

For example, during the period between August 2000 and July 2001, more than 15 percent of agricultural products exported from India and Sri Lanka to the U.S. were rejected due to their failure to meet strict U.S. labeling requirements.³⁶ It is also estimated that Bangladesh's frozen shrimp industry had to spend over seventeen million dollars in upgrading its production method to meet the U.S. and the EU sanitary requirements.³⁷ For the same reason, less than a quarter of Indian fisheries were approved to export to the EU as of 2002.³⁸ Moreover, developed countries' such as the U.S., as well as the EU, change their regulations frequently. Salvador Namburete, Vice Minister of Industry and Commerce for Mozambique, once referred to the EU sanitary standards as a "moving target,"³⁹ recalling that "a shrimp exporter met all standards and import regulations when the ship left the port, but by the time the ship reached the EU the standards had changed and the cargo was not unloaded."⁴⁰

While many developed countries' technical barriers are already more stringent than international standards, the continuing "upward revision of these standards at regular intervals" is further taxing developing countries that try to comply with such moving targets.⁴¹ In addition, developed countries' testing methods have also become remarkably sensitive not because any scientific requirement demands increased sensitivity of the conformity assessment procedure, but merely because more sophisticated testing technology and equipment is available.⁴² This exceedingly demanding testing requirement makes testing costs "disproportionately high and even prohibitive" to developing countries.⁴³

In addition to government regulations, developing countries are also compelled to comply with private, corporation-initiated standards. For example, Indian companies exporting seedless grapes to large European department stores have to satisfy very demanding social standards required by those importers un-

34. See generally STANDARDS AND GLOBAL TRADE: A VOICE FOR AFRICA (John S. Wilson & Victor O. Abiola eds. 2003) [hereinafter A VOICE FOR AFRICA].

35. Maran, *supra* note 12.

36. Sachin Chaturvedi & Gunjan Nagpal, WTO AND PRODUCT RELATED ENVIRONMENTAL STANDARDS: EMERGING ISSUES AND POLICY OPTIONS BEFORE INDIA 11.(2002).

37. *Id.*, at 4; Cato, J.C., FAO, ECONOMIC ISSUES ASSOCIATED WITH SEAFOOD SAFETY AND IMPLEMENTATION OF SEAFOOD HACCP PROGRAMMES (1998).

38. Mold, *supra* note 10, at 14.

39. *Id.*; Kipe, Sandie, 'Everything but Arms, Declining agricultural exports from Least Developed Countries', USDA Foreign Agricultural Service, Global Agricultural Information Network Report No. E23149, June 2003, at 4.

40. Mold, *supra* note 10, at 14.

41. OECD, *supra* note 16, at 17.

42. *Id.*, at 18.

43. *Id.*

der the label of “socially responsible trading.”⁴⁴ These social codes even specify that Indian exporters build “health centers” and acquire a “new set of imported instruments for fire extinguishing and evacuation belts.”⁴⁵ Unsurprisingly, complying with these codes is nearly unaffordable for many of these exporters since complying with the codes incurs nearly a forty percent hike in production cost.⁴⁶

Nevertheless, these developed countries’ demanding regulatory standards are not always meritorious. They often result from irrational reactions or other prejudices. When a cholera disease broke out in East Africa in 1997, the EU rushed to ban all fish imports from the Lake Victoria region without conducting a relevant risk assessment.⁴⁷ Although the ban was eventually lifted by the intervention of the World Health Organization (WHO) after it verified that fish were not a likely transmitter of cholera, the ban’s adverse effect on the East African economy (Uganda, Tanzania and Kenya) was devastating: the Tanzanian workforce in the fish processing industry was reduced by forty percent.⁴⁸ Likewise, the EU’s standard on aflatoxin levels in food, which would save only 1.4 deaths per billion a year, could decrease African exports by more than sixty percent or US\$670 million, as compared with a situation where a relevant international standard could be substituted.⁴⁹

While these meticulously high standards in rich countries reflect an unrealistic zero-tolerance attitude towards imports, which seems at odds with much higher tolerance levels in the domestic arena. Most industrial countries take a zero-tolerance policy towards salmonella in their poultry imports while this pathogen is routinely found in their domestic supply chains.⁵⁰ Unsurprisingly, this asymmetric administration of rich countries’ standards tends to induce discrimination against imports from developing countries.⁵¹

44. Chaturvedi & Nagpal, *supra* note 36, at 5.

45. *Id.*

46. *Id.*

47. United Nation Conference on Trade and Development (UNCTAD), *The Least Developed Countries 1999 Report - Marginalisation, Productive Capacities and the Least Developed Countries* 144(1999); Oxfam, *Rigged Rules and Double Standards: Trade, Globalisation and the Fight Against Poverty* 104-05 (2002); Jawara, Fatoumata and Aileen Kwa, *Behind the Scenes at the WTO – The Real World of International Trade Negotiations: The Lessons of Cancun 7* (2004) (cited in Mold, *supra* note 10, at 13).

48. Jawara and Kwa, *supra* note 47, at 7 (cited in Mold, *supra* note 10, at 13).

49. See Otsuki, T., M. Sewadash, and J. S. Wilson, *Saving Two in a Billion: A Case Study to Quantify the Trade Effect of European Food Safety Standards on African Exports* (2000) (cited in John S. Wilson, *Standards, Regulation, and Trade: WTO Rules and Developing Country Concerns*, in *HANDBOOK*, *infra* note 34, at 431).

50. Mold, *supra* note 10, at 17.

51. *Id.*; Steven M. Jaffee and Spencer Henson, *Agro-Food Exports from Developing Countries: The Challenges Posed by Standards*, in *GLOBAL AGRICULTURAL TRADE AND DEVELOPING COUNTRIES* 94 (M. Ataman Aksoy and John C. Beghin eds. 2005).

C. Rules of Origin

Rules of origin are the domestic regulations that determine an imported product's national origin. Countries need rules of origin to basically discriminate one country's product from other countries' products.⁵² Rules of origin are an essential element of any regional trade agreement (RTA) because these rules enable tariff preferences (zero tariff) to be accorded exclusively to members' products—that is, originating goods—and prevent “trade deflection,” that is, non-originating goods' free-riding of duty free access.⁵³ To determine an origin of an imported product is a tricky task since the manufacturing process of most products tends to be spread over more than one country via multiple sourcing.⁵⁴

The complex nature of rules of origin offers ample room for protectionist manipulation. In other words, importing countries can effectively protect their domestic industries by narrowing down the scope of those originating goods. In a normal situation, developing countries can have better and more access to developed countries' markets by importing raw materials from third countries and adding value to them in a manufacturing process with low labor costs. However, developed countries' domestic producers lobby their governments to exclude their products from being exposed to such increased competition abroad.

