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## From the Director's Desk



Dr. Surajit Mitra

Developing countries form an integral part of the multilateral trading regime. About two-third of the WTO's current 157 members are developing countries. They constitute a diverse group having varied concerns and aspirations. In spite of this heterogeneity, there is a convergence of interests that runs through them.

It is recognized that although some of them have

witnessed impressive economic growth in the past, yet they face uneven economic growth patterns. The challenge therefore is inclusive growth to protect and uplift majority of vulnerable sections of the society.

Doha Round of Negotiations in 2001 provided a Phillip to these aspirations of developing countries in their engagement with WTO. For the first time it brought the developmental dimensions of the developing countries to the forefront of the WTO negotiations. The task before the WTO therefore is to ensure that the outcome of the Doha negotiations adequately reflects the promises held out in Doha Declaration.

Some of the major expectations of the developing countries from the Doha Round include: the WTO should push for an impartial agreement whereby it provides a boost to the domestic industry and agricultural sectors of developing countries by providing greater market access in developed countries' markets. This can be achieved by reduction of tariff peaks and tariff escalation and due to elimination of export subsidies and substantial reduction of domestic support in agricultural sector. As agricultural sector is very sensitive to developing countries, developed countries may not seek reduction commitments on such agricultural products which are directly concerned with developing countries' livelihood security, rural development and food security.

The services sector holds huge potential for trade led growth. India today is a prominent service based economy, about 56% of its GDP coming from this sector. Its success need not be only confined to software, rather it can be replicated in various sectors where knowledge is the key input such as education, health, finance, accountancy, etc. In such context, a meaningful conclusion of Doha Round may provide desirable market openings to the developing countries in services that are of interest to them.

Over a period of time decision-making process in the WTO has become more transparent, matured and inclusive. Developing countries have been largely heard because they have voiced their concerns in a much more coherent manner and with the art of coalition building. It is important that the trend is gradually strengthened so that the will of the majority prevails rather than just of the favoured few. Developing countries can realize full potential of free and fair trade by building up an inclusive and transparent decision-making process in the WTO.

# Doha Round of Negotiations: Issues and Concerns

Geethanjali Nataraj\*

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*The Doha Round for the first time in 2001 brought the developmental dimensions of developing countries to the forefront of multilateral trade negotiations. Developing countries argue that they joined the WTO with the expectation that a free and fair multilateral trading system under WTO would secure the trade gains for them as developed nations have managed to gain such benefits by joining the WTO. However, such gains have remained far from realization for developing nations. The paper while emphasizing the importance of re-starting negotiations at the earliest also advocates that countries should follow unilateral trade policies suited to their own domestic needs but within the framework of the changing international trade environment. Whether one follows the regional or multilateral track, reforming the domestic economy is imperative in order to maximize the gains from trade liberalization. The 9th ministerial at Bali, Indonesia in December 2013 is expected to find some solution to the issue.*

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## Introduction

THE year 1995 was a landmark year in the history of multilateralism with the inception of the WTO. The WTO is considered to be the cornerstone of the multilateral trading system, incorporating trade in goods and services and protection of intellectual property rights (IPRs). Its basic objective is one of enhancing trade between countries without discrimination and it has special provisions for both LDCs (least developed countries) and developing nations to help them reap the benefits of international trade commensurate with the needs of their economic development. But the smooth functioning of the organization is ridden with several obstacles, as there is stiff resistance from developing countries like India to protect their sensitive sectors such as agriculture and safeguard the interest of millions of farmers across the country.

The Doha Round of multilateral trade negotiations (MTNs), which began in November 2001 completed eleven years this year making it the longest running negotiation in the post-War era. However, there is no end yet in sight. Members of the WTO continue to differ on the depth of

liberalization required in the areas of agriculture and non-agricultural market access (NAMA), thus hindering the discussion of other important issues on the negotiating agenda, particularly services.

The completion of the Doha Round is mandatory for two key reasons. The *first* is to implement the tariff and subsidy reforms embedded in the draft texts developed to date and pocket the gains substantially agreed to. The *second* is to ensure the viability of the rules-based multilateral trading system. If multilateral solutions are put on hold, national governments – pressed by their domestic constituencies – will look elsewhere to resolve trade and investment problems, either through unilateral measures or through bilateral and regional trade pacts. Failure of the Doha Round would cause irreparable harm to the WTO's credibility as a negotiating forum, which over the period, is likely to undermine its valuable dispute settlement mechanism.

In this backdrop, the importance of re-starting the talks and negotiations at the earliest is quite significant. *First*, it is going to determine the future role of the WTO as a facilitator of a multilateral

trading regime. *Secondly*, it will also determine the role of developing countries in world trade.

### Current State of Play

Prolonged Doha Round of Negotiations and its deadlock have raised many significant questions in the mind of researchers, policy makers, and traders such as what is the relevance of Doha negotiations? and that "Will the Doha Round ever be concluded?" The Round is in progress since the last 11 years and there has been a major impasse in terms of forward movement. The negotiations have nearly stalled since November 2011. Doha's failure has dampened the credibility and prospects of WTO to some extent. The struggle for negotiations has brought to light the enormous obscurity in governing an immensely intricate global economy. The negotiations have been characterized by relentless differences among the developed nations like the US and Europe, and developing economies on major issues such as agriculture, industrial tariffs and non-tariff barriers (NTBs), services and trade remedies. The world has witnessed deadlocks in trade talks in Seattle (1999), Cancun (2003), and Geneva (2006, 2008). Likewise, in the eight Ministerial conferences it was observed that it is rather becoming impossible that all the fundamentals of the Doha Development Round could finish in the near future.

Moreover, WTO ministers had also agreed to split the earlier thought of single undertaking to advance negotiations on specific essentials of Doha talks to reach authoritative agreements rather than waiting to conclude the whole as one undertaking. But European Union (EU) made some pressing recommendations by addressing the WTO to cover new issues. They argued that the ongoing negotiation book is fully equipped with endless demands so it is better to add new issues like energy, food security, climate change, competition and investment. The WTO needs to deal with the current challenges across the globe to re-enforce its credibility and future. It is likely that the new issues might shift the focus away from unresolved matters in the Doha Round.

Global economy has changed completely in 11 years, since the Doha Round was commenced. Over the last few years world economy has witnessed two major financial crisis - one in 2007-08 and another in 2010-11 which shattered the global economy. Today the topmost concerns are the Sovereign Debt Crisis in the EU countries and imbalances in the current account deficit. Liberalization of trade in goods is no longer at the top of the agenda. Opponents of Doha Round are to ignore the concerns of the Round and address the next Ministerial conference in Bali as "Global Recovery Round". The critics of the Doha Round argue that

manufacturing and services together represent around 75 per cent of total trade so special attention given to agriculture on the cost of these sectors is off beam. In 2001, there was a surplus production that caused international prices to go down but now the global economy is facing high inflation and the way global inflation has gone up, it needs focused policy measures. There has been a drastic change in the world trade situation. In 2000, the US and Germany occupied the first and second positions in exports, with world export shares of 12.3 and 8.7 per cent, respectively. In 2011, India topped the growth in the volume of world's merchandise trade with a 15.5 and 9.5 per cent in exports and imports, respectively and has emerged as the world's most competitive manufacturer on a range of goods in 2011. Exports of merchandise by India and Brazil have also increased manifold and special and differential treatment of developing countries is making less sense to developed countries.

Regardless of plentiful commitments, members could not conclude the negotiations as they had predicted by the end of 2011 some kind of concerns will be arrived at. According to Mr. Pascal Lamy, Director-General of the WTO, the accession of Russia, Vanuatu, Samoa and Montenegro in the WTO membership is a win-win situation. Russia's integration with world economy and

interaction with other members will bring stability to the trading system. WTO has welcomed three of the smallest economies as well; Vanuatu and Samoa will be the fourth and fifth LDCs, respectively. Ministers in the Conference have agreed to seven proposals out of which three are of benefit to the LDCs. The benefits are in the form of extended help to the LDCs service exporters, laws for protection of intellectual property and effective process of accession for the LDCs. After prolonged negotiations, members agreed to extend the Government Procurement. This deal is expected to expand the market access coverage for several sectors of the economy between US\$80 to 100 billion a year. It will provide a much-needed incentive to the world economy as it covers many key sectors, such as infrastructure, public transport, hospital equipment and many other government services.

However, discussions at General Council in November 2011 agreed on the “elements for political guidance” on the Doha negotiations and forwarded the same to the 8th WTO Ministerial conference which was included by the conference chair. An “Easter Package” was unveiled by the TNC (Trade Negotiation Committee) and to the heads of the negotiating groups on April 2011. The document represented the artifact of work since the launch of the talks in 2001 and showed significant progress in many areas and

revealed the issues that divided the members. The area of divide was seen in market access for industrial products. TNC reported that there has been an unbridgeable difference between the members particularly on three issues: the Swiss formula of cutting the industrial tariffs; whether the contributions between different members will be proportionate or balanced; and the contributions of sectorals. In the Geneva talks during April-July 2011, there were several deadlocks on the issue of single undertaking but however there were some elements which were concluded. Members of the committee felt the need of taking up specific issues rather than trying to end everything and marked a few issues with a “Plus” that would be negotiated and agreed upon first. In the 8<sup>th</sup> Ministerial Conference “LDC PLUS” package was given the priority in order to aid the specific issues related to LDCs like duty-free and quota-free market access and related rules of origin, a step ahead on cotton, and the LDC services waiver. While the LDC package was thought to be sabotaged by the US, some of the LDC Plus issues proposed by the US were criticized by the developing nations. The issues were export competition, trade facilitation, a monitoring mechanism of special and differential treatment for developing countries, fisheries subsidies, environmental goods and services. These issues were opposed by the developing

nations, especially India. Recently, senior government officials of India said the so-called early harvest scheme, meant to thrash out a deal on a select set of sectors, would impact the ability of developing countries such as India to strike a bargain with trade in farm goods, where the developed countries boost their exports through heavy doses of subsidies, and industrial products. Further, India has also decided to opt out of negotiations for agreements between select WTO member countries for liberalizing foreign direct investment and visa regimes in service sectors and for lowering import duty on 357 information technology products and 54 environmental goods, saying the talks were against its interests.

According to India, “What the US and European Union are trying to do is cherry-picking without addressing the core concerns of developing countries, which is at the heart of the Doha Round which is a development round,” Early harvest was pushed by developed countries as they were unwilling to open up farm trade, a domestic hot potato. Several countries including India were not keen on this plan. The plurilateral agreement, involving a few WTO members, is in any case seen to be helping countries such as China and Taiwan snatch and further lead as hardware manufacturing hubs. Although India is no longer part of the

negotiating group, it retains its “observer status” to keep the option of rejoining talks later. In case of the talks on environmental goods, officials said that trading bloc Asia-Pacific Economic Cooperation (APEC) has identified 54 products on which it is pushing for a tariff cut of 5 per cent. India’s view is that the issue needs to be discussed at the WTO and instead of following a product-specific list approach, a better strategy would be to have a project-driven agenda that will benefit the developing countries. But the biggest setback is seen to be in services, an area which India was hoping to reap major gains from the Doha Round. But the early harvest model being pushed by developed countries has suggested a “standstill” approach, which will force countries to commit to the existing regime. So, if the government allows 74 per cent FDI in telecom, it will be bound not to reduce it later. Similarly, the advanced economies are seeking a “ratcheting” model, which will again mandate that any voluntary opening up –

which may mean increasing the FDI cap for multi-brand retail to 100 per cent – cannot be reviewed later.

Another area of contention has been Agriculture. Despite all the hardships, members were unable to agree on steps to move the talks forward in 2011. Developing countries view reform in agricultural trade as one of their most important goals as their own producers cannot compete against the surplus agricultural goods that the developed countries, principally the EU and the United States, are selling on the world market at low, subsidized prices. Some African countries also are calling for an end to cotton subsidies, claiming that such subsidies are destroying markets for the smaller African producers. Since 2010, negotiating group has made significant progress in NAMA in parts of the schedule to reduce or eliminate the NTBs to trade. But the main faltering block remains the ambiguity of the tariff-cutting agenda causing little or no advance in tariff negotiations. By then it was

decided to take it in small groups in a view to get success in NTBs. The process consisted of 5 groups and agenda for them was the so-called horizontal mechanism: labeling of textiles, clothing; transparency in the adoption of technical regulations; footwear and travel goods; re-manufacturing; and international standards. Horizontal mechanism aims at supple and quick procedures and provides a step-by-step timetable and suggestions for the possible outcomes. On April 2011, chairs of DDA circulated the progress of the small group’s talks which contained the three issues, i.e. horizontal mechanism, labeling of textiles, and transparency. On labeling of textiles, clothing, footwear and travel goods, the agenda seeks to provide simplicity and definitions to labeling requirements under the Agreement on Technical Barriers to Trade. The text proposes more simplicity and transparency in the elaboration of technical regulations so that the members and traders are properly informed of the measures and consequences. The efforts to advance services talks were hindered by the lack of movement in the other areas of negotiations in the Doha Round. However, members were able to agree to a waiver benefiting LDCs at the 8th Ministerial Conference allowing members to grant them preferential treatment as services suppliers. The decision about the waiver for the LDCs from the obligations of the TRIPS

#### PAST MINISTERIAL CONFERENCES

S. No.	Host City	Date
1.	Singapore	9-13 December 1996
2.	Geneva, Switzerland	18-20 May 1998
3.	Seattle, United States	30 November - 3 December 1999
4.	Doha, Qatar	9-13 November 2001
5.	Cancun, Mexico	10-14 September 2003
6.	Hong Kong	13-18 December 2005
7.	Geneva, Switzerland	30 November - 2 December 2009
8.	Geneva, Switzerland	15-17 December 2011
9.	Bali, Indonesia	3-6 December 2013 (Yet to Happen)

Agreement was also taken up at the conference. The TRIPS Agreement provided for delayed application by one year for all members, an additional four years for developing countries and an additional ten years for the LDCs. Now the 10-year additional period is given till mid-2013 so the Ministerial conference invited the TRIPS Council to give full consideration for the extension of their transition period.

In spite of all these road blocks the WTO continues to grow in strength and this is evident from the number of members who have become its members in 2011 and the several other countries waiting to join. The new members that gained entry to the WTO in the 8th Ministerial included Russian Federation, Montenegro, Samoa and Vanuatu. The last Ministerial conference of the WTO was held in Geneva in December 2011 and the 9th Ministerial conference is expected to be held in Bali, Indonesia during 3-6 December 2013.

### **Next Ministerial Conference at Bali**

Next Ministerial Conference is scheduled to be held in Bali, Indonesia in December 2013. Despite the financial crisis around the globe, Indonesia believes that the multilateral trading system has a vital role to play in ensuring a fair global trade regime and stabilizing the economic growth all over the world. In this context, the Bali

Ministerial will be very crucial to boost the negotiation talks. The out-going Director General of the WTO, Mr. Pascal Lamy has time and again requested all the members to be reasonable. Negotiators have been requested not to impose anything on other members; keep their demands realistic keeping in mind the other members' confine. Conference should focus on unresolved issues that are hampering the trade situation in many countries rather than making new commitments. Growth expansion needs of the developing economies have not been taken into account and many emerging economies could not participate in the earlier Round because of the selective parameters of the WTO, i.e. Agriculture and Industrial Tariffs. However, it suggests that all the major players will seek to find a solution in the 9th Ministerial Conference in the wake of the global economic crisis. The credibility and prospects of the conference are at stake; any failure of the talks can quiver the confidence of the developing countries and LDCs.

Moreover, 8th Ministerial Conference has left many unresolved tasks for the next conference which needs patience and optimistic thinking towards the development agenda. Issues like trade facilitation, agriculture, special and different treatment, least developed country issues, and dispute settlement have advanced over the years. But the negotiations on the services

sector received scant attention. As a result the progress has been insignificant. Mr. Angelos Pangratis, Ambassador of the European Union, says "the agreement on Trade Facilitation itself is highly complex and necessitates a real effort in order to arrive at an advanced text." In the 8th Ministerial conference, the ministers emphasized the role of the WTO in keeping markets free and open. On trade and development front, they restated that the need to protect LDCs' interests needs to be given due priority and to advance the talks on cotton and special & differential treatment requirements for developing countries.

The 9th Ministerial of the WTO has been called to fulfill the following principles to ensure a speedy end to the Round. *First*, the "FIT" principle – Full participation, Inclusiveness, and Transparency; *second*, any issue for action or decision by Ministers proposed by members should be developed by them in line with the normal consensus principle; and *third*, issues for action or decision by Ministers should be agreed well before 9th Ministerial.

The Indonesian Minister of Trade has urged that Indonesia will put its best foot forward to produce an agreement that can regain the world's trust in the multilateral trade system. This was conveyed in the Mini Ministerial Meeting of the Trade Ministers held at Davos on 26 January 2013. Indonesia promises to initiate forceful

negotiation on two major issues in the 9th Ministerial Conference at Bali, which includes facilitation of trade and the Least Developed Countries' Package. "This will be a stepping stone in resolving the issues that are still left under the WTO", said the trade minister. Since there is still a tendency among countries to go in for trade protection, Indonesia has asked everybody to maintain the principles of fair trade and emphasized the importance of building a strong multilateral trade system that can drive economic growth and the creation of jobs.

In the meeting several countries representing developed countries expressed their support of the agenda put forth by Indonesia. They hope that the 9th Ministerial Conference in Bali will achieve concrete results, especially in facilitating trade which they hope can reduce unemployment. Meanwhile both the developing countries and LDCs are hoping that the facilitation of trade can be developed simultaneously with capacity building. They emphasize that the capacity building aid programme is badly needed to smooth trade in developing countries and LDCs. It can only be hoped that it will be agreed upon at Bali if found to be feasible.

## Conclusion

In principle what the Doha Declaration agreed to in 2001 was meant to foster

"development" in developing countries and address the adverse impact of trade liberalization and deregulation. Since then, Doha negotiations have been dragging on for more than a decade with developing nations remaining focused about not concluding a "bad deal" that would jeopardize their developmental dimension. Developing countries feel negotiations are still imbalanced and a lot of consultations and additional changes required from developed countries to conclude the Doha Round.

