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THE WTO, THE POST-DOHA AGENDA, AND THE FUTURE OF TRADE SYSTEM: A DEVELOPMENT PERSPECTIVE

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I. INTRODUCTION

The World Trade Organization (WTO) has emerged as an important agency, whose rules and operations have major effects on the development policies of its developing country Members. This paper reviews some of the recent developments and issues arising from the WTO's work and activities. The paper takes what the author considers is a "development perspective" of the trading system.

The WTO held a Ministerial Conference in Doha in November 2001 and the decisions made there have resulted in an important and also heavy work program that will also have very significant implications for developing countries. The work program contains a long list of issues to be negotiated or discussed. It imposes an extremely heavy workload on the developing countries' policy makers and diplomats. The Doha decisions and the follow up have also placed the WTO and the multilateral trading system at an important crossroads. Important decisions have to be taken in the next several months on the shape and nature of the WTO and the trade system.

The rest of this paper briefly outlines (1) issues and challenges regarding the existing rules and systems in WTO; (2) some aspects of the post Doha work program in the WTO; and (3) some conclusions on the future of the trade system.

II. ISSUES AND CHALLENGES REGARDING THE PRESENT WTO SYSTEM

A. Issues of Concern to Developing Countries

The multilateral trading system and WTO are at a crossroads. Decisions made before and at the 2003 Ministerial will have an important effect on which direction the system will go. The most important of the decisions is whether the next few years will see WTO members doing their best to rectify the problems and imbalances in the rules and system, or whether "new issues" are added to WTO that could distort the trading system and add to the existing imbalances.

The WTO (and its predecessor organization) has contributed to the global trade system through the provision of a framework of rules within which member countries conduct trade and other commercial relations among themselves. This has contributed to a measure of stability and predictability as contrasted to an alternative scenario in which arrangements are dominated by unilateral policies and bilateral arrangements. However, in recent years there has also been

some disenchantment with the system as a result of: (a) the lack of anticipated benefits accruing to many developing countries, (b) a range of problems arising from the implementation of their own obligations; (c) lack of transparency and inadequate participation in decision-making.

Several years after the WTO's establishment in 1995, it is time for an assessment of the Uruguay Round's results and for reviewing the future shape of the trade system. The old GATT system dealt with trade in goods. There were already some imbalances even in the GATT system. For example, sectors of export interest to developing countries remained highly protected, particularly agriculture and textiles. In fact developing countries had agreed to subsidize the developed countries which had asked for time to adjust. The expansion of the GATT system through the introduction of the then new issues (services, intellectual property, investment measures) made the system more imbalanced, as well as intrusive (as the system moved from its traditional concern with trade barriers at the border, to issues involving domestic economic and development structures and policies).

B. Anticipated Benefits Not Realized: Agriculture and Textiles

The developing countries' main expectation of benefit from the Uruguay Round was that at last the two sectors which the developed countries had heavily protected (agriculture and textiles) would be opened up and that the developing countries' products would have greatly enhanced market access. However these sectors have in fact remain closed many years after the Round ended. In agriculture, tariffs of many agriculture items of interest to developing countries are prohibitively high (some are over 200 and over 300 per cent). Domestic subsidies in OECD countries have risen from US\$275 billion (annual average for base period 1986-88) to US\$326 billion in 1999, according to OECD data (see OECD 2000); instead of declining as expected as the increase in permitted subsidies more than offset the decrease in subsidy categories that are under discipline in the Agriculture Agreement.

In textiles and clothing, only very few items which the developing countries export have been taken off the quota list, even though more than half of the ten-year implementation period has passed. According to a submission at the WTO in June 2000 by the International Textiles and Clothing Bureau (see Hong Kong, China, 2000), only a few quota restrictions (13 out of 750 by the US; 14 out of 219 by the EU; 29 out of 295 by Canada) had been eliminated; this raises doubts whether all or most of the quotas will really be removed by 2005 and/or whether other trade measures will be in place to continue the high protection.

Recently, the United States announced that it would be imposing tariffs of up to 30 percent on some of its steel imports, in order to protect its domestic steel industry. This decision has sent shock waves around the world, as well as responses, including the possibility of similar protective measures, retaliatory action against the US, and taking dispute cases against the US in the WTO.

C. Problems for Developing Countries When Implementing Their Own Obligations

Although the major developed countries have not lived up to their liberalization commitments, they have continued to advocate that it is beneficial for developing countries to liberalize their imports and investments as fast as possible. The developing countries have come under the pressure to liberalize from the international financial institutions, regional trade arrangements with developed countries, and from the WTO. Developing countries are asked to bear for a little while the pain of rapid adjustment which would surely be good for them after a few years, whereas the developed countries which advocate this policy themselves ask for more

time to adjust in agriculture and textiles (and in other products) which have been protected for so many decades.