For example, in the recent Japan-Thailand FTA deal Japan attempted to protect its domestic tuna canners and tuna producers by limiting the scope of tuna cans eligible for preferential tariffs to those cans made directly out of tuna harvested in Thailand. Thailand, one of the world's largest tuna canners, strongly opposed Japan's position because its eligible canned tuna exports to Japan under the FTA would be severely reduced.⁵⁵

Naturally, sector-specific lobbies inundate rules of origin with special rules, which eventually turn rules of origin into messy “spaghetti bowls” of protectionist special interests.⁵⁶ One example of rules of origin is over 100 pages long.⁵⁷ Many preferential trade arrangements, such as the EU's Everything But Arms (EBA) initiative and the United States' African Growth and Opportunities Act

52. See Moshe Hirsch, *Rules of Origin as Trade or Foreign Policy Instruments?: The European Union Policy on Products Manufactured in the Settlements in the West Bank and the Gaza Strip*, 26 FORDHAM INT'L L.J. 572, 574-76 (2003).

53. See Paul Brenton, *Rules of Origin in Free Trade Agreements*, WORLD BANK TRADE NOTE, NO. 4, May 29, 2003, at 1; WTO, REGIONAL TRADE INTEGRATION UNDER TRANSFORMATION 10 (2002).

54. See Joseph A. LaNasa, III, *Rules of Origin and the Uruguay Round's Effectiveness in Harmonizing and Regulating Them*, 90 AM. J. INT'L L. 625, 629-34 (1996) (regarding various determinants of origin such as the “last substantial transformation” and the “value-added percentage”).

55. Amy Kazmin, *Questions Remain after Thai-Japan Trade Deal Agreed*, FIN. TIMES, Aug. 2, 2005, at 5.

56. JAGDISH BHAGWATI, A STREAM OF WINDOWS: UNSETTLING REFLECTIONS ON TRADE, IMMIGRATION AND DEMOCRACY 290 (1998).

57. The Mexico-Japan FTA has over 100 pages of rules of origin under the title of the “Annex 4 referred to in Chapter 4: Specific Rules of Origin.”

(AGOA), function like Faustian bargains to developing countries.⁵⁸ Although these agreements grant certain least developed countries preferential treatment in import tariffs, they often exclude those countries' most competitive export products via manipulative rules of origin included in the agreements.⁵⁹

These complicated rules of origin are most conspicuous in the area of textiles and clothing. Under the "yarn-forward rule," the basic component of any textile or apparel products—that is, yarn or fabric—should itself originate from member countries to be eligible for duty-free access. In free trade agreements with Israel and Jordan, the United States had allowed Israeli and Jordanian textile exporters to be eligible for duty-free treatment even when they use third-country yarn and fabric in clothes and apparel products. However, the U.S. soon returned to the yarn-forward rule, which the domestic industry strongly demanded.⁶⁰ The National Council of Textile Organizations in the U.S. urged United States Trade Representative (USTR) to adhere to a zero-exception yarn-forward rule, which was eventually stipulated in the U.S.-Australia FTA.⁶¹

To these protectionist domestic industries, any dilution of the yarn-forward rule could allow those "free-riders," that is, third-party developing countries, such as Vietnam and Cambodia, to ship their fabrics to FTA members to take advantage of duty-free access.⁶² However, to those developing countries, the rule is a developmentally unsound trade diverting mechanism, depriving them of trade expansion opportunities. Even under the AGOA, apparel manufactures in sub-Saharan African countries are unlikely to benefit much from duty- and quota-free access to the U.S. markets because of the strict eligibility requirement that they must use expensive U.S. yarn or fabric, thereby reducing incentives for foreign direct investment in these poor countries.⁶³

However, even regardless of the yarn-forward rule, the textile rules of origin are themselves notoriously complicated, accompanied by various restrictive

58. Mold, *supra* note 10, at 2-3. See also Paul Collier, *Africa's Three Main Problems and How to Fix Them*, FIN. TIMES, Dec. 21, 2006, at 13 (observing that "EBA is so badly flawed"). For example, under the AGOA sub-Saharan African apparel products enjoy duty and quota-free access to the U.S. market only when these products are assembled in those countries "from the U.S. fabric, formed from U.S. yarn cut in the United States." Luis Jorge Garay S. & Rafael Cornejo, RULES OF ORIGIN AND TRADE REFERENCES, IN DEVELOPMENT, TRADE, AND THE WTO: A HANDBOOK [hereinafter HANDBOOK] 114, 115 (Bernard Hoekman et al. eds, 2002).

59. Cf. BELA A. BALASSA, NEW DIRECTIONS IN THE WORLD ECONOMY 360 (1989).

60. USTR, U.S. - Morocco Free Trade Agreement: Textile and Apparel Provisions, Jul. 19, 2004, http://www.ustr.gov/Document_Library/Fact_Sheets/2004/US_-_Morocco_Free_Trade_Agreement_Textile_Apparel_Provisions.html.

61. National Council of Textile Organizations, Statement on Behalf of the National Council of Textile Organizations The United States - Australia Free Trade Agreement Hearing of the Committee on Ways & Means U.S. House of Representatives, Jun. 16, 2004, <http://www.ncto.org/newsroom/ausie02.asp>.

62. *Id.*

63. Garay S. & Cornejo, *supra* note 58, at 116.

requirements. The following excerpt from the U.S.-Jordan FTA⁶⁴ eloquently demonstrates the chaotic nature of rules of origin in RTAs which are often buried in “a facade of technical and seemingly innocuous details.”⁶⁵

9. Textile and apparel products

(a) General rule. A textile or apparel product shall be considered to be wholly the growth, product or manufacture of a Party, or a new or different article of commerce that has been grown, produced, or manufactured in a Party; only if

(i) the product is wholly obtained or produced in a Party;

(ii) the product is a yarn, thread, twine, cordage, rope, cable, or braiding, and,

(1) the constituent staple fibers are *spun in that Party*, or

(2) the continuous filament is *extruded in that Party*;

(iii) the product is a fabric, including a fabric classified under chapter 59 of the Harmonized Commodity Description and Coding System, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in that Party; or

(iv) the product is any other textile or apparel product that is wholly assembled in that Party from its component pieces.

(b) Special rules.

(i) Notwithstanding subparagraph (a)(iv), and except as provided in subparagraphs (b)(iii) and (b)(iv), whether this Agreement shall apply to a good that is classified under one of the following HTS headings or sub-headings shall be determined under subparagraphs (i), (ii), or (iii) of subparagraph (a), as appropriate: 5609, 5807, 5811, 6209.20.50.40, 6213, 6214, 6301, 6302, 6304, 6305, 6306, 6307.10, 6307.90, 6308, or 9404.90.

(ii) Notwithstanding subparagraph (a)(iv), and except as provided in subparagraphs (b)(iii) and (b)(iv), this Agreement shall apply to a textile or apparel product which is knit to shape in a Party.