The stalemate is largely over developed countries' reluctance to make considerable reductions in their trade distorting agricultural subsidies and unbalanced proposals for further reductions in industrial tariffs. From 30 November 2001 to December 2011, after a spate of failed attempts to revive the WTO Doha Negotiations, a WTO Ministerial conference is scheduled to take place in Bali, Indonesia.

Developing countries are faced with a number of challenges to meet their development needs. These include growing their economies, addressing high levels of poverty, ensuring job creation, expanding their manufacturing bases and managing their resources. The question is, in the context of the global economic and planetary crisis, will the WTO negotiations seek the opportunity to question unbalanced trade rules or continue negotiations within the

current economic paradigm that essentially perpetuates underdevelopment in developing countries?

The current state of play amongst the WTO members - more so from developing countries - is that unless agreement is reached on agriculture and non-agricultural market access (NAMA), no negotiations will take place on other issues such as services, trade in environmental goods/services, trade facilitation and geographical indications, amongst other issues. The stalemate in the negotiations questions the legitimacy of the WTO to promote fair and balanced multilateral trade rules that will address the past and current inequities, which developing countries are faced with.

On agriculture, points of debate are the elimination and/or reduction of trade distorting subsidies and substantial market access opportunities for developing countries' agricultural goods. Developing countries that belong to the G-20 and also happen to be big industrial agricultural producers have formed a coalition. These countries have a proactive interest in greater market access in the developed world.

Within the WTO's Group of 33 (G-33) countries, there are also countries that have huge peasants, family, subsistence and small-scale farming communities. Vitality, these countries are calling for special safeguard measures to protect

their small-scale and emerging farmers from the adverse effects of trade liberalization. India, for example, belongs to both the G-33 and G-20. So while the G-20 is calling for greater market access, it will mostly benefit large-scale agriculture farmers and businesses, if at all. Furthermore, the WTO perpetuates the current permissive industrial agricultural production and trade system in genetically modified organisms and agrofuels (biofuels) that contribute significantly to climate change.

On NAMA, developing countries want guaranteed policy space. In other words, the right to develop policy through experimentation, in addition to the flexibility to design industrial, trade, technology and social policies unique to their respective situations. The challenge for developing countries is how they use the policy space if they get it.

Certain economic instruments are necessary, such as the flexibility to raise or drop industrial tariffs when necessary, particularly to protect industries and jobs from import surges as well as to allow subsidies to support infant industries and build domestic capacities and assets. The current WTO negotiations curtail these instruments and subject countries to binding commitments. At the same

time, past and current industrial development is having a significant impact on the physical environment, the use of natural resources and the socio-economic rights of workers.

A more rapid growth associated with a reduction in global protection could reduce the number of people living in poverty by as much as 13 per cent by 2015. It proves that trade liberalization and poverty reduction go hand in hand. Therefore, it is clear that for small and poor countries the WTO is the right platform to go ahead with reforms and pursue their goals of economic development through enhanced trade liberalization. Above all, one must remember that good trade policy begins at home. The surest way to liberalize and progress is to reform one's domestic economy. Whether one follows the regional or multilateral track, reforming the domestic economy is imperative in order to maximize the gains from trade liberalization.

In the current situation, it would be useful to frame negotiating proposals which the WTO can take forward to conclude Doha Round. The bottom-line is that countries should follow unilateral trade policies suited to their own domestic needs but within the framework of the changing international trade environment. A lot of expectations are

built up in the wake of the 9th Ministerial at Bali, Indonesia to find amicable settlement with regard to Doha Round by which both developing and LDCs expectations from WTO are realized which ultimately helps them to improve their growth and economic development.

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## NEWS (NATIONAL/INTERNATIONAL)

### Japan Offers CHF 395,604 to WTO Training Programme for Developing Countries

JAPAN has donated CHF 395,604 to the Doha Development Agenda Global Trust Fund which brings its total contribution to CHF 9.1 million.

This donation will finance technical assistance programmes and training activities for developing and least developed countries (LDCs).

The aim is to better adapt their practices and laws to WTO rules and disciplines, improve the implementation of their obligations and enhance the exercise of their membership rights.

"I welcome Japan's contribution that will allow developing countries to expand their markets, find new trading partners and better integrate into the global economy," the statement quoted Pascal Lamy, WTO Director-General as saying.

Yoichi Otabe, Japan's Ambassador to the WTO, said Japan would continue to support developing and LDCs to better understand the WTO rules to expand their trading activities.

"Trade can be used as a tool for growth, development and poverty reduction and trade is a crucial instrument today given the troubled times we are facing today," the statement said.

(<http://www.ghanaweb.com/GhanaH> 22 December 2012)

### WTO Scales Back 2012 Trade-Growth Estimate

THE WTO has downgraded its 2012 forecast for world trade expansion from the 3.7 per cent forecast in April to 2.5 per cent, owing to prevailing

economic headwinds and has also scaled back its 2013 estimate to 4.5, from 5.6 per cent.

"On the export side, we anticipate a 1.5 per cent increase in developed economies' trade (down from 2%) and a 3.5 per cent expansion for developing countries (down from 5.6%). On the import side, we foresee nearly stagnant growth of 0.4 per cent in developed economies (down sharply from 1.9%) and a more robust 5.4 per cent increase in developing countries (down from 6.2%)," the organization pronounced.

Risks to the forecast would remain mostly on the downside as long as financial uncertainty in Europe remains elevated, the WTO said, while warning that any "hard landing" for the Chinese economy would add to the stresses. However, there was also some upside potential if the European Central Bank's recently announced bond-purchasing programme has an immediate salutary effect on European Union (EU) import demand.

WTO Director-General Pascal Lamy welcomed recently announced measures to reinforce the euro and boost growth in the US. But he said more needed to support growth, and again called for a renewed commitment from countries to revitalize the multilateral trading system. "The last thing the world economy needs right now is the threat of rising protectionism," he warned.

The volume of world trade as measured by the average of exports and imports only managed to grow 0.3 per cent in the second quarter compared to the first, or 1.2 per cent at a yearly rate.

The trade slowdown in the first half of 2012 was driven by an even stronger deceleration in imports of developed countries and by a corresponding weakness in the exports of developing economies.

Based on current information, the WTO expected trade growth to rebound to 4.5 per cent in 2013. Exports of developed and developing economies should increase by 3.3 and 5.7 per cent respectively, while imports of developed and developing countries should advance 3.4 and 6.1 per cent respectively.

Although developed countries collectively recorded modest increases in both exports and imports in 2012, some grew faster than others.

Exports of the US and shipments from the EU to the rest of the world grew steadily over the past year, with year-on-year increases of around 7 and 5 per cent respectively, in the second quarter.

Japanese exports had been mostly flat since mid-2010, but even they recorded an 8.5 per cent year-on-year increase in the second quarter.

US and Japanese imports had also held up relatively well despite the crisis, with year-on-year growth of roughly 5 and 6 per cent in the latest period.

However, import demand in the EU had weakened significantly, resulting in less trade between EU countries and fewer imports from the rest of the world (also down 3.5%). The weight of the EU in total world trade, combined with the larger-than-expected year-on-year drop in EU imports through the first half of 2012, explains much of the downward revision to the forecast.

The EU also represents nearly 60 per cent of developed economies' imports, which accounted for the stagnation in projected imports of developed economies in 2012.

Weak import demand in developed countries and softer domestic demand in China had contributed to sagging trade flows in the developing world, most noticeably in dynamic export-oriented economies in Asia.

Export growth dropped to 2.9 per cent and import growth fell to 2.8 per cent in the first quarter of 2012 before rebounding slightly in the second quarter, but available monthly data suggest that the third-quarter results may be weaker still.

(<http://www.polity.org.za/article/wto-21-September-2012>)

## WTO: Developing Countries Should Open Trade

THE WTO has called on developing nations, including Indonesia, to remove trade barriers that would enable them to benefit from the free flow of goods in the global market.

WTO deputy director-general Valentine Rugwabiza said recently that developing nations can unlock trade potential with emerging peers if they remove barriers.

Such nations also need to improve the competitiveness of local industries to experience the most benefits from free trade, she said in an interview in Jakarta.

She added that any form of trade restriction would "send the wrong signal to investors."

In Indonesia, many non-tariff measures have been imposed on goods from China, following the gradual implementation of the Asean-China free trade deal in 2010 that resulted in a flood of imports from the world's second-biggest economy.

Other restrictive measures include developing standards for imported products through the Indonesian National Standard (SNI) and a labeling system.

"[Non-tariff barriers] are not a good way to protect [local] industry," Ms Rugwabiza said. Many developing nations have kept their doors closed to other developing nations, she said, adding that removing barriers among themselves would be an effective way to counter weaker demand from the developed nations. Non-tariff restrictions include import duties, quotas, trade-related subsidies and trade defense measures.

She encouraged Indonesia's policymakers to improve the business climate by helping local businesses cut costs and identify problems that hamper productivity. This could involve efforts to improve infrastructure, providing incentives and boosting the quality of human resources.

The WTO's main mission is to ensure trade flows in a smooth, predictable and free manner.

(<http://www.thejakartaglobe.com> 17 October 2012)

## Helping Developing Countries Remains Priority but “Nature of Trade is Changing” — Pascal Lamy

WTO DIRECTOR-GENERAL Pascal Lamy, in his address to the 59th session of UNCTAD’s Trade and Development Board on 25 September 2012, said that “we must remain focused on our primary objective, a goal that the WTO and UNCTAD share: to help developing countries benefit from the globalized economy.” He added that “the way that goods are produced and traded (today) has implications for how we can best maximize trade’s contribution to growth and development.” This is what he said:

I am very pleased to address this fifty-ninth session of the Trade and Development Board on the subject of the ‘Evolution of the international trading system and its trends from a development perspective’.

The global economy remains fragile. Recovery from the financial and economic crisis remains sluggish and risks for the near future are still on the downside. In fact, just last week the WTO revised its projections for trade growth in volume from the spring forecast of 3.7 per cent growth to 2.5 per cent, which is a more than expected downgrade. Even the picture for South-South trade is less buoyant than before. If the crisis worsens, it will certainly put at risk some of the developmental gains of recent years.

Persistent high unemployment is testing many governments’ resolve about keeping markets open. Small trade restrictions are accumulating like bad cholesterol, and the danger is that the benefits of trade openness will be incrementally undermined. The WTO’s and UNCTAD’s monitoring of trade-restrictive measures are a useful means to help members keep their cholesterol levels under control. I encourage you within this UNCTAD forum to pay attention to these developments.

What can we in the international community do to help in the present circumstances?

First of all, we must remain focused on our primary objective, a goal that the WTO and

UNCTAD share: to help developing countries benefit from the globalized economy to raise living standards. In essence, to use trade as a conduit to achieve development that is both sustained and sustainable.

The turbulence in the global economy has not changed this priority. However, the nature of trade is changing. We are increasingly trading in tasks and in value-added and through value chains which are increasing in both breadth and in depth. The way that goods or services are produced and traded has implications for how we can best maximize trade’s contribution to growth and development.

Of course, regional and global value chains are not new. Nayan Chanda, Senior Journalist tells us that by the 11th century AD, regular trade had evolved in which African ivory was shipped to India, where craftsmen carved it into jewellery for export to Europe. That is a global value chain. Manchester’s 19th century textile mills were fed with cotton from India, the United States and elsewhere. The cloth produced there was exported throughout the world.

The pattern in itself is not new but what is new are their unprecedented scale, scope, sophistication and speed. Today, trade in intermediate products accounts for more than half of world merchandise exports. Shrinking transport and communication costs, underpinned by a more predictable trade policy environment, have enabled industrial production to be fragmented across regions as never before. Particularly for smaller developing countries but also for small and medium companies, global value chains are good news. Why? Because they lower the bar for entry into the global economy as they do not need to have a full-fledged vertically integrated industry to penetrate the value chain. And this phenomenon is by no means exclusive to high-tech products. This replacement of “trade in goods” with “trade in tasks” has major implications for how we think about trade.

The way we measure trade also has to change. Our traditional methodology assigns the total commercial value of an import to a single country of origin. When applied to “made in the world” products, this methodology can exaggerate, and

does exaggerate if we look at the initial approximations of trade in value added, bilateral trade balances and under-state where value addition occurs which is what matters for jobs.

Inflated bilateral trade numbers can inflame anti-trade sentiment. Worse, they can cause countries to assess their trade interests incorrectly - and bad measurements tend to lead to bad policy. The WTO is working with national and international institutions such as UNCTAD, the OECD, the World Bank, networks of academics and statisticians to develop trade statistics that better reflect the reality of trade today. As was discussed at the Seminar on Global Value Chains held in Beijing recently, the first batch of numbers on trade in value added will appear at the end of the year.

A second set of changes is even more relevant to our discussion today: the rise of global value chains requires governments to re-think how best to pursue trade-led growth. Government policies can help create a virtuous circle of increasing international competitiveness and trade flows, yielding steady development dividends. Public-private co-operation can encourage foreign direct investment, which often brings with it improved technology. Investments in infrastructure, coupled with efficient business and support services, can help deepen ties between countries, making it easier to fragment production regionally. Reduced transaction costs further boost the competitiveness of domestic firms. Active labour policies, education and innovation policies must be part of the mix.

In short, catching the opportunities presented by global value chains requires smart government interventions which need to be rethought in light of this new background.

But the trade narrative also needs to change. The traditional approach to trade was "exports good, imports bad". The political economy of trade policymaking in many countries reflects this: governments instinctively work to bolster exporters' market access while trying to protect import-competing sectors, whatever the merits of this approach were a few decades ago. This is ill-suited to a world in which the import content of exported goods is 40 per cent - double the level

from 20 years ago, and which might be 60 per cent 20 years from now. There is a need to switch the mind-set from the old school need to export to cover imports to the new school of thought which recognizes that we need to import to cover exports.

What can the multilateral trading system do to smooth the path through the world economy? How can we encourage the development of new trade flows? And how can developing countries be helped up the value chain to create more growth and jobs? These are all relevant questions worth looking into and we did last week at a seminar co-organized by MOFCOM, UNCTAD, OECD and the WTO in Beijing.

We will look at the capacity-building side of this at next July's Fourth Global Aid for Trade Review which will look into how we can leverage Aid for Trade to unlock the potential offered by global value chains. The consequences for trade policy-making and domestic policy adjustment to this pattern are also true for Aid for Trade.

Aid for Trade can help countries develop the competitive, well-regulated logistics and connective services sectors that can be as important as physical infrastructure to their trade competitiveness. Aid for Trade projects can also help developing country producers upgrade equipment, improve marketing activities, and comply with international standards and other non-tariff requirements, helping them move higher up on their respective value chains. The Enhanced Integrated Framework can play this role for the LDCs, for whom the costs of joining value chains as compared to emerging countries remains relatively high. We have seen this in the case of rum in the Caribbean, flowers in Eastern Africa, cashews in Mozambique and mangoes in Mali.

Trade facilitation is another area which can help unlock the potential of global value chains. Stripping away red tape at customs points, and enhancing transparency and predictability at borders would lead to considerable savings in time and costs of transacting trade.

Action taken at the regional level to facilitate trade could also go a long way to encouraging the development of regional and global value chains. This is particularly true for Africa, where

manufacturers are often stymied by poor road, rail and port infrastructure, by high and unpredictable transportation costs, by tariffs and non-tariff measures and by red tape. According to surveys conducted by the UN Economic Commission for Africa, a typical customs transaction in Africa involves an array of 20 to 30 different parties, 40 documents, 200 data elements (many of which are repeated multiple times). This is not the route to "Factory Africa".

The African Union is taking steps to remedy the situation. African governments this year adopted a declaration on "Boosting Intra-African Trade", pledging to improve infrastructure and reduce trade barriers and this is very much in synergy with the trade facilitation agenda. I see this as a very encouraging move.

We have also heard the same message coming from the recent Ministerial conference of Land-locked Developing Countries in Almaty.

I do, therefore, believe that concluding a WTO deal on trade facilitation, sooner rather than later, can result in significant cuts to the costs of trading today.

Let me, in closing, raise another important factor in international production chains: non-tariff measures (NTMs). The broad decline in tariff levels has meant that non-tariff measures, such as technical standards, health and safety requirements, and services regulation, now loom larger in international trade. This year's edition of the WTO *World Trade Report* focused on this issue. We found that the nature of NTMs has shifted: the traditional protection-motivated quotas and safeguards have increasingly given way to a precaution-oriented emphasis on health, safety, environmental quality and other social considerations. These concerns are wholly legitimate and cannot, indeed should not, be blindly trumped by a desire to keep trade completely unobstructed. Contrary to the universe of tariffs where the objective of the trade negotiations has been to move to zero tariffs, this cannot be the same for NTMs. The aim should be to create a level playing field on NTMs although this can be more politically challenging. The next focus in decades to come would be how to address barriers meant to protect not the producers but the consumers.

That said, the nature of the measures taken to pursue public policy objectives, and the way those measures are administered, can have widely varying effects on trade, both positive and negative. We can agree that it is desirable to ensure that NTMs do not increase trade costs more than the minimum necessary to achieve their objective. Similarly, it is reasonable to argue that NTMs should not be constructed in ways that unduly favour domestic interests. Yet, in light of the complex objectives and policies in play where NTMs are concerned, finding the right balance will require cooperation and dialogue.

We can start by improving transparency about existing NTMs. At the WTO, we have created the Integrated Trade Intelligence Portal (I-TIP), a one-stop shop for accessing all information notified to the WTO by members, including NTMs, tariffs, trade remedy use and trade statistics. For the first time, it will be possible to access the whole universe of the trade regime of a country. We intend to continue to work with UNCTAD to shed further light on NTMs and explore ways to preserve the gains from trade without sacrificing public policy objectives - a debate that is likely to increase in years to come.