Implementing their obligations under the WTO Agreements have brought many problems for developing countries. A summary of these problems contained in the Annex which contains a summary of a fuller report by Third World Network (2001) on the multilateral trading system. These problems include: (a) the prohibition of investment measures and subsidies, making it harder to encourage domestic industry; (b) import liberalization in agriculture, threatening the viability and livelihoods of small farmers whose products face competition from cheaper imported foods, many of which are artificially cheapened through massive subsidy; (c) the effects of a high IPR regime that has led to exorbitant prices of medicines and other essentials, to the patenting by Northern corporations of biological materials originating in the South; and to higher cost for and lower access by developing countries to industrial technology; and (d) increasing pressures on developing countries to open up their services sectors, which could result in local service providers being rendered non-viable.

These problems raise the serious issue whether developing countries can presently or in future pursue development strategies and objectives, including industrialization, technology upgrading, development of local industries, survival and growth of local farms and agriculture, attainment of food security goals, and fulfillment of health and medicinal needs.

The developing countries' problems arise from the structural imbalances and weaknesses of several the WTO Agreements. The developing countries have compiled a lengthy list of their problems of implementation and proposals for addressing these, and submitted these in the WTO. Summaries of these are contained in the WTO compilations of implementation issues. (See WTO 2001c, 2001d, 2001e, 1999). There is an urgent need to satisfactorily resolve these problems.

D. Resolving the Imbalances First, or Paying Again as Part of the Post-Doha Package?

The requests by many developing countries (made in the process before the Seattle Ministerial of 1999 and the Doha Ministerial of 2001) that these implementation issues be resolved as a matter of first priority in the sequencing of the WTO's future activities has not been agreed to. There has been progress on very few of the implementation problems, and a set of some of them has been placed for consideration during the post-Doha work program alongside the many other topics. The attitude of the developed countries seems to be that the developing countries had entered into legally binding commitments and must abide by them; any changes would require new concessions on their part. Such an attitude does not augur well for the WTO, for it implies that the state of imbalance will remain, and if developing countries "pay twice" or "pay three or four times", the imbalances will become worse and the burden more heavy.

The developed countries have put forward proposals for starting negotiations on the "Singapore issues" after the Fifth Ministerial. Presumably the developing countries are being asked to accept these as issues for negotiations towards new agreements. If this were so, then it would be equivalent to making developing countries pay twice, thrice or four times. (They consider that they already paid by making so many concessions, for example agreeing to accept intellectual property, services and investment measures as subjects for agreements during the Uruguay Round, and yet they have not yet obtained the anticipated benefits in agriculture or textiles).

Developing countries are being told their requests on implementation problems and on getting greater access in the Northern markets will be considered as a package deal in the post Doha work program with the implication that they have to accept negotiating new issues in the WTO. But new agreements and obligations in these new areas would not bring about reciprocal benefits as the developed countries would stand to obtain most of the gains. The lack of reciprocity in benefits and costs would thus add to the present imbalances. Moreover, the introduction of the proposed new agreements is likely to be detrimental to developing countries, which will find even more of their development options closed off. And at the same time there is no guarantee that there will be a "rebalancing" of the WTO rules and system, that the implementation problems will be resolved or that there will be really more meaningful access to Northern markets in agriculture, textiles and other sectors.

III. THE POST-DOHA WTO WORK PROGRAMME

A. Summary of the Outcome

The WTO held its 4th Ministerial Conference in Doha (9-14 November 2001). The outcome included three main documents: a Ministerial Declaration (WTO 2001a); a Declaration on the TRIPS Agreement and Public Health (WTO 2001b); and a decision on Implementation-related Issues and Concerns (WTO 2001c). There is also a subsidiary document linked to the third, on outstanding implementation issues (WTO 2001d).

B. The Preparatory Phase and the Doha Process and Decisions

Before Doha the developing countries were strongly arguing the case that the WTO membership should in the next years focus on resolving the problems arising from the Uruguay Round and the institutional and systemic issues which have arisen in the short life of this important institution. These problems include:

- The lack of anticipated benefits to developing countries largely due to the lack of or inadequate implementation by developed countries of their commitments to provide greater market access for the products of developing countries, especially in agriculture and textiles;
- The increasing problems facing developing countries from their having to fulfil their own obligations in the many WTO agreements;
- The unsatisfactory system of decision-making and internal transparency within the WTO system.
- Besides these WTO-related issues, many developing countries have also been facing other trade problems, particularly the continuous decline in commodity prices; and the inability of many poorer developing countries to diversify or upgrade their exports due to supply-side constraints as well as limited market access.

These problems are part of the imbalances in the WTO and the trade system as a whole, and the developing countries have been advocating an improvement to the system, so that they are able to get their fair share of benefits and (perhaps more importantly) to reduce or

eliminate their losses. Progress in resolving the problems would also reverse the trend of disillusionment with the system, a feeling that has been increasing among the public and policy makers alike.

However, the developing countries encountered great difficulty in getting their message across. The developed-country partners, whilst acknowledging that there are problems, did not see the need for a systemic consideration of "rebalancing" the rules and the system. The discussions were relegated to a case by case consideration of "problems of implementation", and after some years of discussion, hardly any items in the long list of problems submitted by developing countries had been resolved before or at Doha. Thus the request by developing countries that these problems be first resolved before attempts to introduce negotiations on new areas were not entertained.