(iii) Notwithstanding subparagraph (a)(iv), this Agreement shall apply to goods classified under HTS heading 6117.10, 6213.00, 6214.00, 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85, or 9404.90.95, except for goods classified under such headings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton, *if the fabric in the goods is both dyed and printed, when such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decatizing, permanent stiffening, weighting, permanent embossing, or moireing.*

64. US-Jordan FTA Annex 2.2 <http://www.sice.oas.org/Trade/us-jrd/annx22.asp> (emphasis added) [hereinafter USJFTA, Annex 2.2].

65. Lan Cao, *Corporate and Product Identity in the Postnational Economy: Rethinking U.S. Trade Laws*, 90 CALIF. L. REV. 401, 410 (2002).

(iv) Notwithstanding subparagraph (a)(iii), this Agreement shall apply to fabric classified under the HTS as of silk, cotton, man-made fiber, or vegetable fiber *if the fabric is both dyed and printed in a Party, and such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.*

For example, if a Jordanian producer wants to export her dresses to the U.S. duty-free, the “constituent fibers, filaments, or yarns [must be] *woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process*” in Jordan.⁶⁶ These idiosyncratic rules of origin severely undermine Jordan’s developmental potential by disabling Jordan to outsource some of these production processes to third-party countries, such as Bangladesh or Pakistan, which may perform those processes more cheaply than Jordan. The Jordanian producer may be exempted from this strenuous requirement, but only by meeting yet another taxing condition: if she trades “silk, cotton, man-made fiber, or vegetable fiber” products, and if “*the fabric in the goods is both dyed and printed, when such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.*”⁶⁷ Obviously, these meticulous conditions tend to minimize, not maximize, Jordanian producers’ potential trade gains from the agreement.

Unfortunately, developmentally-unfriendly aspects of rules of origin do not halt here. The enormous procedural burden accompanied by these complicated rules of origin adds to already disadvantaged developing countries’ formidable transaction costs, even if these developing countries are parties to those preferential rules of origin. As a result, Eastern European countries’ clothing producers, despite their duty free access status to the EU, elect to follow a normal customs procedure simply to avoid the costs and uncertainties in proving their origins.⁶⁸ According to one study, compliance cost for the rules of origin is tantamount to a tax ranging from 2 to 5.7 percent.⁶⁹ The following excerpt from the U.S.-Jordan FTA vividly demonstrates procedural burdens originating from a disarray of the rules of origin.⁷⁰

10. Whenever an importer enters an article as eligible for the preferential treatment provided by this Agreement –

(a) the importer shall be deemed to certify that such article qualifies for the preferential treatment provided by this Agreement.

(b) the importer shall be prepared to submit to the customs authorities of the importing country, upon request, a declaration setting forth *all pertinent in-*

66. USJFTA, Annex 2.2, *supra* note 64 (emphasis added).

67. *Id.* (emphasis added).

68. See Brenton, *supra* note 53, at 5.

69. Mold, *supra* note 10, at 22.

70. USJFTA, Annex 2.2, *supra* note 64 (emphasis added).

formation concerning the production or manufacture of the article. The information on the declaration should contain at least the following pertinent details:

- (i) a description of the article, quantity, numbers, and marks of packages, invoice numbers, and bills of lading;
- (ii) a description of the operations performed in the production of the article in a Party and identification of the direct costs of processing operations;
- (iii) a description of any materials used in production of the article which are wholly the growth, product, or manufacture of either Party, and a statement as to the cost or value of such materials;
- (iv) a description of the *operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in the article which are claimed to have been sufficiently processed in a Party so as to be materials produced in that Party*; and
- (v) a description of the *origin and cost or value of any foreign materials used in the article which have not been substantially transformed in a Party*.

The Agreement imposes substantial procedural (reporting) burdens on a U.S. importer when a Jordanian exporter ships her clothing to the U.S. However, these burdens are in fact borne by the Jordanian exporter since the U.S. exporter will probably demand this set of information from the Jordanian exporter. Although this burdensome reporting requirement may be essential to the U.S. textile and clothing producers who want to ensure that third-party products will not free-ride tariff preferences under the Agreement, the requirement nonetheless seems to discourage many small Jordanian producers from applying for preferential tariffs.

D. Failing Global Production Sharing: An Impoverishing Dynamic of Administrative Barriers

Nowadays, most goods are produced in a “global production sharing” mechanism under which a production line is broken into multiple stages so that each stage can be accomplished separately in whatever country is best suited in accordance with its comparative advantage (for example, labor-abundant).⁷¹ This is great news to poor countries because such global sourcing offers even small producers a good deal of opportunities to tap into a chain of global production. By empowering poor people to enter the mainstream of the global production system, international trade can pave a road to prosperity for them.

However, the aforementioned administrative barriers defeat this prospect. The excruciating burdens which poor countries’ producers are forced to bear due

71. WORLD BANK 2003, *supra* note 2, at, 69.

to rich countries' elaborate standards, excruciating antidumping rules, or complicated rules of origin mean more than anecdotal bankruptcies and dislocation to developing countries: those burdens tend to structurally wipe out "small" producers and exporters in the developing world.⁷² These small producers, processors and traders in most poverty-stricken rural areas in developing countries cannot afford such expensive production and processing methods which high standards specify.⁷³ Andrew Mold observed that smallholder producers of beans and peas in Kenya and Tanzania who used to ship forty percent of their products to UK supermarkets in the eighties disappeared from this business supply chain by 2001.⁷⁴

Moreover, compliance costs to satisfy developed countries' social hygiene regulations are borne disproportionately by low value and low skill industries. For example, packaging requirements may affect the agricultural or textile industry more seriously than other high value products.⁷⁵ Also, technical regulations are increasingly concerned with production methods or processes rather than final products themselves,⁷⁶ which tends to excessively burden small producers and drive them from the global market.

In the long run, access to the global production chain by small producers in poor countries will become more difficult as developed countries' administrative barriers *cartelize* the world trade. Globally, bigger companies tend to feel more comfortable in meeting these demanding, and also differing,⁷⁷ administrative barriers than smaller ones because the former have more resources than the latter. This cartelizing trend tends to marginalize poor countries which seldom have these big players.

Some big companies or groups of companies force small players in developing countries to join their pre-existing price cartel under the threat of antidumping complaints. For example, the Association of European Sweetcorn Processors reportedly urged Thai sweetcorn canners to raise their export prices in Europe under two formal warnings that they would face an antidumping case if they refused to do so.⁷⁸ Here, developing countries' small producers face a dilemma: if they join the cartel, they will participate in illegal activity at the risks of huge fines or even imprisonment; however, if they refuse, they will be harassed by predatory antidumping suits by those big companies.

Developmental hazards from administrative barriers inducing cartelization

72. Chaturvedi & Nagpal, *supra* note 36, at 2-3.

73. Mold, *supra* note 10, at 14.

74. *Id.*

75. Chaturvedi & Nagpal, *supra* note 36, at 4.

76. Mold, *supra* note 10, at 5.

77. Wilson, *supra* note 34, at 436 (emphasizing "numerous costs associated with variability in standards across export markets and over time").