There is also one issue about NTMs that is entirely uncontroversial: the importance of capacity-building, whether for helping developing country exporters comply with NTMs in important markets or for helping governments participate in standard-setting. I encourage UNCTAD with its specific focus on development to have a closer, wider and deeper look at the universe of standard-setting and the places where this is done, including private standards, and what the development community can do in order to bring a developing country input into this debate that rebalances the framing of these NTMs. I suggest that you could focus your trade reflection on this impact for the future.

In conclusion, I want to reiterate that even though the Doha Development Agenda remains at an impasse, there are realistic, short-term concrete steps that can be taken to bolster trade-led growth and development, enabled by global value chains. The recent decision on WTO accession for least-developed countries (LDCs) and the work on the Information Technology Agreement and the Government Procurement Agreement and even the

APEC environmental goods agreement show that when the will is there amongst the WTO members we can collectively deliver. This same will is required in trade facilitation and other areas of importance to the WTO members, especially to the LDCs. This includes the special and differential treatment leg of the Doha Round which is a low-hanging fruit that we can work to reap together.

I hope that your deliberations over this period will help to further engender this will as we continue to promote a multilateral trading system built on the premise of trade as a critical input in attaining development.

([http://www.wto.org/english/news\\_e/sppl\\_e/sppl249\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl249_e.htm)  
25 September 2012)

## WTO Rules Can Help Developing Countries Achieve Developmental Priorities, Says DDG Rugwabiza

TRADE ministers from landlocked developing countries (LLDCs) are meeting on 12 September 2012 in Almaty, Kazakhstan, to discuss how the trade potential of LLDCs can be enhanced and to articulate a common position on current key trade issues.

This is their fourth meeting since 2005.

The objective of the meeting, which is hosted by the Government of Kazakhstan and the United Nations Office for Least-developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS), is to prepare for the Ten-Year Review Conference of the Almaty Programme which will be held in 2014.

LLDCs' lack of territorial access to the sea and comparative isolation from world markets has contributed to higher than average transportation costs and low participation in international trade. Launched in 2003, the Almaty Programme calls for fast-tracked WTO accession for LLDCs, enhanced access to all markets, assistance on trade facilitation, and improved trade and transport facilitation. LLDC ministers will review progress made by their countries in participating in the international trading system since the adoption of the Almaty Programme. They will highlight major achievements

and constraints met by their countries. A ministerial declaration is expected to be issued after the meeting.

Immediately after the ministerial meeting, a High Level Global Thematic Meeting on International Trade, Trade Facilitation and Aid for Trade will take place from 13 to 14 September 2012 in Almaty. The main objective is to discuss some of the fundamental trade-related issues of importance to LLDCs, such as enhanced market access for LLDC exports, diversification and increased competitiveness of LLDC export products, increased flows of foreign direct investment, WTO accession, improved trade facilitation and transit mechanisms, and Aid for Trade.

WTO Deputy Director-General Rugwabiza is participating in both events. She will bring the WTO's perspective on LLDC issues, particularly on matters related to trade facilitation, Aid for Trade and WTO accession issues. In her speech on 12 September, she notes that 'geography matters for trade' and that when it comes to exporting goods to overseas markets, landlocked countries are at an inherent disadvantage compared with coastal states as their exports must pass through neighbouring countries simply to reach the nearest port. She further notes that the trade facilitation negotiations at the WTO are a win-win and that a multilateral agreement would bring tremendous dividends to the multilateral system, especially to the LLDCs. She also recognizes the need for the LLDCs to reject protectionism, seeing this as "potentially aggravating an already perilous global trade reality". The importance of accession to the WTO and the role that Aid for Trade could play in supporting the developmental priorities of LLDCs are also highlighted by the DDG.

The LLDCs are Afghanistan, Armenia, Azerbaijan, Bhutan, Bolivia, Botswana, Burkina Faso, Burundi, Central African Republic, Chad, Ethiopia, Kazakhstan, Kyrgyzstan, Republic of Lao, Lesotho, Malawi, Mali, Moldova, Republic of Mongolia, Nepal, Niger, Paraguay, Rwanda, Swaziland, Tajikistan, the Former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan, Zambia and Zimbabwe.

([http://www.wto.org/english/news\\_e/news12\\_e/fac\\_11sep12\\_e.htm](http://www.wto.org/english/news_e/news12_e/fac_11sep12_e.htm) 11 September 2012)

## Developing Members Confirm Commitment to Open Market for Poorest Countries

FOUR WTO members reported their commitment to opening their markets for products from least-developed countries at a meeting on 16 April 2012, reflecting increased efforts by the developing economies to improve market access conditions for exports from the poorest countries.

The four members – India, China, Chinese Taipei and Korea – provided information on their duty-free schemes at a meeting of the sub-committee on least-developed countries (LDCs) held on 16 April 2012. The sub-committee, a subsidiary body to the Committee on Trade and Development in which all WTO members may participate, is dedicated to discussing issues of particular importance to least-developed members.

The WTO's 2005 Hong Kong Ministerial Conference Declaration agreed that "developed-country Members, and developing-country Members declaring themselves in a position to do so, agree to implement duty-free and quota-free market access for products originating from LDCs".

The LDCs represent the poorest and weakest segment of the international community. The current list of LDCs, designated by the United Nations, includes 48 countries, 31 of which to date have become WTO members. The LDCs comprise about 12 per cent of the world's population, but account for less than 2 per cent of world GDP and about 1 per cent of global trade in products.

Currently, most of the WTO's developed-country members have set up arrangements to provide duty-free and quota-free market access for the LDCs. Increasing efforts are also being made by developing-country members to open their markets for products from the world's poorest countries.

For example, India's duty-free tariff preference scheme is operational with effect from August 2008, and since then duties are being gradually eliminated to bring 85 per cent of its tariff lines under duty-free coverage over a period of five years. China's duty-free and quota-free programme currently accounted for 60 per cent of all tariff lines and it

intends to expand the coverage to 97 per cent in future. Chinese Taipei's duty-free access for LDCs covers nearly 32 per cent of its tariff lines at present. Korea expanded its coverage under duty-free and quota-free access in November 2011 by including 95 per cent of its tariff lines and has also made changes in the rules of origin.

The Ambassador of Haiti, on behalf of the LDCs, expressed deep appreciation to the members for their efforts to enhance market access opportunities for LDC exports. He also called for enhanced market access opportunities as well as improved rules of origin to further facilitate exports from the poorest countries.

([http://www.wto.org/english/news\\_e/news12\\_e/acc\\_16apr12\\_e.htm](http://www.wto.org/english/news_e/news12_e/acc_16apr12_e.htm) 16 April 2012)

## WTO for Cheaper Drugs in Developing Countries

AS generic drugs are gaining currency in several developing countries, the WTO has proposed an amendment to facilitate the availability of cheaper drugs in poorer nations.

"The proposed amendment will allow export of generic drugs in certain circumstances to address health-related issues in developing countries and provide cheaper drugs," WTO Deputy Director General Harsha Vardhan Singh said.

The amendment would, however, need to be ratified by two-thirds of the WTO member countries numbering 150 at present. "The member countries had been discussing the issue. Some would need the approval by their Parliaments before they can form any view at WTO," he added.

Dr. Singh noted that generic drugs have been an issue in terms of legal obligations on member countries. "It has been discussed in other international forums as well, including TRIPS (Trade-related Aspects of Intellectual Property Rights)," he said.

WTO is an international forum for governments to negotiate trade agreements and settle trade disputes. TRIPS is a WTO-administered international agreement that sets down minimum standards for many forms of intellectual property (IP) regulation on WTO members.

Major developing nations – notably India, China and Brazil – have been espousing the right of poorer countries' access to cheap generic medicines at the WTO. However, developed nations, such as the US, Canada and Japan, have been votaries of branding counterfeits or copy of patented drugs with fake/spurious ones.

He underlined that lack of proper transmission of information between member countries was the cause of about 50 per cent of disputes coming before WTO for resolution.

"Trade disputes are broadly in line with the share of a member country in world trade. Now, the developing countries are also having trade disputes with developed countries and among themselves, which signifies increasing international trade," he added.

Dr. Singh informed the WTO was evolving a 'Made in the World' concept, which was based on value addition in a finished product by different countries rather than revenue generation.

*(Business Standard, 18 July 2012)*

## India, China Influencing Pattern & Scope of International Trade: WTO

EMERGING economies like India, China and Brazil are no longer "policy takers" but are significantly influencing the pattern and scope of international trade, according to WTO Director General Pascal Lamy.

"These emerging powers China, India, Brazil, Mexico, Indonesia, Malaysia, South Africa and many others are no longer policy takers.

"These countries now increasingly influence the pattern and scope of international trade, creating new supply and demand pulls and flexing their influence in international organizations," he said while presenting the Richard Snape Lecture at Melbourne. Mr. Lamy said, "This is no longer the world of the twentieth century dominated by the US pillar on one side and the European pillar on the other. We are in a twenty-first century multi-polar world".

The WTO chief said emergence of some developing countries as key players and as "real contributors" to global dialogue on trade and

economics is a fundamental feature of this new geopolitical reality. He said the global network of imports and exports is no longer just the North-South paradigm of the past century.

"Increasingly we are seeing developing countries as producers and as markets for each other and this is one of the growing patterns of the new landscape of trade," he added.

The WTO chief said that in the past 20 years, merchandise trade between developing countries has expanded much faster than the North-South trade.

A recent report by UNCTAD notes that in 2010 South-South exports made up 23 per cent of world trade compared to just 13 per cent in 2000.

"Developing countries are now the largest market for other developing countries. While this is encouraging, the contribution of developing regions to South-South trade is highly skewed," he said.

Asian countries make up more than 80 per cent of South-South trade, with the shares of Africa and Latin America being just 6 and 10 per cent respectively in 2010. Mr. Lamy said that economic ties between Africa and China and Africa and India are growing considerably.

"Trade between China and Africa will likely hit upwards of US\$200 billion in 2012, up 25 per cent year on year. If this trend continues, reports are that Africa could surpass the EU and the US to become China's largest trade partner in three to five years," he added.

*(The Indian Express, 28 November 2012)*

## 'India's Exports in Volume Grow Fastest'

INDIA recorded export growth of 16 per cent in 2011, the fastest in the world in volume terms during last year, even as the global trade expansion slowed to five per cent, according to the WTO report.

"India had the fastest export growth among major traders in 2011, with shipments rising 16.1 per cent. Meanwhile, China had the second-fastest

export growth of many major economy at 9.3 per cent," the World Trade Organization (WTO) said.

However, the WTO economists forecast further slowing down of world trade in 2012 to 3.7 per cent as the downside risks remain high. "We are not yet out of the woods," WTO Director General Pascal Lamy said.

These risks include a steeper than expected downturn in Europe, financial contagion related to the sovereign debt crisis, rapidly rising oil prices and geopolitical risks.

India, also emerged as the second-fastest importer after China growing at a pace of 6 per cent in 2011.

While, Indian exports increased the fastest in the world in volume terms, in terms of dollar realisation the growth has been slowing sharply since August 2011, according to Commerce Ministry data.

In their report, the WTO economists said the weak import demand from Europe and US would adversely affect the emerging and developing countries like India.

The US and European Union together account for nearly 35 per cent of India's exports of US\$245.9 billion in 2010-11, as per India's trade data.

*(The Indian Express, 12 April 2012)*

## **UNCTAD Requested to Assist Landlocked Developing Countries Accessing to WTO**

TRADE Ministers from landlocked developing countries (LLDCs) meeting in Almaty, Kazakhstan praised UNCTAD's consistent support to their members and requested UNCTAD to continue to assist LLDCs in their efforts to become members of the World Trade Organization.

Out of the 31 LLDCs, 9 are not yet members of the WTO. Except for Turkmenistan, 8 of them are, however, in the accession process. They are Afghanistan, Azerbaijan, Bhutan, Ethiopia, Kazakhstan, the Lao People's Democratic Republic, Tajikistan and Uzbekistan. Half of the

accessing LLDCs are also least developed countries (LDCs).

During the Ministerial meeting in Almaty, Ministers and senior officials from acceding countries expressed their appreciation of the valuable support that their respective countries have received from UNCTAD.

Ms. Gulchera Bazarova, Deputy Minister of Economic Development and Trade of Tajikistan said her country is grateful for the advisory missions and training courses organized by UNCTAD to help the economies of Central Asia that are in the process of accession to better understand the opportunities and challenges for acceding countries.

In order to accede to the WTO, each acceding country must undertake negotiations with trading partners that are WTO members. Such trade negotiations are complex and usually take many years to complete. The accession process requires considerable national policy reforms. It also requires that countries prepare themselves in advance with clear understanding of how the reforms they are willing to undertake affects their trade patterns and economic development. In this respect, UNCTAD's unbiased advice and support helps countries to be informed negotiating partners.

In the Almaty Ministerial Declaration adopted at end of the Fourth Meeting of LLDCs' Trade Ministers on 14 September, the Ministers stated in paragraph 30: "LLDCs, including through their Missions in Geneva, should strengthen their substantive cooperation with UNCTAD on matters of particular interest to LLDCs, including trade, development and interrelated issues in the areas of finance, technology, investment and sustainable and inclusive development."

At the same conference, Ms. Anne Miroux, Director of UNCTAD's Division on Technology and Logistics, highlighted the importance of trade facilitation for LLDCs' access to world markets, crossing borders and overcoming distance. She pointed to the need for simplifying documentation and customs procedures, working for an ambitious trade facilitation agreement at the WTO, inclusion of trade facilitation.

*(<http://unctad.org/en/pages/>, 19 September 2012)*

## Developing Countries Table Food Security Proposal at WTO

THE G-33 group of developing countries has tabled a new proposal on farm trade and food security, trade sources say, in a bid to fast-track elements of the draft Doha accord ahead of the WTO's ministerial meeting next year.

The group, which includes China, India, and other countries with a sizeable share of smallholder farmers, would like trade ministers to support more flexible rules for farm subsidies in the WTO's "green box" - those that are exempt from any ceiling or reduction commitments on the grounds that they cause not more than minimal trade distortion.

Negotiators told *Bridges* that the proposal has been circulated in advance of an informal meeting of the WTO's agriculture negotiations committee. The meeting was initially called to discuss two separate proposals from the G-20 developing country group, which favours reform of developed country farm policies. (See *Bridges Weekly*, 3 October 2012)

However, some officials warned that the G-33 proposal might be less likely to garner consensus than the G-20's initiative. "It might be seen as a slightly different beast," one negotiator cautioned.

### "Low-income, Resource-poor" Farmers

The G-33 proposal calls for new rules on public stockholding for food security purposes and on domestic food aid. The group says that if a developing country government purchases food for its stocks at administered prices in order to

support "low-income, resource-poor producers," they should not have to count this towards the aggregate measure of support they provide - an amount referred to as the 'AMS' by trade negotiators, and capped for each country under WTO rules.

Similarly, if developing country governments acquire food for domestic food aid at subsidized prices, they should not have to count these towards their AMS ceiling, so long as the food was "procured generally" from low-income or resource-poor producers in developing countries.

The group also proposes that several kinds of developing country farm programmes should be exempt from any ceiling on subsidies by classing them with other green box programmes at the WTO. Policies and services related to farmer settlement, land reform programmes, rural development, and rural livelihood security in developing countries should be among them, the group said.

The three clauses are all taken unchanged from a part of the draft Doha agriculture text that members have tended to see as being close to consensus, subject to progress in the talks as a whole. However, the draft text itself has now been unchanged for four years as a result of the broader impasse in the talks.

Absent from the G-33 proposal were two elements - agricultural state trading enterprises, and international food aid - that had been included in an earlier draft prepared by India, which has taken the lead in pushing for the initiative at the WTO.

(*Bridges Weekly*, Vol. 16, Issue 39, 14 November 2012)





## BOOKS/ARTICLES NOTES

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### ARTICLES

#### **Carving Out Policy Autonomy for Developing Countries in the World Trade Organization: The Experience of Brazil and Mexico**

by Alvaro Santos, Georgetown University Law Center, 2012, [asantos@law.georgetown.edu](mailto:asantos@law.georgetown.edu)

THIS paper makes an attempt to suggest policy options needed for developing countries to derive autonomy in the context of multilateral trading system. It says despite the presence of restrictions, there is still flexibility in the system for countries to carve out regulatory space for themselves. That countries can expand their policy autonomy shows that governments of developing countries have more agency and responsibility than development scholars typically admit. At the same time, however, the asymmetry of power and resources between countries does affect their experience in the system and thus influences the outcomes to a greater extent than liberal trade scholars usually acknowledge.

This Article provided an account of how countries are creating policy space in a way that is currently underappreciated in existing academic literature. This space relies on the ability of countries, as RPs, to make use of textual open-endedness in legal obligations, to seek out favourable rule interpretation, and to actively participate in the WTO system through strategic lawyering and litigation. To pursue this strategy, countries invest in “developmental legal capacity,” through which governments recognize the need to make gains in policy autonomy in order to pursue economic policy goals that may be in tension with the WTO’s free trade objectives.

This Article drew on two case studies to examine the availability of policy space within the WTO obligations and the role of developmental legal capacity. It analyzed the trajectories of Brazil

and Mexico in the WTO to show two different experiences of RPs. The divergent lawyering and litigation experiences of Brazil and Mexico reflect different attitudes towards the free trade regime inaugurated by the WTO. Mexico seems to have considered WTO membership – part of its trade liberalization policy – as a strategy for economic growth in itself. Its participation in the regime has been mostly to ensure market access for its domestic producers abroad and to defend its own market from what it considers unfair competition. It has largely abandoned its powers to selectively promote specific sectors in which it may create comparative advantages with greater growth potential. In contrast, Brazil seems to have combined a strategy to promote market access for its exports with domestic measures to promote economic sectors it considers valuable. When other countries in the WTO have challenged those measures, Brazil has defended them by seeking to expand its policy space within the system. In this way, the experience of Brazil seems to show that, claims to the contrary notwithstanding, states can take an active role in the promotion of their domestic industries and their economic future, even under the WTO constraints.