78. Andrew Bounds, *Sweetcorn Dispute Turns Bitter as EU and Thais Trade Blackmail Accusations*, FIN. TIMES, Dec. 22, 2006, at 3.

may also occur within developing countries. Even in poor countries, relatively large-sized companies may better respond to developed countries' demanding standards than smaller ones. They may even abuse their dominant positions in the domestic market, further wiping out small players. They may collude with their governments through a corruptive alliance. Even foreign investors may prefer to invest directly in these big players for easy profits, instead of channeling money to a long-term infrastructure project which will benefit a larger number of small players.

IV.

RETOOLING TRADE NORMS AND POLICES FOR DEVELOPMENT

A. Is the WTO Dispute Settlement Mechanism an Answer?

The WTO's dispute settlement mechanism, often praised as the "jewel in the crown" of the new WTO system,⁷⁹ offers a potential way to challenge administrative barriers imposed on poor countries. However, the WTO's dispute settlement mechanism is unlikely to address the deep-rooted failure to facilitate development in poor countries.

Of course, under certain circumstances, the WTO dispute settlement mechanism may offer developing countries good opportunities to tackle some developed countries' protectionist policies, such as export subsidies that blatantly violate well-established norms. Recently, Brazil has successfully challenged the U.S. and the EU before the WTO tribunal for their illegal export subsidies on cotton and sugar, respectively.⁸⁰

However, Brazil, albeit still a developing country, is a large country which can afford an expensive proceeding under the WTO dispute settlement system, which is obviously not the case in other smaller developing countries. For example, Mauritania could not sue the EU in the WTO for the latter's regulation which required camel milk, Mauritania's main export to Europe, to be obtained not by hands but by machines only because the litigation cost would not justify Mauritania's annual export of US\$3 million.⁸¹ These poor members unfortunately have no administrative capacity and expertise, either.⁸²

Furthermore, most administrative barriers in rich countries, such as "behind-the-border" measures, differ from more patent violations of trade norms, such as export subsidies, in that these often carry with them a paper trail justifi-

79. Sylvia Ostry, *Future of the WTO*, Brookings Trade Policy Forum, Apr. 15, 1999, available at <http://www.utoronto.ca/cis/wto.pdf>.

80. U.S. – Subsidies on Upland Cotton, Report of the Appellate Body, WT/DS267/AB/R, circulated on Mar.3, 2005; EC – Export Subsidies on Sugar, Report of the Appellate Body, WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, circulated on Apr. 28, 2005.

81. WORLD BANK 2003, *supra* note 2, at 116.

82. *Id.*

cation which must be investigated and tackled by complainants, which are poor countries. In this regard, Steve Charnovitz aptly observed that:

It should be noted that the SPS Agreement – which was largely initiated by the U.S. government – favors those countries that have a surfeit of administrative procedures. Governments that can produce a voluminous risk assessment, show that it was considered by regulators, and document each step of the regulatory process will probably do better as SPS defendants than countries with thinner regulatory structures. This may be one reason why no case has been lodged against the United States even though there are numerous U.S. regulations that keep out foreign agricultural products.⁸³

Further, poor countries are discouraged from suing rich countries because often times the defendant rich country is a “donor” to the complainant poor country. Although a rich country’s threat to discontinue financial aid is understandably veiled and not published, anecdotes eloquently demonstrate the subtle warnings conveyed through diplomatic channels.⁸⁴

Even if a poor country, against all these odds, has successfully challenged a rich country’s administrative barrier, it may not necessarily be a happy ending for the complainant. After all, WTO litigation remains an unrealistic recourse for poor countries if the winning party cannot wield any practical retaliatory pressure against the losing party due to a disparity of economic power.⁸⁵ Bernard Hoekman and Petros Mavroidis observed that:

When acting as complainants they [economically powerful countries] will use threat and/or imposition of countermeasures in order to induce compliance; when acting as defendants, they will have at least the luxury of weighing the pros and cons between changing the domestic policies at stake (in order to avoid imposition of countermeasures) or simply keeping the domestic policies at stake intact (and see countermeasures imposed against them).⁸⁶

In conclusion, administrative barriers may be better addressed by retooling the current trade norms and policies than by relying on the WTO dispute settlement mechanism which appears ineffective for this purpose.

B. Retooling Trade Norms and Policies

1. Fine-Tuning Antidumping Rules in a Development-Friendly Fashion

Some commentators have argued for repealing the antidumping remedy in

83. Steve Charnovitz, *The Supervision of Health and Biosafety Regulation by World Trade Rules*, 13. TUL. ENVTL. L.J. 271, 290-91 (2000).

84. Mold, *supra* note 10, at 10, 35 (footnote h) (citing Jawara and Kwa, *supra* note 47, ch. 6).

85. UNCTAD, *supra* note 47, at 144; Oxfam, *supra* note 47, at 104-05; Jawara & Kwa, *supra* note 47, at 7. See also Sungjoon Cho, *The Nature of Remedies in International Trade Law*, 65 U. PITT. L. REV. 763, 787 (2004).

86. Bernard Hoekman & Petros Mavroidis, *WTO Dispute Settlement, Transparency, and Surveillance*, 23 WORLD ECONOMY 527, 531 (2000).

its entirety for reasons other than development.⁸⁷ However, due to the strong political appeal of antidumping measures,⁸⁸ repeal proposals remain an academic undertaking. Instead, a less radical antidumping remedy is more practical and may deliver realistic benefits to developing countries. Some candidates are as follows.

First, rich countries may contemplate introducing a temporary “moratorium” of antidumping investigations for lifeline exports from low-income developing countries. They may formulate eligibility for antidumping, free market access that are similar to the pre-existing criteria found in preferential trade pacts, such as the U.S.’ African Growth and Opportunities Act (AGOA) and the EU’s Everything but Arms (EBA) initiative. This moratorium will set poor countries free from the fear of contingent trade remedies and offer them powerful avenues to participate in the global stream of commerce.

Second, rich countries may want to apply the “lesser duty” rule, at least to low-income developing countries’ exports which are determined to be dumped. This rule mandates antidumping authorities to impose antidumping duties only to the extent that the duties can sufficiently eliminate the domestic industry’s injuries, even if such duties may be lower than duties matching actual dumping margins. Some developed countries, such as the EU and Australia, have already adopted and implemented this rule. A cluster of WTO members called “Friends of Antidumping” have also proposed the same rule.⁸⁹ However, some other developed countries, in particular the U.S., have opposed this approach on the grounds that it unduly burdens antidumping authorities with additional tasks such as data submission.⁹⁰

Third, in some developed countries, such as the EU, antidumping authorities may elect to forego antidumping duties if it achieves a “public good” such as benefiting to consumers or promoting market competition.⁹¹ Antidumping authorities may interpret a public interest clause constructively enough to capture the current developmental needs of low-income, developing countries and thus exempt them from antidumping duties. Countries which have yet to introduce a public interest clause, such as the U.S., may achieve a similar development exemption when constructing new trade policy, if an introduction of the

87. See, e.g., Caine, *supra* note 27.

88. See Dan Ikenson, “Byrdening” Relations: U.S. Trade Policies Continue to Flout the Rules, Free Trade Bulletin No. 5 (Jan. 13, 2004), available at <http://www.freetrade.org/pubs/FTBs/FTB-005.html> (depicting U.S. trade remedy laws as the “sacred cow” of the U.S. trade policy).

89. WTO Negotiating Group on Rules, Proposal on Lesser Duty: Paper from Brazil; Chile; Colombia; Costa Rica; Hong Kong, China; Israel; Japan; Korea; Mexico; Norway; Singapore; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand and Turkey, Jun. 16, 2003, TN/RL/W/119.

90. See Rules: New ‘Friends of Anti-Dumping’ Proposals; Chile Submission on Fisheries Subsidies, BRIDGES WEEKLY TRADE NEWS DIGEST, vol. 7, No. 23, Jun. 25, 2003.

91. See generally Marc Wellhausen, *The Community Interest Test in Antidumping Proceedings of the European Union*, 16 AM. U. INT’L L. REV. 1027 (2001).

clause itself is politically infeasible.

Finally, most antidumping authorities adopt a “*de minimis*” rule by which they reject antidumping petitions targeting a negligible amount of imports. The WTO’s Antidumping Code itself mandates that national antidumping authorities terminate their investigations when they find that “the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible.”⁹² The current *de minimis* standard is set at less than three percent of total imports of like products into the importing country.⁹³ For low-income developing countries, this threshold can be raised by one or two percent to provide better access to rich countries’ markets.⁹⁴

2. Building Compliance: Improving Both Standards and Capacity

Nowadays, the presence of development terminology, such as capacity building and technical assistance, is ubiquitous and even clichéd. It is commonly accepted, however, that such initiatives remain largely symbolic due to their insufficient and often “derisory” funding scale, as well as their disorganized implementation schemes.⁹⁵ The WTO’s “Aid for Trade” program launched in the Doha round, which attempts to offer capacity building support to developing countries in order to maximize their benefits from trade liberalization, largely remains lip service since funding sources have not yet been confirmed or committed.⁹⁶ To better demonstrate their commitment to the objectives of Aide for Trade, developed countries should invest in compliance inducement mechanisms that will assist producers in developing countries to meet rising standards, such as those imposed by developed states on standards for social hygiene.

Admittedly, fixing this structural problem is largely a matter of infrastructure building, such as further developing transportation sectors and administrative systems, rather than providing mere development assistance. Nonetheless, well-designed, well-targeted development packages will move many poor countries up to the next rung on the developmental ladder by relieving them of the substantial burdens of various regulatory standards in rich countries.

First of all, developing countries should participate actively in the process of making standards within international organizations such as International Or-

92. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Code), Annex 1 A, WTO Agreement, *supra* note 1 art. 5.8.

93. *Id.*

94. See THE UN MILLENNIUM PROJECT, INVESTING IN DEVELOPMENT: A PRACTICAL PLAN TO ACHIEVE THE MILLENNIUM DEVELOPMENT GOALS 217 (2005).

95. Mold, *supra* note 10, at 27-28. See also Sungjoon Cho, *WTO's Gemeinschaft*, 56 ALA. L. REV. 483, 517-18 (2004) (criticizing developed countries’ “rhetoric without actions” in the area of development assistance).

96. WTO, Aid for Trade Task Force, Recommendations of the Task Force on Aid for Trade, WT/AFT/1, Jul. 26, 2006 (urging “the Director-General to seek confirmation from donors and agencies that funds are readily available for the implementation of the Aid-for-Trade initiative”).

ganization for Standardization (ISO), thereby transforming themselves from a standard-taker to a standard-bearer.⁹⁷ Only a handful of relatively large developing countries have done so. For example, Malaysia has been able to actively participate in the Codex Alimentarius Commission by establishing a mirroring domestic institution called a “National Codex Committee” and getting interested businesses involved in the Committee.⁹⁸ Likewise, India’s proactive participation in the ISO meetings has helped India influence the formulation of an ISO 3720 standard on Black tea in 1986.⁹⁹

Of grave concern to poor countries is the dearth of international standards for most of their lifeline products, such as agricultural food products. In fact, most of the food safety regulations registered with to the WTO in the first five years of its operation had no international standards at all.¹⁰⁰ These domestic regulations often represent corporate interests, not those of consumers, due to regulatory capture.¹⁰¹ This is why more direct, bilateral regulatory cooperation is necessary between exporting (poor) and importing (rich) countries in order to realize actual improvements in access for poor countries’ products in the markets of rich countries.

In order for this regulatory cooperation to transpire, rich countries need to change their current paradigm from “policing” poor countries’ imports, a mere regulatory perspective, to “managing” their production processes, a broader development perspective. In other words, instead of simply rejecting poor countries’ lifeline imports as incompatible with their high standards, rich countries should find pragmatic ways to actually accommodate poor countries’ products. Most of all, rich countries should inform poor countries of why their goods are rejected and of what reforms or improvements are necessary to gain access.

To this end, poor countries should take advantage of the pre-existing regulatory cooperation mechanisms under the Agreement on Technical Barrier to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures (SPS), such as mutual recognition arrangements (MRAs) and the principle of equivalence. For example, Article 4 of the SPS Agreement entitled, Equivalence, requires rich countries to accept poor countries’ standards as equivalent if the latter prove that their standards can achieve the “appropriate,” if not the same, level of protection in the former’s markets.¹⁰² Under the SPS poor countries can request a bilateral consultation or negotiation to discuss the recognition of equivalence with rich countries. Rich countries are strongly encouraged to enter

97. Shyam K. Gujadhur, *Influencing Market Standards: A Voice for Developing Countries*, INT’L TRADE FORUM, Issue 2, 2003, at 3. See also A VOICE FOR AFRICA, *supra* note 34.

98. Gujadhur, *supra* note 97, at 3.

99. *Id.*

100. Mold, *supra* note 10, at 2.

101. *Id.*

102. SPS Agreement, *supra* note 33, art. 4.1.

into such talks.¹⁰³

A recent WTO case involving Canada and Brazil recommends another novel soft law approach to regulatory cooperation. In February 2001, Canada banned Brazilian beef imports for fear of mad cow disease (BSE).¹⁰⁴ On account of the high-profile nature of this case in Brazil, testified to by the many protests and boycotts in Brazil, this case would have reached the WTO tribunal.¹⁰⁵ However, rather than resorting to litigation, the parties solved this dispute by sealing a regulatory arrangement under the Committee on Sanitary and Phytosanitary Measures (SPS Committee). Based on Brazil's proposal under transparency rules of Article 7 of the SPS Agreement, the SPS Committee adopted a recommendation to mandate that members notify the WTO of any SPS measure that "may have negative effects on trade opportunities of developing countries."¹⁰⁶

Certainly, the potential merits of this regulatory cooperation go beyond the actual dialogue; feedback from such dialogue can create further opportunities for financial and technical assistance. In pursuing a regulatory dialogue, rich countries tend to realize that the level of their standards is unjustified and developmentally unworkable when subjected to a practical cost-benefit analysis. At the same time, rich countries may be able to diagnose the regulatory deficiencies that handicap producers from poor countries and offer a realistic prescription to remedy such deficiency. Rich, importing countries may also be in a better position to provide financial assistance to poor exporting countries with whom they dialogue. For example, the EU is funding the "Liaison Committee Europe-Africa-Caribbean-Pacific (COLEACP)" to promote the African, Caribbean, and Pacific (ACP) countries' horticultural export to Europe by connecting exporters, from these countries to European importers as well as familiarizing these exporters with the EU's pesticide regulations.¹⁰⁷

Notably, the necessity of regulatory dialogue has already been confirmed by the WTO tribunal. The WTO Appellate Body has already emphasized in

103. *Id.*, art. 4.2.