The lesson to draw from the experience of Brazil and Mexico is not that one trajectory is better than the other. Rather, the lesson is that the economic trajectory depends, not only on the international trade regime, but also on the domestic economic strategy of each country. Therefore, the responsibility of the virtues and vices that one may associate with each of these divergent strategies must be placed largely on the domestic government and the economic policies it has decided to follow.

To say that we should turn our attention to the domestic economic policies is not to say, however, that the international legal framework is unimportant. Rather, it is to say that despite the international constraints, countries can expand their policy space – if they deem it desirable – and

find room for policies they want to advance. The Article recognizes that there are limits to what countries can do. Not all rules are ambiguous and subject to favourable interpretation. Not all strategic lawyering will turn to an advantage either. Moreover, carving out policy space requires significant resources – material, human, political – that not all countries may easily muster in order to become RPs. Poorer countries may therefore experience greater limits – real or apparent – imposed by the international trade regime. However, to show that countries subjected to similar international obligations can pursue divergent trade and development policies is to make clear that there is policy space and that this space can be put to different uses with divergent outcomes.

The article has sought to challenge the argument, commonly made by developing countries' governing elites, to wit that their country's legal obligations "tie their hands" and command them to act in a specific way. Instead, the article calls attention to the agency of developing countries' governments. While recognizing that there are important limits set by the architecture of the WTO and the asymmetry of power between its members, the article argued that there is flexibility within the system to expand developing countries' regulatory autonomy beyond what is currently recognized. Developing countries' governments should bear responsibility – and their citizens should hold them accountable – for the kind of developing strategy they pursue, or refrain from pursuing, within the international trade regime.

**US Provides \$1 million in Additional WTO Trade Support** by MacKenzie C. Babb  
19 September 2012,  
<http://iipdigital.usembassy.gov/st/en>

The article explains the ways and means to develop technical assistance for developing countries. It promises to debureaucratize the trade facilitation and improve upon the conditions of many developing countries.

The US will contribute \$1 million to the WTO for trade-related technical assistance to developing countries, according to US Trade Representative Mr. Ron Kirk.

Mr. Kirk said, the money would help developing nations improve their ability to analyze issues,

assess their interests and participate effectively in the WTO.

"This contribution reflects our commitment to work with developing countries as partners and to ensure that developing countries can participate effectively in all the activities of the WTO," Mr. Kirk said. "We continue to believe that, working through the WTO, we can help these countries further their development goals and improve the well-being of their people by opening markets and creating meaningful new opportunities for farmers, manufacturers and service providers."

Mr. Kirk said the US also has pledged \$150,000 to support developing countries' participation in the WTO Trade Facilitation negotiations, which come in response to countries' requests to update the WTO assessment of their trade abilities.

"The elimination of unnecessary red tape and modernization of customs procedures that will result from trade facilitation improvements has the potential to deliver significant development gains, and we remain committed to working with our developing countries partners to make these gains achievable," he said in a September 18 statement.

The new contributions, which have been approved by Congress, are part of a broad US effort to build trade capacity around the world.

Overall US support for trade-capacity building since the Doha Round of negotiations began in 2001 has surpassed \$13 billion, including more than \$2.6 billion in trade facilitation assistance for developing and least-developed countries.

The United States remains committed to continuing to support countries around the world working towards greater participation in global trade.

**Strengthening Developing Countries in the WTO** by Bhagirath Lal Das, *Trade and Development Series No. 8*,  
<http://twinside.org.sg/title/td8.htm>

THE paper suggests the importance of the multilateral trading system under the guidance of the WTO. It aims to strengthen various aspects of trade agreement and operations to benefit developing countries.

## 1. Introduction

DEVELOPING countries have never had a decisive role in the General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO) system; but their weakness may be much more damaging now than ever before, because of three newly emerging features. *First*, the WTO is increasingly spreading its coverage to new areas. *Second*, the impact of the agreements of the WTO (as compared to the GATT) and their operation is much wider and deeper for the economies of countries, particularly the developing countries. *Third* and perhaps the most important, the economies of the developing countries are much more vulnerable at present than before because of their own weakness and also exposure to the uncertain external environment.

Earlier, the rules of the GATT had their impact principally on the imports and exports of a country; but now the WTO agreements have much wider implications for a country's economy. The disciplines on services and intellectual property rights (IPRs), which are the new additions to the system as a result of the Uruguay Round of Multilateral Trade Negotiations (MTNs), have a significant impact on the production process, technological development, financial institutions like banks and the insurance sector, inflow and outflow of funds on the so-called invisible account, vital modern infrastructure like telecommunications, etc. The new agreements in the areas of information technology goods and electronic commerce will have a significant impact on revenue resources, as will be explained later. And now there are pressures for inclusion of still further new areas, like the protection of investors' rights, the social clause, etc., which will deepen and widen the impact of the activities of the WTO in a country. For example, the proposals on investment, if finally carried through, will have a profound impact on the balance-of-payments situation as well as on the sectoral and regional balance of investment in a country.

With so much at stake, one would expect the developing countries to strengthen their capacity in respect of the negotiations in the WTO. Indeed, some of them are now better prepared. The concluding phase of the Uruguay Round did bring about some awareness in a number of developing

countries about the implications of the negotiations. In some of the developing countries, one noticed even large-scale national debates on the various issues. But even among the few developing countries that are better prepared now than before, the level of preparation falls far short of what is needed. And the vast range of the other developing countries have hardly made any preparation even at this stage.

The WTO, where the developing countries comprise a very large number and the voting pattern is based on one country one vote, provides a good setting for the developing countries to be effective. They can in fact turn it into an institution to serve their interests and make it an example of an international or multilateral institution working for their benefit. But unfortunately they have not been able to take the initiative nor have they succeeded in defending themselves effectively in this institution.

This exercise is aimed at exploring the reasons for the weak participation of the developing countries in the GATT/WTO, the ways of strengthening their participation and the need for effective backup support for this purpose. All this is discussed in the context of the opportunities for the developing countries and the challenges confronting them in the GATT/WTO system.

## 2. Opportunities, Challenges and Response

Though the main negotiations on the text which finally emerged as the GATT took place principally between the US and the UK in the 1940s, several developing countries formally participated in those negotiations and joined the GATT right from the beginning. As the agreement is based on the principle of reciprocity in the exchange of concessions, it is naturally more appropriate for participation by countries at similar levels of economic development. To make it more relevant for the developing countries, the principle of reciprocity was not rigidly followed in the case of concessions expected from them, while they got the benefit of concessions made by others through the operation of the Most Favoured Nation (MFN) treatment clause which ensures total non-discrimination among the members in respect of enjoyment of benefits.

Besides, there were other advantages of joining the agreement. It obviated the need for entering into a series of bilateral agreements with various countries and renewing them from time to time. Also, it provided some protection to the weak trading partners through a multilateral dispute settlement system, which precluded unilateral actions.

By the early 1960s, it was felt that the special and differential treatment to the developing countries needed more positive and constructive policies and actions on the part of developed countries. These were included in Part IV of the GATT. The practice of non-reciprocity was given formal recognition through an explicit commitment by the developed countries in Part IV that they do not expect reciprocity from the developing countries. Later, a decision (1979) of the Tokyo Round, commonly called the Enabling Clause, made it possible to give special tariff concessions to developing countries without going through the elaborate process of waiver of the MFN treatment clause.

Most of the developing countries, however, have not been able to take full advantage of the opportunities provided by the GATT/WTO because of their undeveloped supply capacity. But some of them did improve their supply capacity and expanded their trade, taking advantage of the opportunities available in other countries. Their industrial production and exports grew rapidly. Some of the Latin American countries fell into this group, though not on a sustained basis. Several South-East Asian countries and East Asian countries utilized the opportunities on a more stable basis, resulting in faster growth of industrial production and exports. They were able to take advantage of the market opportunities in developed countries in expanding their own economies at a fast rate. But a large number of developing countries have not benefited significantly from the trading system encompassed by the GATT/WTO and it has not brought about any significant improvement in their income and wealth.

### *Past Challenges*

Even the limited benefits to a few selected countries in Latin America and Asia have not been without severe handicaps. Any rapid expansion of exports in a sector would invariably generate

protectionist tendencies, policies and measures in the developed countries. All this has curtailed the opportunities available to the developing countries. Such tendencies manifested themselves in the form of special trade regimes in some sectors, restraints on imports/exports outside the framework of the GATT, enthusiastic use of anti-dumping investigations and duties, and the current trend of using environmental concerns as a pretext for restraining imports. Further innovative methods of trade restrictions in the form of linking trade to labour standards are in the pipeline. It is useful to revisit these stages of the GATT briefly in order to anticipate the problems ahead.

Immediately when developing countries started enjoying a good growth rate in the export of textiles, the industries in the developed countries felt the pressure of competition. Instead of letting the market operate freely, the developed countries sponsored a separate regime in this sector called the Arrangement Regarding International Trade in Textiles, commonly known as the Multi-Fibre Arrangement (MFA), in derogation of the normal GATT rules. Severe restraints on the export of textiles from developing countries imposed under this special regime constrained their industrial growth.

Later, restraints were imposed in some other sectors as well. For example, the major developed countries imposed quantitative limits to the export of jute products and leather products, which were mainly exported by the developing countries. Further, a few developing countries with the capacity to export steel were also affected by special restrictions in the steel sector.

What is important to note is that the major developed countries did not hesitate to bypass or circumvent the normal GATT disciplines in sectors of particular importance to the developing countries when the exports from developing countries in these sectors were perceived to cause problems for their domestic industry. The normal principle of free and liberal trade was totally forgotten; and from this can be drawn a lesson for the future.

Obviously it was all done under pressure from the domestic industry, and there is no reason to believe that the developed countries are in a better position now to resist similar pressures from their

industry. Herein lies the fear that they may again resort to import-restrictive measures in sectors where they face serious competition from the developing countries.

Besides, further new methods have lately been used to restrain imports from the developing countries. Their imports have often been subjected to anti-dumping investigations and anti-dumping duties. Even when the investigations did not result in the imposition of duties, the trade would already have been disrupted by the uncertainty caused by the initiation of the investigation. And more recently, trade-restrictive measures in some sectors have been imposed by some major developed countries taking advantage of the general exceptions clause (Article XX of GATT 1994) on the grounds of protecting the environment.

### *Emerging Challenges*

These trends have added to the strains of the developing countries in expanding their export prospects. The situation appears particularly serious when one sees it in the context of the current determined efforts of the major developed countries to expand the opportunities for their economic operators in developing countries. The WTO is being used as an important instrument for this purpose as the developed countries have found this forum to be especially effective in pursuing their objectives. In particular, the possibility of retaliation through the operation of the integrated dispute settlement mechanism makes the enforcement of the obligations of developing countries quite effective.

This is probably the reason behind the attempt by the major developed countries to broaden the coverage of the WTO to include new subjects, some of which are quite unrelated to the traditional subject of the GATT, i.e., the trade in goods. The subjects of services and IPRs entered the WTO in the Uruguay Round. Efforts are ongoing to expand the coverage of environment and introduce investment into this forum. It is testament to the persistence and tenacity of the developed countries that the subject of investment, which had been sponsored in the GATT during the preparation for the Ministerial Meeting of 1982 and several times thereafter without much success, is still being pursued vigorously. The subject of competition is

being sponsored in order to ensure free operation of the firms of developed countries in the markets of developing countries. In some traditional areas too, the developed countries are making efforts to expand the market access of their goods. One important example is government procurement, where the exercise has started with respect to bringing in transparency; but the major developed countries have often announced that their real objective is to expand the market access of their goods.

All these trends present new challenges to the developing countries. Particularly, there are four features which enhance their recent and current burden in the WTO compared to what it was a decade ago. *First*, the subjects and pattern of negotiations have now become much more complex than in the past. For example, the negotiations on the liberalization of financial services or in the various areas of IPRs are really very intricate. Likewise, directly participating in the dispute settlement process either as a complainant or as a defendant has become very complex, because of the intricacies of the legal interpretation which has routinely become a part of the panel or appeal process in the disputes these days.

*Second*, the role of the developing countries in the WTO negotiations has undergone a significant change. Earlier, they had been negotiating mostly for special concessions and relaxations from the developed countries, whereas now the negotiations are more about extracting concessions from them. It is a much more difficult exercise, as one has to balance the expectations of the demanders with minimum commitments from one's own side.

*Third*, the developed countries have started taking up these negotiations with a new determination to expand the access of their economic entities in developing countries. Their attitude and approach appear to have changed in recent years. The old concept of enlightened self-interest in seeing the harmony of their own long-term prospects with the development of developing countries has been replaced by expectations of immediate gains from expansion of current opportunities in the developing countries, irrespective of its effect on the economies of these countries.

*Fourth*, the developed countries, particularly the major ones, are more coordinated in their objectives and methods in the WTO, whereas the developing countries have been losing whatever solidarity they had in the past. The developed countries are also now moving with a great deal of confidence in themselves. They feel that they can solve their economic problems by proper coordination of policies among themselves; and they do not see the need for support from developing countries in this regard. This has naturally reduced their sensitivity to the problems of developing countries.

### 3. Manifestations of Weakness of Developing Countries

Amidst all these challenges in the WTO, the developing countries are in a very weak position. This weakness is manifested in various ways, some of which can be well-identified. For example: (i) the developing countries have been getting less than equal treatment in several areas, (ii) they have been making significant concessions to major developed countries without getting much in return from them, (iii) several important provisions of special and differential treatment of developing countries have not been properly implemented, (iv) the subjects and areas of interest to the developing countries have been consistently ignored and not attended to, (v) in the working of the dispute settlement process, important interpretations are evolving which have the potentiality of constraining their production and export prospects, and (vi) big loopholes and traps have been left in some agreements which could have possible adverse impacts on the developing countries, etc. All this needs to be elaborated and clarified by way of illustrations.

#### *Less Than Equal Treatment*

Often there is a call from developing countries for being given special and differential treatment in the GATT/WTO; but one seldom ponders over the instances of less than equal treatment meted out to them over a long period, particularly after the coming into force of the Uruguay Round agreements. Some examples are given below.

The ultimate means of enforcement of rights and obligations in the WTO is retaliation, which is almost totally impractical for developing countries.

Though the recommendations and findings of the panels/Appellate Body in disputes are normally accepted and implemented by the countries concerned, in really sensitive cases, a country may hesitate to do so, and then the only option would be to take to retaliation. But developing countries may find this ultimate weapon difficult to use, for both economic and political reasons. Hence, they have an innate handicap in ensuring the implementation of the findings and recommendations, particularly in difficult cases, and thereby they have a basic weakness in enforcing their rights.

There is also the serious problem of cost in reaching the stage of recommendations and findings in the dispute settlement process in the first place. This process is so complex and costly that developing countries have to think very seriously before they start the dispute settlement procedure. A developed country, on the other hand, can start the process with much greater ease. Similarly, the developing countries also face a serious handicap in defending themselves in a case in the WTO because of the cost involved. Thus the developing countries are very poorly placed in the WTO in respect of enforcing their rights and ensuring observance of the obligations of the other countries.

There is a similar problem in respect of subsidies and dumping. The complexity of countermeasures against subsidies and dumping makes these contingency provisions less useful for the developing countries. At the same time, the costly defence against such measures exposes them to unfair risks of being victimized.

Agreements on zero tariff for certain products which are mainly of export interest to developed countries have been rushed through. There are two specific examples. During the WTO Ministerial Meeting in Singapore in December 1996, a proposal was suddenly placed by major developed countries to have an agreement that there would be zero duty on information technology goods, and they had it approved. Then during the WTO Ministerial Meeting in Geneva in May 1998, there was a provisional agreement on standstill in respect of the duty on electronic commerce, which practically means zero duty. Products of export interest to developing countries have never received such prompt and decisive consideration in the GATT/WTO system.

Service sectors of interest mainly to developed countries have been similarly rushed through in the negotiations to culminate in agreements. Specific examples are the agreements on financial services and telecommunication services. But the sectors of interest to developing countries have had no meaningful progress.

The persons of developing countries get much less favourable treatment in the matter of entering the developed countries than what is accorded to the persons of developed countries. It naturally puts them under added handicap in respect of the opportunities for the supply of goods and services.

International technical standards and rules of origin are being formulated which will have important implications for the market access of goods, but the developing countries have hardly got the resources and capacity to participate in the process.

In the agriculture sector, the subsidies used mainly by some developed countries (contained in Annex 2 to the Agreement on Agriculture), e.g., those for research and development, crop insurance, resource retirement programmes, etc., have been made immune from any countermeasure, whereas those used generally by developing countries (some of them included in Article 6.2 of the Agreement on Agriculture), e.g., land improvement subsidies and input subsidies, do not enjoy such immunity.

In respect of the subsidies on non-agricultural products, those used mainly by developed countries have been made non-actionable, e.g., those for research and development, regional development and environmental standards; whereas the subsidies used by developing countries for the expansion and diversification of their industries do not get such favourable treatment.

In the textiles sector, as mentioned earlier, developed countries have followed the practice of 'less than equal treatment' of developing countries for more than three decades. A special multilateral trading regime was introduced in this sector in the early 1970s in derogation of the normal GATT rules and it has continued for nearly three decades.

As mentioned earlier, some other products of interest to developing countries, e.g., leather, jute, etc., have been subjected to special restraints on imports in developed countries.

### *Major Concessions by Developing Countries without Getting Any in Return*

The illustrations of less than equal treatment given above are also examples of major concessions given by developing countries to the developed countries without insisting on and getting any commensurate concessions from the latter. Usually this 'softness' has been displayed by the developing countries under three considerations. *First*, they agreed to some of these measures in the spirit of cooperation, for example in the areas of textiles, leather, jute, etc., as the developed countries, during those days, needed support in their adjustment process in these sectors. *Second*, in some cases which were more prevalent during the Uruguay Round, they agreed to some concessions under intense pressures from major developed countries. The entry of services and IPRs into the WTO and the agreements on financial services and telecommunication services are some important examples. *Third*, more recently there has been a tendency among the developing countries to be over-enthusiastic in being accommodative. They have agreed to the proposals without getting or asking for adequate time for proper examination of the implications. The agreements on zero duty on information technology goods and electronic commerce are the main examples.