104. *Canadian Ban on Brazilian Beef Imports Escalates Trade Battle*, BRIDGES WEEKLY TRADE NEWS DIGEST, VOL.5, NO. 5, Feb. 13, 2001, available at http://www.newsbulletin.org/getbulletin.cfm?bulletin_id=14&issue/id=1937&browse=1&SID= (last visited on Feb 24, 2004) [hereinafter *Trade Battle*].

105. *See Canadian Ban on Brazilian Beef Imports Escalates Trade Battle*, BRIDGES WEEKLY TRADE NEWS DIGEST, VOL.5, NO. 5, Feb. 13, 2001.

106. WTO, Committee on Sanitary and Phytosanitary Measures, *Implementation Proposal under Paragraph 21: Proposal by Brazil*, G/SPS/W/108, Jun. 22, 2001, <http://docsonline.wto.org> ("Where the introduction of SPS measures may have negative effects on trade opportunities of developing countries, Members shall provide information in accordance with the provisions of Annex B and the additional requirements for justification alluded to in Article 10.2, including where the concerned measures constitute an administrative measure, such as a ban or a temporary suspension of importation, arising from an SPS policy previously notified to the WTO.").

107. Gujadhur, *supra* note 97, at 3.

cases such as *Gasoline* (1996)¹⁰⁸ and *Shrimp-Turtle* (1998)¹⁰⁹ that importing countries should take into account foreign (exporting countries') interests when the former apply regulations that may negatively affect the latter. Inspiringly, these two paradigmatic cases concerned a developed country (U.S.) as an importing country and developing countries (Venezuela and Pakistan etc.) as exporting countries. This North-South context enables the principles of regulatory deliberation to be interpreted in a developmentally sensitive way, confirming the need for regulatory dialogue-cum-technical assistance.¹¹⁰

Finally, capacity building assistance implemented directly by donor governments together with recipients in poor countries often makes more sense than government-to-government aid. An inspiring example of such a compliance inducement mechanism is provided by the Norwegian Agency for Development Cooperation (NORAD). In 2003, NORAD collaborated with the Federation of Indian Chambers of Commerce and Industry (FICCI) by investing in a pilot project to educate and train Indian grape growers about the EurepGAP, a voluntary European standard that concerns agricultural practices,¹¹¹ and which eventually certifies those farmers who follow these good practices.¹¹² Without NORAD's financial contribution, most Indian farmers could not have afforded such training or certification programs which have subsequently enabled them to successfully launch their crops on the European market.

3. Labor Standards: Shifting from a Hard Linkage to a Soft Linkage

Governments, academia, NGOs, and even the labor unions of rich countries have long highlighted and condemned the allegedly wretched labor standards in many poor corners of the world.¹¹³ Some of these standards, such as child labor or forced labor, are more serious than others, such as unsanitary working conditions.¹¹⁴ However, most rich countries prefer to generally link poor countries'

108. United States – Standards for Reformulated and Conventional Gasoline, WT/DS2/9, Appellate Body and Panel Report, as amended, adopted on May 20, 1996, available at http://www.wto.org/english/tratop_e/dispu_e/distab_e.htm.

109. United States--Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58, Appellate Body and Panel Report, as amended, adopted on Nov. 6, 1998, available at http://www.wto.org/english/tratop_e/dispu_e/distab_e.htm [hereinafter *Gasoline*].

110. Sungjoon Cho, *An Analysis of the First WTO Appellate Body Report: Gasoline Case*, 9 EUR. J. INT'L L. 182 (1998), available at <http://www.ejil.org/journal/Vol9/No1/index.html>.

111. EurepGAP, What Is EurepGAP, <http://www.eurepgap.org/Languages/English/about.html>.

112. European Food Safety Norms Phase II Project Likely by June, *The Fin. Express*, Feb. 27, 2006.

113. See, e.g., SANDRA POLASKI, *TRADE AND LABOR STANDARDS: A STRATEGY FOR DEVELOPING COUNTRIES* 4 (2003), available at http://www.ceip.org/files/Publications/Polaski_Trade.asp?from=pubdate.

114. For example, the U.S.' list of basic labor standards which are usually attached to U.S. trade legislation consists of both fundamental labor rights (e.g., the right to organize and bargain collectively) and regulations of working conditions (such as a minimum wage and maximum working hours). See Gary S. Fields, *Trade and Labor Standards: A Review of the Issues* (1995).

compliance with labor standards, domestic or international, to the latter's access to the former's markets. This persistent and robust demand for adherence to labor standards is attributable, in part, to the perception that labor standards concern human rights,¹¹⁵ and also in part to the economic fear of social dumping and the race-to-the-bottom.¹¹⁶ In other words, it would not only be *unethical* to produce something cheaply using exploited labor, it would also be *unfair* to dump these products in domestic markets, driving out local products that are made in accordance with normal labor standards. Some believe that if this social dumping continues, all nations will follow suit, resulting in ever-deteriorating labor standards all over the world.

Those who advocate for a formal link between trade and labor tend to argue that certain "social clauses," which include fundamental workers' rights or minimum international labor standards, should be incorporated into the WTO system.¹¹⁷ The logical corollary of this position is that (rich) WTO members may restrict imports from other (poor) members if the latter's labor conditions or practices violate these social clauses. These advocates highlight that poor countries' compliance with such standards will be rewarded with improved access to rich countries' markets, as is seen in the unilateral linkage within the context of domestic Generalized System of Preferences (GSP) programs.¹¹⁸

However, incorporating these social clauses into the WTO system creates, rather than solves, these problems. First of all, the underlying rationales of such clauses are dubious. Stephen Golub aptly observed that:

From an economic point of view, these concerns are misguided. Low foreign labor standards, like low wages, are largely a reflection of low productivity and not a form of unfair competition. There is no evidence that weak labor standards affect trade patterns significantly. There is little theoretical or empirical basis for fearing a competitive "race to the bottom" as countries vie for capital flows. Diversity of labor standards is appropriate given differences in economic development, and is entirely compatible with free trade and capital mobility.¹¹⁹

Therefore, high labor standards imposed on poor countries via social clauses tend to tax their labor-intensive production and thus deprive them of their main

115. See, e.g., U.S. Critics See a "Monstrous Sweatshop," But Hondurans See a Better Life, N. Y. TIMES, July 18, 1996, at A 1.

116. See generally Stephen S. Golub, *International Labor Standards and International Trade*, International Monetary Fund Working Paper, WP/97/37 (1997).

117. See e.g., Virginia A. Leary, Workers' Rights and International Trade: The Social Clause (GATT, ILO, NAFTA, U.S. Laws), in Bhagwati and Hudec, eds, 2 *Fair Trade and Harmonization* 177, 223 (cited in note 13); Dani Rodrik, *Developing Countries after the Uruguay Round*, Center for Economic Policy Research Working Paper No. 1084 (1994) (proposing a "social safeguards" clause based on core labor rights in the WTO).

118. See Sandra Polaski, *Combining Global and Local Forces: The Case of Labor Rights in Cambodia*, 34 WORLD DEVELOPMENT (2006).

119. Golub, *supra* note 116 at 32; see also Jagdish Bhagwati, *Trade Liberalization and 'Fair Trade' Demands: Addressing the Environmental and Labor Standards Issues*, 18 WORLD ECONOMY (1995).

competitive advantage.¹²⁰

Moreover, the essential details of these social clauses are not easy to implement. As is the case with human rights, labor rights, or even more fundamental rights, are still controversial and hard to define. Even the U.S. has ratified very few ILO conventions.¹²¹ For example, the prohibition of child labor may not be as simple and intuitive as one might imagine in the first place. Under certain socio-cultural circumstances, non-exploitive forms of child labor may be accommodated.¹²² As is seen in the Indian cottage industry, a certain form of child labor is a logical outcome of family labor. "Even in cases where child labour is employed commercially, the choice is clearly between letting the child somehow earn his livelihood or forcing him into a miserable life."¹²³

In addition, how far could and should one go in investigating violations of social clauses? Under the inter-governmental nature of the WTO's institutional arrangement, violations must be attributable to government actions. It would not be feasible, even under the social clauses, to unilaterally penalize individual producers that allegedly exploit their workers. At the very least, an importing country must demonstrate that an exporting country's government has failed to enforce its own labor laws. Yet, would it always be possible to attribute the failures of private parties to the wrongful acts of a government, especially when the government lacks both capacity and resources? Furthermore, how could one distinguish between negligible violations and serious, persistent violations which may deserve trade sanctions?

More importantly, even if those poor countries do improve their labor standards and thus are entitled to better market access under social clauses, such access could still be preempted by subsequent and superseding trade restrictions. For example, even though Cambodia has for years improved its labor standards to get better access to the U.S. markets, the U.S. negotiators in the Doha round have wanted to block Cambodian textile imports by creating an exception to duty and quota-free market access by LDCs on the grounds that Cambodian textile producers are "too competitive."¹²⁴

Given the unintended, unanticipated or the sometimes undisclosed impact of such policies, the prospects of a formal linkage of labor standards to market

120. Golub, *supra* note 116 at 21.

121. The United States has ratified only two out of eight fundamental human rights conventions. International Labor Organization (ILO), Ratifications of the Fundamental Human Rights Conventions by Country, available at <http://www.ilo.org/ilolex/english/docs/declworld.htm>.

122. The OECD standard requires the elimination of only "exploitive" forms of child labor. Organization for Economic Cooperation and Development (OECD), Trade, Employment and Labor Standards 26 (1996).

123. *Id.*; See also Richard Freeman, A Hard-Headed Look at Labor Standards, in *International Labor Standards and Economic Interdependence* 89 (Sengenberger et al. eds. 1994) (observing that "better that they work and eat than starve").

124. David Woods, Two Queries - and Same Answer - for U.S. Textile Lobbyists, *Fin. Times*, Dec. 22, 2005.

access through social clauses remains dubious. In addition, there are risks of abuse associated with blue protectionism.¹²⁵ Perhaps, de-coupling trade from labor issues under the WTO and deferring these issues to a competent organ, such as the International Labor Organization (ILO), might be a better solution; such was in the view espoused in the Doha Ministerial Declaration.¹²⁶ As the regulatory Kuznets effect suggests, labor standards, like other social regulations, tend to be improved when countries become richer.¹²⁷

Nonetheless, precisely because of the *moralistic* nature of these issues, one could not confirm that this linkage issue has completely been foreclosed by the Doha Ministerial Declaration. Regardless of the Declaration, rich countries' governments, labor unions, and NGOs will continue to raise this linkage issue. It seems desirable for the WTO to respond somehow to this voice, rather than to simply ignore it. At this juncture, a more pragmatic alternative to a hard, formal linkage could be implemented *outside* of, yet still involving, the WTO. For example, the WTO could initiate a "Joint Trade and Labor Project" in collaboration with the ILO to raise awareness of labor issues within the context of international trade and to encourage voluntary, unenforced, changes of members' labor practices.

The joint project would be based on a soft approach that the ILO adopts, such as shaming through the publication of reprehensible practices.¹²⁸ It could also emulate some administrative procedures under the North American Agreement on Labor Cooperation (NAALC)¹²⁹ in which a national administrative office (NAO)¹³⁰ in each WTO member serves as an inquiry point regarding its labor laws and regulations to heighten transparency. The NAO could also be responsible for notifying the WTO Secretariat of any new labor regulations which may affect imports of other members.

The NAO could also be allowed to receive complaints from individuals, labor unions, or other NGOs on specific labor violations by another member, as under Article 16 (3) of the NAALC.¹³¹ If the NAO decides that, based on the merits of the case, such complaints warrant an inquiry, it can request a fact-

125. See Dale, *supra* note 14.

126. WTO, The Doha Ministerial Conference, adopted on Nov. 14, 2001, WT/MIN(01)/1, para. 8.

127. See Simon Kuznets, Economic Growth and Income Inequality, 45 Am. Econ. Rev. 1 (1955); Bjorn Lomborg, The Skeptical Environmentalist: Measuring the Real State of the World 33 (1998) (observing that people tend to care about high environmental standards only after they become rich).

128. See Lance Compa, *The Multilateral Agreement on Investment and International Labor Rights: A Failed Connection*, 31 CORNELL INT'L L.J. 683, 708 (1998).

129. North American Agreement on Labor Cooperation, U.S.-Can.-Mex., Sept. 14, 1993, 32 I.L.M. 1499, available at <http://www.naalc.org/english/agreement.shtml> [hereinafter NAALC].

130. Commission for Labor Cooperation, The National Administrative Offices (NAOs), available at <http://www.naalc.org/english/nao.shtml>.