In negotiations on international trade, it is not wrong *per se* to make concessions, because the exercise of negotiations is meant to be one of give and take. What is totally wrong is to make concessions without getting anything in return. And this is precisely what has happened lately in the GATT/WTO negotiations. When developing countries agreed to let services and intellectual property standards enter the WTO, they made a significant concession to the developed countries which were by far the major gainers from these concessions. Similarly, when they agreed to have agreements on liberalization in financial services and telecommunication services, it was again a major concession made by them. *Finally*, the agreements on zero duty on information technology goods and electronic commerce have been yet other significant concessions. And there has been no commensurate counter-concession offered or given by the developed countries which have been the main beneficiaries.

Following a rational negotiating strategy, the developing countries should have asked for and insisted on some important concessions in the areas of their own interest. Hardly any developed country ever makes a concession in the multilateral forum without getting anything in return. But with the developing countries, it has been a totally different case; they have been repeatedly making concessions without obtaining any in return.

### *Special and Differential Treatment Not Implemented*

Special and differential treatment provisions are contained in Part IV of GATT 1994 and in the various Uruguay Round agreements. Those contained in Part IV, i.e., in Articles XXXVI, XXXVII and XXXVIII, of GATT 1994 are very significant. In these provisions, the developed countries have undertaken a commitment to 'accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms'. They are further committed to 'refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on the products currently or potentially of particular export interest to less-developed contracting parties'. Besides, the developed countries also have to 'give active consideration to the adoption of other measures designed to provide greater scope for the development of imports from less-developed contracting parties'. These 'other measures' may also include 'steps to promote domestic structural changes, to encourage the consumption of particular products, or to introduce measures of trade promotion'.

(In the GATT, 'less-developed contracting parties' mean the developing countries.)

Of course, these commitments are not of a contractual nature, in the sense that there can be no retaliation for non-fulfilment of these obligations. However, it does not mean that these commitments do not have to be implemented. But in reality, these provisions have never been taken up seriously by the developed countries, and the developing countries have not been able to have them implemented.

In the new WTO agreements, there are very few elements of special and differential treatment in the nature of the actions of developed countries and expectations from developing countries. One example of the former is in Article 66 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which makes it obligatory on the developed countries to 'provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base'. And an example of the latter is the provisions of Article XIX of the General Agreement on Trade in Services which requires 'appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation...'

Developing countries have not been able to persuade developed countries to implement these provisions sincerely.

### *Areas of Interest to Developing Countries Ignored*

The subjects of interest to developing countries have hardly ever occupied centre stage in the GATT/WTO. There have been attempts by developing countries time and again to have attention focused on these issues, but they have not succeeded. Some important examples are given below.

Tariffs in the developed countries on the products of special export interest to developing countries continue to remain high. Quantitative restraints on imports in several sectors of their interest continued for a long time, and still continue in some important sectors like textiles. Practically nothing has been done to eliminate or reduce harassment of the developing countries through measures in the garb of anti-dumping action, conformity with technical standards, protection of the environment, etc. Service sectors of interest to them have not been taken up for serious negotiation; for example, the movement of labour has been given only scant attention so far. The possibility of unilateral trade action by a major developed country still remains in its legislation and it continues to use this provision to put pressure on other countries,

particularly the developing countries. This provision has not been removed, even though there is a specific commitment in the WTO Agreement that the laws of countries should be made fully compatible with the obligations under the agreements covered by the WTO.

### *Trends in the Dispute Settlement Process*

Though the new dispute settlement process has brought about a certain degree of improvement over the past, some trends have been developing recently which are adverse to the interests of developing countries. The panels and Appellate Body have often adopted interpretations which constrain the rights of developing countries and enhance their obligations. Four particular cases may be cited in this regard.

*First*, in the Venezuela gasoline case, the Appellate Body has expanded the discretion of a country in taking trade-restrictive measures for the conservation of non-renewable natural resources. The Appellate Body has said that the discretion of a country in this matter is not limited by the test of necessity, rather it is adequate if there is a nexus between the particular trade-restrictive measure and the protection of a non-renewable natural resource. *Second*, the Appellate Body has said in the India woolen shirts case that the onus of justifying the trade restraint in the textiles does not lie on the country applying the restrictive measures; rather it is the complaining country which has to demonstrate that the conditions prescribed for the restraint have not been fulfilled. *Third*, the panel in the Indonesia car case has denied developing countries the flexibility, allowed by the Agreement on Subsidies, to give subsidies for the use of domestic products in preference to an imported product. The panel has taken the stand that such a measure would violate the Agreement on Trade-Related Investment Measures (TRIMs). *Fourth*, the Appellate Body in the recent shrimp-turtle case has given interpretations, at least four of which have adverse implications for developing countries. These are enumerated below.

(i) It has tried to establish the primacy of the conservation of the environment over the free flow of goods under the normal GATT rules, and thereby it has diluted the disciplines on the general exceptions as provided in Article XX of GATT 1994.

- (ii) It has considered the turtle to be an 'exhaustible natural resource' on the ground that it is covered by some multilateral environment agreements for the protection of endangered species.
- (iii) It has directly implied that a country can take trade-restrictive measures for actions and effects outside its jurisdiction, on the ground that the extra-territorial nature of the action gets blurred as the turtles are migratory.
- (iv) It has approved the filing of briefs and opinions before the panels by persons and organizations outside the governments which are involved in the particular case.

Serious implications of these interpretations are likely to unfold over the coming years.

### *Loopholes and Traps in the Agreements*

Significant loopholes have been left in some important agreements which act to the detriment of developing countries. Three examples will illustrate this feature. In the Agreement on Textiles, the developed countries undertook the commitment to bring products accounting for 33 per cent of their imports into the normal WTO discipline and thus exclude them from the special restrictive regime of the textiles sector by 1 January 1998. The totality of the products out of which this percentage is to be calculated is listed in an annex to the agreement. The loophole is that the list in this annex includes a very large number of items which have not been under restraint. The developed countries have taken advantage of this loophole and chosen for the liberalization process up to 1 January 1998, only such products which are not under restraint. In this manner, the obligation is fulfilled and yet there is no liberalization by them in practice.

Then the Agreement on Textiles also contains a faintly visible trap. Its Article 7.3 contains a requirement of sectoral balance of rights and obligations, a concept which is alien to the GATT/WTO system, which works on the principle of overall balance. There is apprehension that it may be a trap for justifying the possible reluctance of developed countries on 1 January 2005 to abolish the special restrictive regime in this sector on the plea that developing countries have not adequately liberalized their textile sector.

The special provision for dispute settlement in the Agreement on Anti-dumping is also an example of a major loophole. While this agreement has brought in some measure of objectivity in the investigation of dumping, the whole subject of anti-dumping has been practically excluded from the normal dispute settlement process of the WTO. In these cases, the role of the dispute settlement panels has been severely curtailed inasmuch as they cannot pronounce whether an action or omission of a country violates its obligation, a role which is almost a routine feature in disputes in all other areas.

These specific adverse situations, grouped for convenience into six categories above, are examples of the weakness of the developing countries in the WTO. There may be many more such examples. Clearly the developing countries have been on losing ground in the WTO, more so in recent years. This leads us to a discussion of the strategies and the role of the developing countries in the WTO.

#### 4. Strategies of Developing Countries in the WTO

The strategies of the developing countries and the method of their participation in the WTO are generally of two types. Either they are indifferent and totally silent, or there is rigid opposition up to a certain extent, followed by abrupt and total capitulation.

##### *Indifference and Silence*

A very large number of the developing countries remain silent in the WTO meetings and discussions. They attend the meetings, listen to the statements and remain totally quiet. They neither support nor oppose a point. Of course, technically they do become parties to the decisions taken, even though they have not supported them explicitly.

Their silence may be due to various reasons. *One*, they do not feel that the subject under consideration affects their countries directly and thus they are indifferent. *Two*, they do not understand the intricacies of the point under consideration and thereby prefer to remain quiet, fearing that their statements and opinions may be irrelevant and will betray their ignorance. *Three*, even if they feel sometimes that a particular proposal has adverse implications, they prefer not to come out openly against it, particularly if it

involves opposing the major developed countries. They prefer to avoid annoying them, especially when they have not received any clear instruction from their capitals to oppose or support the proposal. *Fourth*, in the case of proposals with clear adverse implications, they feel that some other more active and vocal developing countries will be speaking out against the proposal and thus that their interest will be taken care of.

In the case of a very large number of developing countries, the missions in Geneva do not receive detailed briefs or guidance from their capitals, and thus they do not feel quite compelled to take a particular line in the meetings. In most cases, they do not have full knowledge of the subject and are not confident enough to make any intervention in the discussion. However, their indifference does not absolve their countries from the obligations which are imposed by the decisions taken without their actively participating in them, and thus it may prove costly for their country in the long run.

##### *Stiff Opposition and Sudden Collapse*

A small group of countries do take active interest in the meetings and discussions. But most of the time, they participate in these events without any detailed examination of the subjects under discussion. Neither their missions in Geneva nor the capitals are equipped with adequate capacity for this purpose. Most of the time, they work on the basis of their quick and instinctive response to the proposals. If they feel that any proposal is not in the interest of their country, they oppose it. Their opposition is quite firm sometimes and they stick to their line almost till the very end. But finally when intense pressures are built up in the capitals or if all other countries have acquiesced in the proposal, they also drop their objection and remain sullenly silent. Decisions are taken to which they become parties even though they had earlier raised objections; and in this manner their countries get bound by the obligations imposed by the decisions. The immediate political cost of withholding consensus appears to them to be much heavier than the burden of these obligations in the future.

The transition from the long period of determined opposition to sudden collapse into acquiescence at the end, has denied these countries the opportunity of getting anything in

return for the concessions they finally make in the negotiations. Some illustrations will explain the situation.

In November 1986 in Punta del Este when the Uruguay Round of MTNs was launched, the developing countries, after stiff opposition, finally agreed to include services and IPRs in the negotiations, but had the satisfaction of apparently being able to keep these two subjects totally separate from the subject of trade in goods. They also thought that in respect of IPRs, the negotiations would be limited to trade-related issues and would not cover IPRs standards. In April 1989, they were persuaded to agree to include IPR standards in the negotiations. In fact the negotiations on IPRs practically centred around the standards, and there was hardly anything on the trade-related subjects in these negotiations or in the agreement that emerged. Further, through the provision of cross-retaliation in the integrated dispute settlement mechanism, the obligations in goods, services and IPRs were linked, and it became possible to take retaliatory action on goods for violation of obligations in services or IPRs, something which the developing countries had been opposing persistently in the past.

As mentioned earlier, the very inclusion of the subjects of services and IPRs in the framework of the WTO was a major concession made by the developing countries. Then they also agreed to negotiate special agreements in specific service sectors, viz., financial services, telecommunication services and maritime services. The agreements on the first two have been completed with major gains to the developed countries which are the main suppliers of services in these areas.

Further, an unfair basis of reciprocity has been adopted in some negotiations. For example, in financial services, the exchange of concessions is in respect of permission to open a specific number of branches of banks. Developing countries have agreed to permit the opening of a certain number of branches of the banks of other countries in exchange for their being enabled to open a certain number of branches in the other countries. The reciprocity in exchange of concessions on the basis of the number of branches is not fair and appropriate at all because the volume of transactions of a branch of a bank of a major developed country will be far in excess of the possible volume of

transactions of a branch of a developing-country bank. A better standard of reciprocity would have been one based on cross-sectoral concessions or the volume of transactions, rather than the number of branches. The developing countries were not able to present an alternative framework for reciprocity in those negotiations.

### *Missed Opportunities*

The account given earlier would show that there are several instances when developing countries did not ask for and insist on reciprocal concessions while making important concessions on their side. For example, they agreed to zero duty for information technology goods at the 1996 Singapore WTO Ministerial Meeting and to provisional zero duty on electronic commerce for 18 months at the 1998 Ministerial Meeting in Geneva. These two proposals were sponsored by the major developed countries and they were the main beneficiaries. Electronic commerce is an area with very high growth prospects, and a duty in this area can be a potentially lucrative source of revenue for the developing countries. Also the users will generally be those in the high-income group of the population, and as such, even from the angle of equity, a tax in this area in the developing countries can be appropriate. Thus the developing countries have really surrendered a potential major source of revenue without any benefit. They were not prepared with counter-demands for negotiating reciprocal concessions from the sponsors and beneficiaries of these proposals. They could not steer the negotiations in these directions at all.

In fact, developing countries have repeatedly been missing out on opportunities for negotiating reciprocal concessions or for limiting their own concessions. For example, during the preparations for the Uruguay Round of MTNs, the major developed countries had insisted on including three new subjects in the negotiations, viz., services, IPRs and investment. All three were finally included in the negotiating agenda, though the developing countries put up stiff resistance right up to the end. With the benefit of hindsight, one can now say that with a proper negotiating strategy, the developed countries could have been persuaded at that time to give up at least one of these subjects in return for an agreement to negotiate the other two. Also,

permitting the very entry of services and IPRs into the negotiations in this forum for trade in goods was a very major step; and the developing countries could have rightfully asked for major concessions from the sponsors at the time of taking that step. But as the situation developed, they could neither stop their entry nor exact a price for it.

Such opportunities are likely to resurface soon. There is strong insistence by some major developed countries on starting negotiations on investment and the social clause. Also some of them have made their intentions clear that they have sponsored negotiations on government procurement with the objective of expanding the market access of their goods. These will be totally new areas to be taken up in the WTO, if they do get taken up. Investment and the social clause do not have any place in the GATT/WTO forum at present. In respect of government procurement, though the subject relates to the trade in goods, the existing framework as enunciated in Articles III and XVII of GATT 1994 prescribes some rights regarding giving special treatment to domestic products and discretion on selecting the countries for the supply of these goods. Even the start of negotiations on the disciplines for investment, the social clause and new disciplines on government procurement will be a major concession to the developed countries. The developing countries have been resolutely resisting such moves so far. But if they decide at a later date to start negotiations in these areas, they should do so only after getting commensurate major concessions from the sponsors, i.e., the major developed countries. Concessions in the areas of interest to the developing countries are necessary, merely for their agreeing to the entry of these topics into the WTO negotiations.

As mentioned above, the approach of the developing countries so far has been either to remain silent or to present stiff opposition followed by sudden collapse at the end. If at all they have to concede on a proposal which had been opposed by them earlier, a better strategy will be to have a planned withdrawal, if and when they decide to yield for various reasons. Following this strategy, they can have a chance of getting something in return for the concessions made.

### *Process of Cooperation and Coordination*

The weakness of individual developing countries is also reflected in very poor cooperation and coordination among themselves. They have not been able to evolve common positions and common strategies on important issues. In fact they do not have a proper mechanism for such efforts.

Though an informal group of developing countries does exist in the WTO, it is not utilized for identifying common interests and working out common positions. The discussions are more of a general nature, though sometimes countries do explain their perceptions and positions and describe their problems on specific issues.

However, in one sector, viz., textiles, there is effective coordination among the developing countries that are exporters. They have formed a formal organization called the International Textiles and Clothing Bureau (ITCB) which is fully financed by these countries and has a functioning secretariat. The member countries of this organization meet regularly to discuss the issues in this sector and to formulate a common position. Most of the time they are able to do so and also to articulate their common stand and position quite effectively and put up specific common proposals.

It is difficult to say why the developing countries are not able to have a common platform on other important issues when they have succeeded in developing such efficient cohesion in the textiles sector. Various reasons may be conjectured for this inability. One, in the textiles sector, the problems are well-identified and focused, and the direct import restraints in the developed-country markets have an immediate and visible impact on the production and export prospects of the developing countries. Two, the exporting developing countries have suffered at the hands of major developed countries for a long time in this sector, and they have practically been pushed into effective mutual coordination by this long and severe suffering. Perhaps the interests of developing countries are too dispersed in respect of the WTO issues in general, and they are not able to identify a cohesive cementing force which would make them overcome the current hesitation which emerges out of their fear of annoying the major developed countries.

There is generally a strong discouraging environment for their efforts in this direction, as such efforts are immediately dubbed by major developed countries as attempts to politicize the GATT/WTO system. A general idea is spread by the latter that every country should be on its own in this system as it has to safeguard its own interests. This, however, has not prevented them from forging sound coordination among themselves through various formal institutional arrangements, like the Quad, Group of 7, OECD (Organization for Economic Cooperation and Development), etc. It is a big irony in the GATT/WTO system that the major developed countries, which are quite strong even individually, are moving towards closer coordination, whereas the developing countries, which are in a weak and vulnerable position, are not able to come together and coordinate their interests and efforts.

Some insight into the plight of the developing countries can be had if we examine the WTO environment in which they have to operate. It is necessary to understand it and keep it in view while thinking of any change or improvement in the role of developing countries in the WTO.

### **5. The WTO Decision-Making Process**

It is a big paradox of international economic relations that the developing countries, which outnumber the developed countries in the WTO by about four to one, are not having their way in this forum and have to face adverse situations almost perpetually. Unlike the International Monetary Fund (IMF) and the World Bank, there is no weighted voting in the WTO, which works on the principle of one country one vote. And yet the developing countries, which form an overwhelming majority in numbers in the WTO, have not had any success in pursuing their objectives. They are always on the defensive and have to strive hard to reduce the hazards and damage that come their way. It is important to understand how this sad situation has come about.

The highest decision-making body in the WTO is the Ministerial Meeting which generally meets once in two years. The next decision-making body is the General Council which takes decisions in between the Ministerial Meetings. The formal process of decision-making in these bodies is by

simple majority of the Members present, with one Member having one vote. However, there is hardly any occasion of formal voting as, in practice, decisions are taken by consensus, which is held to exist when no Member present at the meeting formally opposes the proposal. Then there are specialized bodies, like the Councils on goods, services and TRIPS, the Committee on Trade and Development, various Working Groups, etc. Generally these bodies take decisions on the basis of consensus. The reports of panels and the Appellate Body are considered by the Dispute Settlement Body (DSB) which also works on the basis of consensus.