131. NAALC, *supra* note 129, art. 16(3).

finding task by the ILO. The WTO Ministerial Conference could then publicize results from the ILO's fact finding as well as its recommendations. Upon the ILO's recommendations, the WTO Ministerial Conference could release its own facilitative recommendations, such as "outreach sessions," "public forums" or "memorandum of understanding."¹³² Only after exhausting this procedural option, and thus fulfilling the regulatory dialogue requirement under GATT Article XX,¹³³ a member may contemplate restricting imports from those countries failing to observe basic labor standards on the grounds that exporting countries' labor measures are at odds with the importing country's public morals¹³⁴ or that these measures constitute exploited forms of labor, such as prison labor,¹³⁵ which could be broadly interpreted for this purpose.¹³⁶

This WTO-ILO Joint Project could preserve labor consciousness in the WTO thereby diffusing political tensions over this sensitive issue, while avoiding blatant trade sanctions which all counter-productive hard linkage solutions, such as the social clauses, tend to create.

4. Making Developmental Sense of Rules of Origin

The current spaghetti bowl of rules of origin in RTAs¹³⁷ needs to be disentangled and liberalized to serve the cause of development. A more liberal approach to rules of origin means more than a mere improvement of market access for poor countries. It also suggests that other countries would want to invest in these poor countries to take advantage of their preferential access to rich countries' markets. This new avenue for foreign direct investment tends to offer poor countries a significant growth dynamic for their long-term development.

For example, rich countries may consider minimizing sector-specific restrictions regarding developmentally sensitive products because they exacerbate harms caused by the pin-point protection of very narrowly defined industries.

132. Cf. Commission for Labor Cooperation, Submission of Public Communications, http://www.naalc.org/english/review_annex1_3.shtml.

133. Gasoline, *supra* note 109, at 27. The WTO Appellate Body ruled that:

"The U.S. must have been aware that for these established techniques and procedures to work, cooperative arrangements with both foreign refiners and the foreign governments concerned would have been necessary and appropriate. . . . [I]t appears to the Appellate Body, that the United States had not pursued the possibility of entering into cooperative arrangements with the governments of Venezuela and Brazil or, if it had, not to the point where it encountered governments that were unwilling to cooperate. . . . But it does not reveal what, if any, efforts had been taken by the United States to enter into appropriate procedures in cooperation with the governments of Venezuela and Brazil so as to mitigate the administrative problems pleaded by the United States."

134. General Agreement on Trade and Tariffs, art. XX, para. (a).

135. *Id.*, art. XX, para. (e).

136. See Simon Tay, *Trade and Labor: Text, Institutions, and Context*, in HANDBOOK, *supra* note 58, at 468.

137. See *supra* pt. II, § C.

Here, the popular yarn-forward rule¹³⁸ should be reconsidered, in particular when domestic sourcing of raw materials makes no commercial sense to poor countries due to their transportation problem or the low quality of domestic materials.

Streamlining rules of origin in a simpler and more transparent way can also relieve developing countries of a tremendous logistic burden. One way to reduce their paperwork requirements might be to shift the burden of proof on the eligibility for preferential tariffs by establishing a presumption that imports from low-income developing countries are compatible to the relevant rules of origin. Domestic producers who wish to rebut such a presumption would have to prove any violations.

A more fundamental fix of the rules of origin problem is to stay away from those spaghetti bowls in the first place¹³⁹. More universal market access without the impediment of origin requirements tends to enable poor countries to discover and to benefit from more niches in the global production mechanism in accordance with their comparative advantage.¹⁴⁰

V.

CONCLUSION: FROM DEVELOPMENT TO GLOBAL PEACE AND SECURITY

Even if the current Doha “development round,” delivers a long-awaited liberalization package consisting of reduced subsidies and tariffs in developed countries, various administrative barriers to market access may remain. In order to “mainstream” trade as a critical development and poverty reduction strategy,¹⁴¹ WTO members should address these trade-restrictive administrative barriers, in addition to conventional trade barriers such as tariffs and subsidies.

This article has taken on three main administrative barriers: antidumping measures, regulatory standards, and rules of origin. It has demonstrated the developmental hazards that these barriers inflict on developing countries. This article has also suggested retooling trade norms and policies to mitigate these hazards. It argues, *inter alia*, that antidumping investigations be suspended for low-income developing countries, that regulatory dialogue be pursued between rich importing countries and poor exporting countries, and that rules of origin be loosened and simplified to offer developing countries expanded access to rich countries' markets.

From a different standpoint, developing countries might capitalize on de-

138. *Id.*

139. For example, prioritizing an MFN-based multilateral trading system under the WTO over bilateral, regional trade agreements

140. See generally, Sungjoon Cho, *Defragmenting World Trade*, 27 NW. J. INT'L L. & BUS. 39 (2006).

141. See David E. Luke, Trade-Related Capacity Building for Enhanced African Participation in the Global Economy, in HANDBOOK, *supra* note 58, at 510.

veloped countries' demanding standards. For instance, African farmers use dramatically lower amounts of chemical fertilizers or pesticides vis-à-vis their rival European farmers, mostly because the former cannot afford them. According to the FAO, in 2001 sub-Saharan African farmers used only 12.6 kg of fertilizers per hectare while the Dutch and French farmers used 451.9 kg and 226.5 kg, respectively.¹⁴² Adopting a voluntary organic labeling scheme, African farmers may export their crop to the developed countries' markets as environmentally-friendly produce. Donors should focus their financial assistance on these kinds of possibilities and fund these farmers' necessary certification procedures.¹⁴³

As a new millennium unfolds, the global village is characterized by a Kafkaesque juxtaposition of cornucopia and dearth. However, increasing interdependence makes such a disparity more and more intolerable, even to the rich world.¹⁴⁴ After all, "poverty anywhere constitutes a danger to prosperity everywhere."¹⁴⁵ Tackling administrative barriers in rich countries enables poor countries, beyond Doha's promises, to achieve an access to the global market in a truly meaningful manner, which helps lift the latter out of abject poverty. Empowering these once marginalized people through trade and investment will contribute to an "alliance of civilization"¹⁴⁶ and eventually to global peace and security. Prosperity truly is the best immunization for the diseases of war and conflict.¹⁴⁷

142. Mold, *supra* note 10, at 18.

143. *Id.*, at 28.

144. Amartya Sen, *Global Doubts*, HARV. MAG. 68 (Sep.-Oct. 2000).

145. The Constitution of the International Labor Organization, Annex (Declaration Concerning the Aims and Purposes of the International Labor Organization), para. I (c), available at <http://www.ilo.org/public/english/about/iloconst.htm#annex>.

146. United Nations, Alliance of Civilization: Report of the High-Level Group 11 (2006), available at http://www.unaoc.org/repository/HLG_Report.pdf.

147. See generally, Sungjoon Cho, *A New Agenda for Peace: International Trade Law as a Practical Discourse*, in *TRADE AS THE GUARANTOR OF PEACE, LIBERTY AND SECURITY?: CRITICAL, HISTORICAL AND EMPIRICAL PERSPECTIVES* 63 (Padideh Ala'i et al eds. 2006).