In this scheme of decision-making, a country wishing to oppose a harmful proposal can be effective only if it puts up a formal opposition at the time a decision by consensus is sought. And for a positive action, it has to muster the support of the majority of the Members present. One would expect that a developing country, being satisfied that a particular proposal is not in its interest, would formally put up its objection at the time when consensus is being determined. Also one would expect that the developing countries in large number will formally oppose a proposal if it is not in their interest and would get it turned down by majority vote, since they really do form the bulk of the WTO membership. Similarly, in respect of a proposal which is in their interest, one would expect them to sponsor it with the support of a large number of them. But nothing like this actually happens. Part of the reason lies in the actual operation of the WTO process in considering a proposal.

Generally, important proposals in the GATT/WTO are normally made by the developed countries. After they have formally made a proposal in a particular body in the WTO, there would be some preliminary observations by some delegations made in a non-committed manner. Thereafter the action shifts away from the main stage. The main sponsors hold limited consultations with some delegations, first trying to consolidate support and then involving the others to soften their possible opposition. Sometimes, the chairmen of the relevant bodies of the WTO and even the Secretariat organize such consultations. Invariably these are limited to a small number of delegations, the ones

selected for participation being those that may have a keen interest in the subject or those that may be vocal in opposition in the open forum. A very large number of developing countries are left out of this process of consultations which are in reality full-fledged negotiations. If the subject is an important one, the chairman sometimes makes an interim report in the formal meeting. These reports are generally very brief, saying that the consultations are going on, often without giving the details of the main issues involved and the conflicting stands of various countries.

In the meantime, pressures are built on the developing countries that had been opposing the proposal. Depending on the intensity of the opposition, the pressures may be applied on the delegations in Geneva or even bilaterally in the capitals. The usual technique of winning over the opponents one by one is also applied. And finally the hardcore opponents are left with the option of either keeping quiet or withholding consensus in the open meeting. Very often they do not want to incur the political cost of formally opposing a decision at the end, if they are left alone or are in a very small group. The decision is thereby taken in the open meeting by consensus.

In this process, a very large number of developing countries do not have the opportunity of participating in the negotiations which are held behind the scenes in small groups. They are faced with the final result in the open meeting at the end, and they do not have enough courage or motivation to put in a clear opposition or an effective reservation at that stage even if the particular decision is not fully in their interest. They do mumble a few words of protest sometimes, but do not come round to withholding consensus formally.

In this manner, even though each country has a vote in the WTO and has a right in decision-making equal to that of any other country, a large number of developing countries are left out of the actual negotiations. Their lack of agreement with the decisions eventually reached is evidenced by the bitter critical statements which some of them have been making after the important meetings of the WTO. Some recent examples are the statements made after the Ministerial Meetings in Singapore and Geneva.

In these small-group consultations and negotiations off the stage, generally the Quad countries (US, EU, Canada, Japan) are always present. Switzerland as the host country is also usually invited. Besides, either Australia or New Zealand, if not both, gets included. Thus the developed countries are almost fully represented. But among the one hundred or so developing countries, hardly five to ten get a place in these informal discussions and negotiations. Thus the scale is very much tilted against the developing countries, not only by way of economic and political weight, but also, quite ironically, by the weight of numbers.

From the angle of developing countries, the decision-making process is very much non-transparent and non-participative, as an overwhelming number of them are associated only in the beginning when the proposals are initially made formally and at the end when the conclusions have already been worked out. As mentioned earlier, they do get bound by the obligations imposed by these decisions without having participated in the actual negotiations. This is no doubt a very unsatisfactory situation from the angle of developing countries.

Naturally the consequences have been quite adverse to their interests, as the obligations are heavily tilted against them. If a similar situation continues in future, they are likely to lose more. The year 1999 and the few years thereafter are likely to be filled with sensitive and difficult negotiations in the WTO which may have a significant impact on the economies of the developing countries. A quick look at the tasks ahead will make clear the potential of damage if they continue to be on the fringe of the WTO process.

## 6. A Glimpse of the Tasks Ahead

The work to be undertaken in the next few years may be divided into four categories, viz., (i) implementation of the WTO agreements, (ii) review of some provisions of the agreements, (iii) continuing negotiations in some areas, and (iv) the work in some new areas.

The implementation of the agreements involves: formulation of legislation and procedures, establishment of institutions and machineries,

removal of certain import control measures and sending notification to the WTO. Some of these actions would have been undertaken by now, whereas some others may have to be taken up in the near future. Even where the action has already been undertaken, the work might not be complete, as the actions are subject to scrutiny by other countries. The country taking the action may have to satisfy the other countries that its implementing action has been correct and adequate. Some more difficult implementing measures are yet to be taken, e.g., formulation of enforcing legislation for IPRs and creation of the appropriate machinery for enforcement, introducing a *sui generis* system for the protection of rights on plant varieties, etc. One important task of developing countries in all this is to explore the options for implementation, so that the adverse effects are minimized and benefits are maximized. This demands a very elaborate exercise. Even the seemingly simple obligation of sending notifications to the WTO sometimes entails a very heavy burden, as arrangements have to be made to maintain the relevant information in appropriate formats, adequate training has to be given to the personnel handling it and information in many cases may have to be collected from remote regional areas and compiled.

Implementation has another aspect too. A country has to keep watch on the implementation being done by others, so that its own rights and opportunities are fully safeguarded. For example, the textile-exporting developing countries have to monitor carefully the process of progressive liberalization in the developed importing countries in this sector.

The reviews of some provisions of the agreements will involve serious negotiations. The more important among such reviews are in the areas of subsidies, TRIPS, TRIMs, anti-dumping and services. In the area of subsidies, the provisions relating to non-actionable subsidies, export competitiveness of developing countries and presumption of serious prejudice will be covered by the review. In the TRIPS area, the provisions on patenting of plants and animals will be reviewed. In the area of TRIMs, it will be examined if the agreement should be expanded to cover investment policies and competition policies. In the anti-dumping area, the restriction on the role of panels

will be reviewed to see if it should be extended to other areas. In the services area, the review will cover the current exemptions from MFN treatment. Besides, the working of the provision relating to the negotiating right of small exporting countries will also be subject to review.

Important new negotiations will take place in the areas of agriculture and services. In agriculture, the negotiations will cover the reduction of protection and subsidies. In services, the negotiations will be in two areas, *viz.*, *one*, for further liberalization of service sectors in terms of market access and national treatment; and *two*, the three subjects on which disciplines have not yet been worked out, *viz.*, subsidy, safeguard and government procurement.

The negotiations in these areas are likely to be as difficult as they were during the Uruguay Round. The negotiations in services are intensely technical in nature, particularly in respect of the basis for the reciprocity of benefits. Besides, the developing countries have to identify the sectors of their interest, and suggest the elements of liberalization in the developed countries in these sectors.

In the agriculture sector, the Uruguay Round resulted in the anomaly of developed countries continuing with their import control measures and subsidies of up to 60 to 80 per cent of the base levels, whereas the developing countries which had not been applying the general import controls and subsidies earlier, have been prohibited from applying them in future. The developing countries will have to negotiate in an effective way to remove this anomaly. Further, they will also need to acquire flexibility in respect of import controls and subsidies in order to encourage food production for domestic consumption and protection of their small and household farmers. Besides, concrete proposals will also have to be given for relieving the burden of the net food-importing developing countries.

Further, there are severe deficiencies, imbalances and inequities in the existing agreements, some of which have been illustrated and described above. The developing countries will have to strive very hard to remove these adverse features and bring about basic improvements in the agreements.

Apart from these exercises in respect of the current agreements, several new areas have been taken up for consideration, viz., environment, investment, competition, government procurement, trade facilitation and electronic commerce.

In the area of environment, the thrust of the major developed countries is to enhance the scope of taking trade-restrictive measures for protection of the environment, following the provisions of the multilateral environment agreements.

In the areas of investment and competition, studies are ongoing in the WTO as decided in the 1996 Singapore Ministerial Meeting. The pressure from major developed countries is to upgrade the level of consideration from studies to negotiations in the WTO. The apprehension is that the negotiations on investment, if envisaged in the WTO, will be about the protection of the rights of investors and erosion of the discretion of the host governments. Similarly, the proposed negotiations on competition may be about reducing the discretion of governments in controlling the adverse effects of the activities of big foreign firms and also in providing support to domestic firms.

In government procurement, the current exercise is on working out the elements of an agreement on transparency. The apprehension is that it may result in laying undue burden on the developing countries and also that the exercise may extend to expansion of market access for the developed countries in respect of government procurement in developing countries.

Similarly, in the area of trade facilitation, the developing countries will have to ensure that the elements of facilitation do not actually result in obstruction to their production and exports.

A further new subject, electronic commerce, suddenly emerged in the negotiations during the Ministerial Meeting in Geneva in May 1998. There has been a provisional agreement on standstill, i.e., zero duty, on electronic commerce for 18 months, and the proposal is to negotiate this subject further. Since zero duty on electronic commerce mainly benefits the major developed countries, the endeavour of developing countries will be on getting adequate reciprocal benefits, if the provisions of the provisional agreement are allowed to continue further.

From the list of activities described above, it is clear that the developing countries are going to face a difficult task in the years ahead. If past experience is any guide, they are likely to suffer colossal losses, if they do not improve on their approach, strategy and preparation.

## 7. The Future Course

First and foremost, the developing countries have to have the political determination not to be pushed around in the WTO forum. They should also have a resolute will to utilize the forum to serve their interests and minimize the adverse effects on them. In this process they have to move with a degree of confidence, identify their negotiating strengths and use them effectively. Efforts have to be mounted at national level, group level and multilateral level.

The biggest strength of a negotiator in a multilateral negotiation lies in having the full support of his or her country behind the stand being taken. This can happen only when the stand of the country is decided after thorough deliberation. Developing countries need to improve and strengthen their decision-making machinery and institutions. There is also the need for a change in their strategy in the negotiations and for comprehensive preparations for their role in the WTO. At the same time, they also have to work for a total change in the WTO negotiating process.

### *Strengthening National Decision-Making Institutions*

Developing countries have to identify their specific interests and objectives in respect of the subjects of the WTO. This can be done through the process of a broad-based and in-depth examination of the issues and implications. It requires some institutional changes in the decision-making process. The subjects are so complex and their implications so widespread that any particular ministry in a government would not be fully equipped to handle them on its own. Almost every issue being taken up in the WTO involves differing interests of various wings of the government. It also involves a clash of interests among various industry groups and economic operators. The overall interest and stand of the country can be worked out only after

balancing and harmonizing all these differing and clashing interests.

For example, a simple proposition of reducing the tariff on a particular product will invite different reactions from different industry sectors and different wings of the government. The producer industry will feel threatened by competition from imports, whereas the consumer industries will feel happy as they will have the prospect of cheaper supplies of inputs. Likewise the wing of the government responsible for the development of the producer industry will have a tendency to oppose the proposal, while the one responsible for the downstream industries will be inclined to support it. This is not a new dilemma. But now there are more of such dilemmas and they have complex ramifications. A typical example of the emerging complexity is the proposal to liberalize the entry of foreign investment. It may be welcomed by the industry and trade sectors, as it gives them wider choice of sources of funds; but it may have adverse implications for the balance-of-payments position over a course of time and may also disturb balanced sectoral and territorial development.

These subjects demand a very comprehensive examination of their implications and the balancing of differing interests. A government ministry working in the traditional manner is hardly equipped to perform this task. It appears necessary to have a standing expert body of high standing, credibility and objectivity in the nature of a Commission, which would be supplementing the efforts of the current machinery. The Commission should examine the issues critically, taking into account all aspects and interests, and should hold wide consultations with the affected groups in trade and industry, consumer fora, various wings of the government and other interested groups and persons. Upon completion of this exercise, the Commission should make recommendations to the decision-making body about specific positions which the country should take. If the position of a country is taken after such detailed examination in an atmosphere of transparency, it will naturally enjoy strong political backing in the country, and the negotiators will be able to negotiate with full confidence and strength. Also, with such a

decision-making process in the developing countries, the pressures which the major developed countries normally build up on them in the course of negotiations will be much less effective.

### *Change in Strategy and Approach*

Then there should be a change in the developing countries' strategy and approach. The current feeling of helplessness that the developing countries cannot have their say in the WTO should be replaced by a new mood that they can achieve their objectives if a number of them are united and well-prepared. The developing countries are in very large number in the WTO and even if one does not expect all of them to come together on all the issues, one can at least expect a large number of them to have a common perception and common stand on a number of subjects.

The current process of being pushed into making one-sided concessions or facing a sudden collapse at the end should naturally be changed to one of engaging in a meaningful negotiation of give and take and insisting on getting commensurate concession from others before finally agreeing to any concession from one's own side. Opposition and resistance to harmful proposals is alright, and whenever a decision is taken to yield, it should be done in a proper and planned manner, after negotiating for commensurate concessions from the beneficiaries of the proposal.

### *Preparation Process*

But all this needs the support of detailed analytical examination of the issues involved and identification of interests. The developing countries should undertake such examination, but their capacity is limited. They should build up and strengthen their capacity. They could sponsor this work in some of the universities and institutions in their countries. They should also build up a network of institutions in developing countries for this purpose. But considering their limited resources and capacity, it is doubtful if they will be able to undertake studies and analyses on their own on a sustained basis. They need assistance.

Earlier, particularly during the Tokyo Round and Uruguay Round of MTNs, the United Nations Conference on Trade and Development (UNCTAD) undertook a massive technical assistance programme to help the developing countries in the negotiations. It was supported by financing from the UN Development Programme (UNDP). UNCTAD is still engaged in studying the subjects and issues relating to the WTO; but its work in this area is mainly centred around the intergovernmental meetings. It also continues with some technical assistance in the area of international trade, but assistance in negotiations is not the prime focus at present.

Some other organizations are also engaged in the work of providing assistance to the developing countries. The WTO itself has such a programme, which is devoted mainly to assistance in implementation of the agreements. Sometimes it prepares analytical papers at the request of a developing country or a group of them. Quite understandably one cannot expect the WTO Secretariat to provide a critical and analytical evaluation of the various proposals put up by various countries; but such an evaluation is at the very core of the developing countries' preparation process.

The South Centre has started a pilot project with the financial assistance of the UNDP. It has prepared some analytical papers and a discussion paper laying down the current issues in the negotiations and their implications for the developing countries. In some cases, it has suggested preferred alternatives for the developing countries on various issues. But its work is very limited in nature, and in its present form it is unlikely to cater fully to the needs of the developing countries.

The Commonwealth Secretariat has also been running a programme of technical assistance. It is mainly devoted to the preparation of short analytical papers at the request of individual countries or a group of them. This programme, though useful, is too small at present to satisfy the emerging needs.

The Third World Network, a non-governmental organization, has also been undertaking the work of technical assistance to the developing countries on the WTO issues for the last three to four years.

It has concentrated on topical subjects under consideration and has prepared analytical and briefing papers. It has organized seminars and workshops for exchange of views and expertise among the developing countries on important occasions. It has assisted them in developing cooperation among themselves in the formulation of positions in important areas. It brings out a daily bulletin from Geneva, containing reports on the ongoing negotiations and analysis of issues by experts. This organization, however, has only a small presence in Geneva; and a strong presence there is important for assistance in the negotiation process.

None of these efforts in their present form by itself can satisfy the emerging needs of the developing countries in the next few years, though each of them constitutes an important contribution in support of the developing countries. There is a need for a comprehensive assistance programme. Preferably it could be funded mainly by the developing countries themselves, or at least a large number of them. There could be supplemental funding from some other benevolent sources. This programme could be located in one of the existing organizations with the appropriate capacity and orientation or could be established as a separate unit. Even if it is located in an existing organization for administrative and accounting purposes, it should work as an independent programme and unit.

The main functions of the programme could be the following:

- (i) critical and analytical examination of the current and emerging issues from the perspective of the developing countries and their implications for them;
- (ii) assisting developing countries in preparing their own proposals in various areas in the WTO;
- (iii) examining the proposals of others with respect to their implications for the developing countries, and assisting developing countries in preparing their responses; and
- (iv) during the intense phase of negotiations, providing quick and prompt assistance in respect of the formulation of and responses to

the amended proposals, which normally get tabled at that stage.

Such an assistance programme will be supportive of the national efforts of developing countries in their preparation and also of regional and group efforts. In fact there could be a linkage of constructive complementarity of this programme with the national, regional and group efforts.

### *Regional and Group Efforts*

The effectiveness of the developing countries will be enhanced if there is better coordination among them. The exercise of coordination should start right from the stage of identification of interests and formulation of positions and stands. Under the overall umbrella of the Informal Group of Developing Countries in the WTO, there may be some smaller groups, based on specific issues and interests, with full transparency and interaction with the other members of the Informal Group. There may also be burden-sharing in preparations in specific areas and exchange of information, which will avoid duplication of efforts and ensure better utilization of their scarce resources.

There should also be coordination, linkages and networking among the research institutions and universities in these countries engaged in analysis of the issues in the WTO. There could be arrangements for burden-sharing among such institutions. The efforts of these institutions should also be coordinated with those of the multilateral central assistance programme proposed above.

### *Change in the WTO Negotiating Process*

The developing countries have to endeavour to bring in changes in the negotiating process in the WTO so that there is greater transparency and wider participation of developing countries in the negotiations. Discussions in small groups for the purpose of explaining proposals and persuading other countries are a natural process; but for negotiation of the texts of the proposals and agreements, there must be much wider direct participation. There may be difficulties in negotiating the texts in very large groups, but a balance has to be worked out between the need for efficiency and full direct participation of the

countries in the negotiating process. Developing countries may deliberate on this issue and make specific proposals for an improved method of negotiations in the WTO.

The WTO agreements and their operation are and will be having a profound impact on the economies of the developing countries. Hence it is imperative that they do not remain indifferent and handicapped, but actively participate in the negotiations and other activities in this forum and make themselves effective in its decision-making and operations.

### **When Has a Developing Country Developed?**

by Hector Torres, *ABC Environment*, 27 July 2012, <http://www.abc.net.au/environment/a>

WITH some developing countries now lending money to the States, are they in a position to be declared “developed”?

### **Comment**

Special rules are in place in both international trade and international climate negotiations for the least developed countries. But as they develop, when should we reduce those privileges?

The World Trade Organization and global climate-change negotiations face comparable challenges. Both need to accommodate different levels of development and match them with appropriate obligations. Even the jargon is similar: ‘common but differentiated responsibility’ in the climate-change talks, and ‘special and differential’ treatment in the WTO.

Similarly, the classic North-South divide that shapes both sets of negotiations recalls the era when ‘North’ was a synonym for ‘rich’, and ‘South’ was shorthand for those who could not afford to play by the same rules. The world has changed dramatically since then, and in the climate-change negotiations it is now accepted that some ‘developing’ countries will need to undertake emission reductions by 2020.

The WTO is a step behind. Based exclusively on its own self-assessment, any member can claim to be ‘developing’ and remain at that stage, which automatically entitles them to the benefits of ‘special and differential’ (S&D) treatment. That translates

into derogations from general rules and longer periods to introduce less ambitious tariff reductions.

Assigning 'common but differentiated responsibility' for climate change is basically a question of allocating mitigation costs between countries responsible for accumulated CO<sub>2</sub> stocks and those responsible for current CO<sub>2</sub> flows. In the WTO, the challenge is one not of measurement, but of levelling the playing field to ensure 'fair' competition and an equitable distribution of the short-term costs of trade liberalization.

Imposing 'lighter' trade obligations on developing countries makes sense, because opening markets to competition implies that some uncompetitive industries may disappear faster than the economy can reabsorb the displaced labour and capital. Developing countries typically lack the fiscal resources needed to facilitate the transition, so they get more time to adapt, as well as less ambitious targets. Without this deference, it would be difficult to marshal support for trade liberalization, particularly from democratic governments.

Most people accept the need to grant S&D treatment to developing countries. But for how long should they receive it?

The process of 'developing' is, by definition, dynamic, so deference must be temporary. But, obvious as this may be, the WTO still needs to acknowledge the provisional nature of S&D treatment. The WTO has 157 members, of which only 35 are 'developed' countries, while 122 are 'developing' (including large 'emerging-market economies', or EMEs).

There are no graduation criteria and no rules to tell when a WTO member could be weaned from S&D treatment. Not surprisingly, no middle-income country has ever felt the need to surrender its benefits. This state of affairs is all the more remarkable given that countries in more dire need of support, the 'least developed' category (a subgroup of developing countries that is entitled to additional benefits), can be forced out of that category when their per capita income surpasses a certain threshold. As a consequence, several new country groupings have mushroomed within the

large category of developing countries in order to allow for more tailored S&D treatment.

For the last 10 years, while the WTO was struggling with multilateral negotiations known as the Doha Development Agenda, the dynamics of the global economy have made the developing inconsistency even more apparent. In 2001, less than half of global economic growth was attributable to developing countries, including China, India, Brazil, and others. Nowadays, they account for almost 80 per cent of global growth.

Likewise, unemployment today is higher in OECD countries than in developing countries (8.6 *versus* 6%); the average fiscal deficit in advanced economies is three times higher than in developing economies (6.7% of GDP *versus* 2.6%); and their total financing needs (maturing debt plus the budget deficit) in 2012 are four times that of EMEs (27.7% of GDP *versus* 7.7%).

Do these figures mean that large EMEs are in a position to relinquish at least part of the benefits of S&D treatment? The answer need not be black or white. Competitiveness is not necessarily uniform across all industries (for example, an EME can be very competitive in agriculture but not in manufacturing), and large segments of EME populations are still living in poverty. Yet it is increasingly difficult to argue that all developing countries need to enjoy a nearly unrestricted right to opt out of WTO general obligations.

Several WTO developing countries are now net creditors, lend massive amounts of money to the United States Treasury, and are courted by European countries in financial distress. At the IMF, they are successfully arguing that their increasing economic weight should entitle them to larger quotas and more votes, and at the climate-change negotiations they have rightly accepted that they will need to assume reduction commitments.

All of this should be celebrated, and the multilateral trading system deserves part of the credit. But the WTO also needs to accommodate divergent conditions and stages of development. Making room for reality would reinforce S&D treatment by giving more meaningful benefits to the countries that need them most.

**Cultivating America, by Cultivation**

by Amitendu Palit, *The Financial Express*,  
1 August 2009.

THE article in the beginning points out that future India-US relationship is expected to strengthen on the pillars of agriculture. It mentions that the visit of the US secretary to India has identified agriculture as one of the strongest pillars of bilateral cooperation and has also pointed out the long history of cooperation between the two countries on agriculture. While mentioning about the historical cooperation between India and the US, the article takes note of the US involvement in Indian agriculture during fifties and sixties when food was imported under PL480 scheme and US and Western support was provided in financing research for developing HYV seeds, which helped in the 'green revolution' by multiplying domestic cereal output. It also speaks about the US support to Indian agriculture by pointing out that much of the research on HYVs was carried out at the Consultative Group on International Agricultural Research (CGIAR) Centers, which was majorly supported by the US.

Pointing out about the current support to South Asia by the US initiative, the article mentions that Cereal Systems Initiative for South Asia could be a key ground for bilateral cooperation, where Indian government, USAID, CGIAR, the Bill and Melinda Gates Foundation and corporate are targeting six million farmers across South Asia for enhancing crop yields with positive outcomes for household incomes and food supplies. It also mentions that the US realizes the futility of subsidizing farm exports and says that latest budget proposals have tried to rationalize subsidies, which is critical to Mr. Obama's plans to improve quality of public expenditure. Mentioning about the global trade, the article says that the Asian markets have institutional architectures such as ASEAN and multiple bilateral pacts for stimulating trade-induced growth and localization of global trade in Asia that can be avoided only by reviving multilateral trade talks. This implies kicking to life the Doha Development Agenda (DDA), which can't be revitalized without addressing core concerns of developing countries and the US and EU are widely perceived as 'villains' in this

regard. They not only subsidize farm output for outcompeting developing countries, but also block market access for manufactured products from the latter.

The article mentions that the US has shown 'willingness' to lend a sympathetic ear to developing country concerns in the latest Cairns Group discussions along with India, China, Japan and Europe to push farm trade talks. It says that the US budget conveys positive impressions on eliminating farm subsidies and is cooperating in agriculture with India and developing countries on the issue of special safeguard mechanisms (SSMs) and shows the desire for removing roadblocks. It finally mentions that despite tall claims, subsidies on dairy exports were recently re-introduced by the US to save dairy products from competition. It suggests that India's collaboration with the US on agriculture has not only benefits of crop yield and productivity, but also will strengthen the ongoing efforts to legitimize food security. The perceived benefits would be even more if DDA takes off.

**Doha to Geneva via New Delhi**

by T.S. Vishwanath, *The Economic Times*,  
20 July 2009.

THE article in the beginning states that the World Trade Organization (WTO) after silence of several months is pushing the beleaguered Doha Round back into circulation by organizing a mini-ministerial in New Delhi in the leadership of India, where focus of the discussion is on agriculture and industrial goods and for the successful completion of the Geneva ministerial, it is important that services are given prime importance.

Mentioning about the negotiations on the agriculture the article says that discussions to rein in subsidies of developed countries should not result in binding commitments which are not even close to targets the countries have to meet in order to fulfill internal reform commitments. If agriculture, which is at the core of a Development Round, fails to deliver any real market access opportunity to poor nations in developed countries, where only 2-3 per cent of population is dependent on this sector compared to 70-80 per cent in developing country economies, this

Round would be a failure. It suggests that the reluctance of rich countries like Japan, Switzerland or Norway to open markets in several key products has to be resisted to balance the interests of developed and developing countries in WTO. The article states that India should use this platform to reform agriculture so that it can justifiably seek a longer period for implementing these reforms and by strategically liberalizing sectors in agriculture which are not vulnerable, India can also channel investment and technology into this sector.

Mentioning about the negotiations on industrial goods, the article points out that such negotiations are disadvantageous to developing countries mainly due to the two proposals on the table. The first is on sectorals which seek zero duties on select products and the second is the anti-concentration clause which reduces flexibilities available to developing countries and the combined effect of these proposals will badly affect the developing countries. The article points out that the proposals on the sectoral primarily focuses on the three sectors (chemicals, industrial goods and electrical & electronics), which constitute to the majority of the world trade and China is the only developing country with reasonable presence in these sectors in global markets. The article suggests to keep sectoral out of the WTO in this Round as the balance would be lost if products of interest to developed countries move to zero or near zero duties globally and products like textiles which are of interest to developing countries would at most come down to 7-8 per cent in developed country markets. It also suggests that developed countries will have to make a special attempt to bring their peak tariffs in areas of interest to developing countries to at least 5 per cent if not closer to their average of 2-3 per cent.

Finally, the article mentions that the focus of the NAMA negotiations has to be on the formula for binding tariffs at lower levels and says that very little progress has been made on the discussions of non-tariff barriers as countries are not clear on tackling of this serious problem. It says that NTBs are mainly domestic regulations and countries are not ready to give up their sovereignty to impose laws at the WTO but it is

important to address this problem if real market access is the objective of the Round. The article concludes by stating about the appropriate room for all the countries as far as negotiations on NAMA are concerned and suggests for identifying most important issues to resolve in all areas of negotiations so that the coming ministerial in December concludes successfully.

### **Gains from the Current Doha Offers**

by Suparna Karmakar, *The Hindu Business Line*, 17 July 2009.

WHEN the WTO General Council will hold the Seventh Session of the WTO Ministerial Conference in Geneva, the Doha Round will have the distinction of being the longest WTO negotiation till date, surpassing the previous Uruguay Round. Given the enhanced agenda and new dynamics of the global economic power play, an early conclusion of the Round would have required a miracle, points out the article by taking the reference of Prof. Jagdish N. Bhagwati's views on current trade negotiations.

Mentioning about the WTO agenda the article points out that some noted WTO experts in the US and the World Bank continue to recommend further enhancement of the WTO negotiating agenda, ostensibly to "ensure a win-win outcome" for all stakeholders. The ability of the WTO to enforce negotiated rules through its Dispute Settlement Board appears to be the main reason for WTO's attraction over other multilateral organizations. It also points out that due to ongoing economic and financial crisis and the sentiments of protectionism the world now appears to be moving towards a much larger direct role of government in production and management of the economy aimed at stemming the worst impact of the recession. Therefore, WTO member countries will not undertake the commitments of painful liberalization necessary to achieve closure of the Doha Round in the near future.

The next part of the article points out that conclusion of the DDR after the economic crisis have been given due importance in different meetings of various sub-groups of WTO members, which has resulted in support of not imposing

new barriers to trade and a speedy conclusion of the DDR. It further mentions that leading economies need to resolve their differences on slashing the farm subsidies and tariffs on traded goods and as the current package of Doha Round is only about 80 per cent agreed, conclusion of the DDR will really be a tall task. The article also mentions about the WTO reports that have highlighted the dangerous fallouts of the protectionist barriers imposed in response to the global economic downturn, and the "buy local" legislations, import penalties and other border restrictions instituted by the key WTO members, causing more difficulty at a time of depressed demand and declining trade flows.

Final part of the article discusses about the falling trade volumes despite certain services sectors have performed better than other merchandise trade overall. It says that concluding the Doha Round would certainly improve the environment of trust and respect for multilateralism. While protectionism among WTO members in the current recession has been contained by the parameters of the negotiated safeguards and tariff ceilings, the sectors with limited and weak negotiation coverage have seen more virulent protectionist action.

**Divide-and-Rule does not Work at WTO Any More** by Paranjoy Guha Thakurta, *Asian Age*, 28 September 2008.

THE article starts with the reference of the Frantz Fanon's well-known book "wretched of the earth", which is about the Algerian anti-colonial struggle and says that the collapse of the Doha Round of talks at the WTO in Geneva reflects an important development in the political economy of the globe that it is no longer that simple for rich countries to divide and rule the dejected people of the world. It mentions that those who lament the demise of multilateralism in international trade and those who regret the absence of any breakthrough "concluded" successfully, should realize the greater victory that has been won. It also states that the emerging economies like China and India and "small and vulnerable" nations of sub-Saharan Africa have stuck together and refused to yield ground to the powerful nations of North America, Europe

and Japan and gave a message that it is better to have no deal than a bad deal.

The article mentions the importance of Doha Round by comparing it with two earlier rounds of trade negotiations, the Tokyo Round and the Uruguay Round, and says that this time the developing world has remained united and affluent nations could not "buy up" a few developing countries with special sops as had been done many times during past rounds of negotiations. It further mentions that the US and the European Union offered to consider more temporary work visas for skilled professionals that India had been demanding and four West African nations (Mali, Benin, Burkina Faso and Chad) had mobilized themselves to press for a cut in US government subsidies to its cotton farmers. The blame game started after WTO Director General Pascal Lamy's claim that the US and Europe would reduce farm subsidies while developing countries would reduce import tariffs, failed and the Group of 33 developing countries, argued that farm subsidies in the US and Europe squeezed their own farmers out of the market, thereby reducing local food production and leaving their countries vulnerable to sudden spikes in food prices. China and India were blamed by America for being over-protective to their wide range of imports from food products to chemicals and automobiles. The author of the article mentions that three-fourths of the world's poor survive on farming and 95 per cent of the world's small and marginal farmers live in developing countries but the US has pitted their interests against those of nearly 90 per cent of the world's population by seeking to subsidize a small section of less than six million Americans. It points out that Geneva round of talk broke on the exact modalities of devising the special safeguards mechanism in the Agreement on Agriculture that allows a country to temporarily increase customs tariffs in response to a surge in import volumes or a sharp decline in prices.

Finally, the article mentions that the concerns of the poor countries in Doha Round were sought to be addressed through "special and differential treatment" in case of reduction of import tariffs and it was also stated that there would be "less than full reciprocity" between developed and

developing countries in case of cuts in import tariffs. The implication of above argument meant that rich countries were supposed to reduce duties relatively more than poor nations but nothing has happened and appears unlikely to take place in the near future.

**Don't Cry Over Doha Failure as the Stakes were Inflated** by Dani Rodrik, *The Japan Times*, 11 August 2008.

THE article at its outset questions the world trade minister's attitude towards finalizing the new multilateral trade agreement that reduces agricultural subsidies and industrial tariffs. It also points out that the multilateral trade agreement with the negotiation saga is continued despite numerous incidents of near-collapse, ups and downs and extensions. The article says that due to lower stakes of the countries involved in the negotiations of the Geneva round was the reason of recent failure on agreement. It also suggests that the successful conclusion of the "development round" will lift hundreds of millions of farmers in poor countries out of poverty and ensure that globalization remains alive. While, failure of the negotiation will have a near-fatal blow on the world trading system and push it into disillusionment and protectionism.

Pointing out the farm support prices in the rich countries, the article mentions that these prices tend to depress world prices as well as the incomes of agricultural producers in developing countries. The article also suggests that the farm-support policies in developed countries have affected world prices as well as farm producers of developing countries and phasing out of the farm subsidies for most farm products would only have a modest effect on the world prices. For phasing out their farm subsidies developed countries have demanded for sharp cuts in import tariffs by developing countries, which is already at an all-time low. It also mentions that high farm prices help producers but hurts poor urban households in developing countries as happened during the recent increase in food prices when

food-growing countries imposed ban on food export. Although farm reforms in rich countries could have a mixed effect on the world's poor and farm reform in the US and the EU and other rich countries would benefit their consumers and taxpayers as they have paid for the subsidies on the agriculture but the benefit exists only for a few commodities like cotton and sugar that are not consumed in large quantities by poor households.

Discussing about industrial tariffs the article states that rich countries have demanded sharp cuts in import tariffs by developing countries such as India and Brazil in return for phasing out their farm subsidies but the applied tariff rates in developing countries are already at an all-time low. It further mentions that complete elimination of all merchandise trade restriction would boost developing countries income by 1 per cent but instead of completely eliminating them Doha Round would only reduce these barriers. The article explains the myth of development round on agriculture and points out that it was used as an opportunity to gain the moral high ground over anti-globalization protesters by rich-country governments and WTO. It also provided an opportunity to the US to tear down the EU's common agricultural policy and was tailor-made for the few middle-income developing countries that are large agricultural exporters.

Mentioning about the "bicycle theory" of trade negotiations it points out that the continuous progress in liberalization backfired as the US and key developing countries found it difficult to liberalize their farm sectors, which led to the collapse of the latest round of negotiations as India refused to accept rigid rules that it felt would put India's agricultural smallholders in jeopardy. Finally, the article states that the risk of failed trade negotiation can erode the legitimacy of global trade rules over the longer run. In the concluding remark it says there may be numerous expectations rather than the actual economic results on the ground that will determine the outcome of the negotiations.

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## DOCUMENTS

### TRADE NEGOTIATIONS

## Doha Development Agenda

At the 4th Ministerial Conference in Doha, Qatar, in November 2001, WTO member governments agreed to launch new trade negotiations. They also agreed to work on other issues, in particular the implementation of the current WTO agreements. The entire package is called the Doha Development Agenda (DDA) or the Doha Round. The negotiations take place in the Trade Negotiations Committee (TNC) and its subsidiaries, which are usually regular councils and committees meeting in 'special session' or specially created negotiating groups. The chairs of the nine negotiating bodies report to the TNC, chaired by the WTO Director-General, which coordinates their work.

### DOHA ROUND NEGOTIATIONS IN 2011

The Doha Development Agenda (DDA) negotiations are at an impasse. Despite numerous pronouncements and commitments, members failed to finalize the negotiations as they had envisaged by the end of 2011. However, 'Elements for Political Guidance' on the Doha negotiations were agreed by members at the November General Council and forwarded to ministers at the 8th WTO Ministerial Conference. The Conference Chair included these 'elements' in his concluding statement, which also contained a factual summary of the discussions on the DDA by ministers at the Conference.

At the February 2011 meeting of the Trade Negotiations Committee (TNC), members welcomed a roadmap endorsed by some ministers meeting in Davos, Switzerland, aimed at further accelerating the negotiations to conclude the DDA

in 2011. The roadmap envisaged draft texts in all areas by April, a comprehensive package by July and finalization by the end of 2011.

### 'Easter Package'

On 21 April 2011, the TNC Chair and the chairs of the negotiating groups unveiled the so-called 'Easter Package'. The document represented the product of work since the launch of the negotiations in 2001. For the first time, members had the opportunity to consider the entire Doha package in all market access and regulatory areas. It included texts in areas where there had been none. While the document showed significant progress in many areas, it also revealed issues that divided members and which put the successful conclusion of the Round at risk.

The area where the divide was most evident was in market access for industrial products (non-agricultural market access). Although there were other issues without which the Round could not be completed, the key differences that had blocked progress were in industrial products. From consultations with key members on the magnitude of the gaps and the prospects of bridging them, the TNC Chair reported to the membership that there were fundamentally different views on the level of ambition in three areas: the cuts to industrial tariffs provided by the Swiss formula (a mathematical formula for cutting and harmonizing duties); whether the contributions between different members were proportionate and balanced; and the contribution of 'sectorals' (areas in which deeper cuts might be made).

The Chair reported that members were confronted with a political gap, which from what he had heard in his consultations was not bridgeable at that time. Regarding the process ahead, the Chair identified three options that would not work: business as usual; stopping and starting from scratch; and drifting away by wishing the issues would disappear. Members agreed with this assessment.

### **'LDC plus' Package**

In May, members recognized that the Doha Round could not be completed in its entirety by the end of 2011. They therefore embarked on a process aimed at delivering a smaller package by the 8th Ministerial Conference in December. The understanding was that this was not going to be the final package but a step forward. In this context, a large number of members agreed that the guiding element should be development, with issues of the least-developed countries (LDCs) taking priority for delivery. However, others said that additional issues should also be explored.

In order to facilitate an outcome on the LDC-specific issues of duty free, quota free market access and associated rules of origin, a step forward on cotton, and an LDC services waiver, the TNC Chair presented a non-exhaustive list of topics – known as 'LDC plus' – that could form the elements of a small package of DDA deliverables. These included trade facilitation, export competition, a monitoring mechanism of special and differential treatment for developing countries, a step forward on fisheries subsidies, and a step forward on environmental goods and services. It was stressed that this list did not preclude other issues from being worked upon and eventually delivered by the end of the year.

In July, the Chair reported that from his consultations, it had become clear that the 'LDC plus' package was not shaping up as members had wished. From September, the consultations turned to the question of what to do next during and after the 8th Ministerial Conference.

### **Elements for Political Guidance**

In October, the Chair reported on his consultations regarding the status of, and next steps

in, the DDA negotiations. The consultations had shown that, despite the intensified efforts by members, the DDA negotiations were at an impasse. As a consequence, it was unlikely that the negotiations could be concluded on all elements in the near future as originally intended. While no member was ready to give up on the Doha objectives, there was a collective sense that members needed to explore different approaches from the ones employed before.

In particular, members wished to advance the negotiations in areas where progress could be achieved, by reaching agreements on specific issues – whether provisionally or on a definitive basis – ahead of delivering on the full Doha 'single undertaking' (nothing is agreed until everything is agreed). In addition, members believed that efforts needed to be intensified where substantial differences remained. There was also emerging consensus that work had to continue on the basis of progress achieved and that development should remain a central theme of any outcome.

In the period leading up to the Ministerial Conference, the TNC Chair and the Chair of the General Council conducted extensive consultations in preparation for the Conference. Elements under three broad themes were agreed by the General Council in November: the importance of the multilateral trading system and the WTO; trade and development; and the Doha Development Agenda negotiations. These were subsequently forwarded to the Ministerial Conference for inclusion in the first part of the Conference Chair's concluding statement, representing the points on which there was consensus among members.

In his concluding statement, the Conference Chair reiterated what the Chair of the General Council had stressed – nothing in the text re-interpreted or changed any WTO rules or agreements or prejudiced any member's rights and obligations. In particular, the Doha mandate remained as formally agreed by members in its entirety and neither the consensus 'Elements for Political Guidance' nor the non-exhaustive summary changed or reinterpreted it.

## Agriculture

In 2011, agriculture negotiators intensified efforts to bridge differences in order to achieve a shared understanding of the draft 'modalities' (blueprint) for further agricultural trade reform. In parallel, WTO members continued their technical work on data submission, verification and presentation, crucial for the development of future legally binding schedules (lists of commitments). Despite the activity over the past two years, members were unable to agree on concrete steps to move the negotiations forward in 2011.

The work of the committee in 2011 focused on narrowing differences in members' positions on the draft 'modalities', the basic negotiating texts, issued by the Chair in December 2008. The draft modalities set out the broad outlines for final commitments on cutting tariffs and subsidies for farm goods and indicated a number of flexibilities for developing countries and specific situations. In a report dated 21 April 2011, Chairman David Walker of New Zealand detailed the results of the committee's work, capturing the progress made on individual topics.

In the first half of the year, the Chair continued his consultations with smaller groups of WTO members to develop and strengthen a common understanding of ways forward on those issues where agreement had not yet been reached, including the draft modalities on cotton.

In meetings in various formats, trade negotiators continued the work begun in 2009 on data requirements, including values of production for calculating domestic support commitments. To address the remaining information gaps, members submitted national data, participated in data verification meetings and, using an expanded electronic forum, raised questions and sought clarification on the details of these submissions. Negotiators worked on the development of formats for organization and presentation of data, with a view to ensuring that the future calculation of Doha Round commitments would be transparent and verifiable.

Members also gave some consideration to areas where technical clarification might be needed in the text of the draft modalities. The Chair consulted with members, and members met among themselves to discuss remaining ambiguities in

order to reach a common understanding of the draft modalities.

A new Chair of the agriculture negotiations, Ambassador John Adank from New Zealand, was elected in November 2011. He undertook informal consultations on the cotton issue pursued by the 'Cotton-4' group (Benin, Burkina Faso, Chad and Mali) in preparation for the 8th Ministerial Conference in December 2011. The final statement by the Chair of the Conference confirmed the commitment by WTO members to progress the mandate in paragraph 11 of the Hong Kong Ministerial Declaration to address cotton 'ambitiously, expeditiously and specifically'.

## Market Access for Non-Agricultural Products

During 2011, the Negotiating Group on Market Access for Non-Agricultural Products made significant progress on parts of the agenda to reduce or eliminate non-tariff barriers (NTBs) to trade. There was, however, little or no advance in the tariff negotiations. Chairman Luzius Wasescha considered that the main stumbling block remained differences on how ambitious the tariff-cutting agenda should be.

Since the end of 2010, the negotiating group has embarked on a small-group process, with a view to making progress on NTBs. This process consisted of five groups composed of 15 to 20 representatives, each discussing a separate NTB proposal. The proposals addressed in these groups were the following: the so-called 'horizontal mechanism'; labelling of textiles, clothing, footwear and travel goods; transparency in the adoption of technical regulations; re-manufacturing; and international standards. The horizontal mechanism aims at achieving flexible and expeditious procedures, involving a facilitator, to assist WTO members to address concerns regarding non-tariff measures. It establishes step-by-step procedures and timetables and provides suggestions for the role of the facilitator and possible outcomes.

The small-group process intensified in the period leading up to April 2011, when the chairs of the Doha Development Agenda negotiating groups circulated documents representing the outcome of the work in their groups. Progress was such that Chairman Wasescha said that there was a significant

potential NTB package within reach. His report contained working texts on three of the issues – the horizontal mechanism, textile labelling, and transparency.

On labelling of textiles, clothing, footwear and travel goods, the proposal seeks to provide clarity and definitions to labeling requirements under the present Agreement on Technical Barriers to Trade (TBT), particularly on what actions taken by members can constitute unnecessary obstacles to trade. On transparency in the adoption of technical regulations, the text proposes more clarity and transparency in the elaboration and implementation of technical regulations, so that members, traders and other stakeholders are properly informed of the measures and the consequences when failing to comply with them.

Regarding tariffs, the Chair said in his April review that there was nothing new to report and that divergences over the appropriate level of ambition continued to be the main impediment, as they had since mid-2008. The situation on tariffs remained unchanged for the remainder of the year and no work was done by the group on the subject.

After the publication of the report in April, members continued to meet in various configurations to make further progress on the NTB working texts and proposals. However, during the last two months of 2011, the attention of the membership focused on the 8th Ministerial Conference in December and the negotiating group held no formal session.

## Services

In 2011, WTO members intensified their efforts to advance the negotiations on services. As in previous years, however, progress was hampered by a lack of movement in other areas of the Doha Round. Nonetheless, at the 8<sup>th</sup> Ministerial Conference, members were able to agree a waiver benefiting least-developed countries.

In his report to the Trade Negotiations Committee in April, Chair Fernando de Mateo said that despite negotiators' efforts to narrow differences, gaps remained. Limited progress had been made in the market access negotiations since July 2008. On domestic regulation, recent intensification of negotiations had produced some

progress, even if disagreement persisted on important and basic issues. On GATS rules, while technical work continued, there did not seem to be convergence regarding the expected outcome in any of the three negotiating subjects (safeguards, government procurement and subsidies).

## Market Access

In the market access negotiations, the renewed energy was focused on three one-week negotiating clusters (held in February, March and April) that dealt with different services sectors and modes of supply. Despite these initiatives, little progress could be reported by the end of April. Later in the year, attempts to develop other negotiating strategies for the market access negotiations proved unsuccessful.

## Treatment of Least-Developed Countries

The 8th Ministerial Conference agreed a waiver for least developed countries (LDCs), allowing members to grant them preferential treatment as services suppliers. The accord followed intensive work throughout the year to narrow differences in the text. The waiver responds to guidance given by Ministers in Annex C of the 2005 Hong Kong Ministerial Declaration to develop appropriate mechanisms for according special priority to LDCs.

## Domestic Regulation

In early 2011, the Working Party on Domestic Regulation intensified its work on the development of a draft text of regulatory disciplines in line with GATS Article VI:4. The mandate is to develop disciplines to ensure that licensing and qualification requirements and procedures and technical standards do not constitute unnecessary barriers to trade in services.

In the intensive drafting sessions, members undertook a detailed reading of the Chair's March 2009 draft text and related proposals, aiming to specify parts on which further work would be required. The number of language options was reduced, and efforts were made to isolate differences by putting them in brackets (showing no agreement). All language proposals, submitted either in writing or orally during the intensive phase of negotiations, were reflected in a Chair's Consultative Note.

Members had constructive and engaged discussions but were not able to agree on a revised text. During the meeting of the special session on 15 April, the Chair provided a progress report under his own responsibility on the overall situation. Views expressed by members were reflected in a subsequent report by the Chair of the Special Session to the Trade Negotiations Committee.

In addition, the working party held a workshop on regulatory practices to inform negotiators about practical experiences with services regulation, particularly with regard to transparency, licensing and qualification requirements and procedures, and the use of technical standards. National regulators and international organizations presented case studies. In subsequent meetings of the working party, members focused on how future work on domestic regulatory disciplines would be conducted as well as future topics for discussion.

### *GATS Rules*

The Working Party on GATS Rules carries out the negotiating mandates contained in Articles X (emergency safeguard measures), XIII (government procurement) and XV (subsidies). Since members continued holding different views on what would constitute an acceptable outcome, text-based negotiations could not be envisaged for any of these topics for the time being.

Emergency safeguard measures, based on the principle of nondiscrimination, would permit a member temporarily to suspend commitments in the event of an unforeseen surge in imports of services that caused, or threatened to cause, injury to a domestic services industry. In 2011, members further examined the statistics relevant for emergency safeguards, assisted by WTO Secretariat presentations. These concerned the availability of disaggregated statistics on international services flows that could be potentially relevant for safeguards, and the types of data used in safeguards investigations in the goods sector under the WTO Safeguards Agreement.

Regarding government procurement, the working party has pursued a series of dedicated discussions on the broader economic and developmental importance of government procurement in services, based on a proposal by

the European Union. Members also explored the services aspects of the Plurilateral Agreement on Government Procurement and started sharing national experiences of reform and opening of domestic procurement systems as well as access to foreign procurement markets.

In the area of subsidies, the working party held one dedicated discussion on the information provided by members, in line with a mandate in Article XV of GATS, on the subsidies they extend to their services suppliers. Discussions also continued on a proposal to create disciplines for export subsidies and on concrete examples of any trade-distortive effects that might be associated with subsidies in services.

### **Trade-related Aspects of Intellectual Property Rights (TRIPS)**

The Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS), meeting in special session, continued efforts to find common ground in negotiations on notifying and registering geographical indications (GIs) for wines and spirits. In April, the Chair circulated a draft text – the first time a single text reflecting members' proposals and positions has been produced in the negotiations. However, the text was far from signalling any agreement. The Director-General pursued consultations on extending the higher level of protection of GIs to products other than wines and spirits.

### *Negotiations on a GI Register*

The GI register for wines and spirits is intended to facilitate the protection of geographical indications. These are place names (or sometimes other terms or signs associated with a place) used to identify products as originating from a location that gives them particular qualities, reputation or other characteristics. Bordeaux and Tequila are well-known examples. The TRIPS Agreement mandates negotiations on establishing a register, and work has continued since 1996. In 2005, the Hong Kong Ministerial Declaration called for the talks to be 'intensified'.

There are currently three proposals under consideration by the TRIPS special session:

- a 2003 proposal by Hong Kong, China,

- the so-called 'Joint Proposal' of 2005, revised in 2011, from a group of countries that want the register to be essentially a source of information about national protection of registered GIs,
- the 'W/52' proposal, put forward in 2008 by a group of over 100 countries as part of a package also covering other TRIPS issues. This proposal is considered to create a stronger expectation of protection for GIs entered on the register.

The Chair of the TRIPS special session, Darlington Mwape of Zambia, held intensive negotiating sessions from January to April with a core drafting group of 19 members, subsequently enlarged to include 12 others. As with other parts of the Doha Round, TRIPS negotiators were encouraged to produce new texts in time for a review of the Round – the 'Easter Package' – in April. To ensure transparency, each series of sessions was followed by an informal meeting open to all. The drafting group worked on the basis of six elements for a register suggested by the Chair: notification, registration, legal effects/consequences of registration, fees and costs, special and differential treatment, and participation.

In April, the Chair issued a detailed report providing a comprehensive factual representation of the various phases of the negotiation, the concerns and interests at stake, the working methodologies used, and the issues that still divided members, together with the current draft of the composite negotiating text reflecting members' proposals and positions. Nonetheless, it was clear that the key issues to resolve remained the legal effects or consequences of registration, and whether the register would apply to all WTO members or only those electing to take part. There was also the question of product coverage, namely whether, in line with the original negotiating mandate, it should be confined to wines and spirits, or whether the register should extend to other products.

#### *Incentives for Technology Transfer*

In October 2011, the TRIPS Council, in regular session, undertook its ninth annual review of the incentives given to companies by developed countries to transfer technology to least-developed countries (LDCs). Developed countries provided detailed information on the incentives they make available. The LDC Group presented two papers,

one with further questions in relation to 2010 reports and another containing a proposed format for future reports.

The TRIPS Agreement requires incentives for technology transfer to LDCs, and ministers agreed at Doha in 2001 that the TRIPS Council would 'put in place a mechanism for ensuring the monitoring and full implementation of the obligations'. This mechanism was set up by a council decision in 2003, detailing the information to be supplied by developed countries on how their domestic technology transfer incentives are functioning in practice.

The WTO Secretariat organized a fourth workshop to discuss transfer of technology under the TRIPS Agreement. The objective of the workshop was to achieve a broad understanding of the operation of the incentives and to establish an effective dialogue between developed countries and LDCs.

#### *Disputes Over Intellectual Property Protection*

In general, disputes can be brought under the WTO Dispute Settlement Mechanism not only if an agreement or commitment has been violated, but also if an expected benefit under an agreement has been nullified without violating the letter of the agreement. For disputes over intellectual property protection, the TRIPS Agreement prescribed a five-year moratorium on initiating such 'non-violation and situation complaints' and this moratorium has been extended by a series of Ministerial Conferences.

In 2011 the TRIPS Council continued to consider the scope and modalities for such complaints. Members disagree on whether these complaints should be allowed at all, or whether this could be the legitimate basis for a dispute. The 8th Ministerial Conference in December directed the council to continue examining the scope and modalities for these disputes and to make recommendations to the next Ministerial Conference in 2013. It also agreed that, in the meantime, members would not initiate such complaints under the TRIPS Agreement.

#### **Consultations on Outstanding Implementation Issues**

The Director-General continued to consult on GI extension and the relationship between TRIPS and the Convention on Biological Diversity (CBD),

as called for by the 2005 Hong Kong Ministerial Declaration, which deals with these questions as 'outstanding implementation issues' in line with the 2001 Doha Declaration.

The first issue concerns the possible extension to other products of the 'higher' or 'enhanced' level of protection that is currently only required for GIs for wines and spirits. Members differ on whether such an extension would help their trade in such products, or whether increasing the level of protection would create an unnecessary legal and commercial burden.

The other issue concerns the relationship between the TRIPS Agreement and the CBD: whether – and, if so, how – TRIPS should do more to promote the CBD objective of equitably sharing the benefits that arise when genetic resources are used in research and industry. The main focus has been on proposals to amend the TRIPS Agreement to require patent applicants to disclose the source or the country providing genetic resources and

associated traditional knowledge. A range of alternative proposals has also been submitted.

From March 2009, the Director-General has undertaken these consultations personally, with interested delegations and through open-ended information sessions. The consultations were regularly reported to the Trade Negotiations Committee and the General Council. They concentrated on technical questions, with a view to assisting members to understand more fully each other's interests and concerns and shedding light on the technical aspects of the two issues. The consultations have not addressed the question of whether these matters should be linked to the broader negotiating agenda.

The Director-General presented a written report covering the period from March 2009 to April 2011. No further consultations were held in the course of the year.

(Source: WTO, *Annual Report 2012*)

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