Instead, the major developed countries pushed very hard to have the WTO expand its negotiating and rule-making mandate, including to incorporate new areas, such as investment, competition policy, government procurement and trade and the environment. This attempt at expansion was strongly resisted by a majority of developing countries (including by regional groupings) which argued that: (a) they were not yet ready to enter negotiations or consider agreements on these issues; (b) they did not adequately understand the implications of the proposed issues, and (c) from the limited understanding they did have, they were very concerned that new agreements or rules in these areas would add to their already heavy obligations and would further restrict their development policy options and constrain or reduce their development prospects. They therefore proposed that these new issues be continued to be studied or discussed but not be accorded the higher status of "negotiations" as this would imply agreeing to establish new agreements or rules.

Due to a series of unusual or even unique procedures, the views and positions of many of the developing countries in key areas and topics were not adequately reflected (or not reflected at all) in the drafts of the Ministerial declaration that were prepared in Geneva and transmitted to the Doha meeting. This failure to reflect their views added to the frustration of the developing countries, which felt that the drafting process was untransparent, and the drafts were unrepresentative. They requested that the draft to be transmitted to Doha should contain the different positions of various countries or groupings (instead of being a "clean draft" which would give the mistaken impression that it was a consensus document) or that these differences be at least made clear in a covering letter. However these requests were rejected and a "clean text" that reflected the views of the proponents of the "new issues" became the basis of negotiations in Doha, placing the developing countries at a great disadvantage.

At Doha, two new drafts were produced, and again many developing countries were upset that their views were not properly reflected, and that the negotiating and decision-making process (especially the convening of a marathon exclusive "Green Room" meeting to which only a few countries were invited) was inadequate, not transparent and thus not fairly reflective of their views and positions. [A description of the Doha events and the Doha preparatory process is in Khor (2002).]

This was especially in relation to the sections of the Declaration on the "Singapore issues" (investment, competition, transparency in government procurement and trade facilitation) as well as on the environment. The Declaration implies that negotiations (towards new agreements or new rules) have been agreed to on the "Singapore issues" (so called because they were first introduced as subjects for study though not for negotiations at the 1996 WTO Singapore Ministerial conference) following the Fifth Ministerial (scheduled for 2003) on

the basis of an explicit consensus on "modalities". However, due to objections and requests for reformulation of this language at the last "informal" session at Doha, the Declaration was tempered by a clarification by the Conference chairperson at the final official session to the effect that the consensus referred to would be required for negotiations to begin (the implication being that the required consensus would not be only for modalities). The interpretation of the Declaration and the Chairperson's clarification can be expected to generate intense discussion in the months ahead. In any case, the Declaration does commit WTO members to discuss a list of elements and topics within each of the Singapore issues, which will have major implications for whether a consensus can be reached either on modalities or on the larger issue of the desirability of negotiating new agreements on these issues in the WTO. Therefore, there is a heavy work load for developing countries on these topics in the present new work program before the Fifth Ministerial in Mexico in 2003.

C. The Post-Doha Work Program: Overview

According to some experts, the work program is effectively an agenda for multilateral negotiations in at least 19 areas, larger and more intrusive, in terms of national economies and politics, than even the Uruguay Round agenda. The post Doha work program is extremely heavy as it includes several key elements, each of which are complex and difficult and involves much time, human resources and technical expertise, which developing countries do not have.

The following is a listing of some of the areas of negotiations and discussions.

ISSUES FOR NEGOTIATION OR DISCUSSION IN THE WTO POST-DOHA WORK PROGRAMⁱ

Mandated Negotiations

- Agriculture (para. 13-14)
- Services (para. 15)

Mandated Reviews

- TRIPS (para. 17-19)
- TRIMS

New Areas of Negotiations

- Non-agriculture market access (para. 16)
- Trade and environment (para. 31-33)
- Clarification of WTO Rules (anti dumping, subsidies, countervailing measures, fisheries subsidies, regional trade arrangements) (para. 28-29)
- Clarification of dispute settlement (para. 30)

Singapore Issues

- Trade and investment (clarification of elements etc in working group) (para. 20-22)
- Trade and competition policy (clarification of elements etc in working group) (para. 23-25)
- Transparency in government procurement (para. 26)
- Trade facilitation (para. 27)

New working groups

- Trade, debt and finance (para. 36)
- Trade and transfer of technology (para. 37)

Other issues

- Electronic commerce (para. 34)
- LDCs (para. 42-43)
- Special and differential treatment (para. 44)
- Technical cooperation and capacity building (para. 38-41)
- Small economies (para. 35)

This non-exhaustive list shows how heavy is the work program arising from the Doha Conference. Besides the already mandated negotiations on agriculture and services, and the already mandated reviews of the TRIPS and TRIMS agreements, the post-Doha work program will include new negotiations on market access for non-agriculture products, negotiations on some aspects of trade and environment, negotiations to clarify some rules (including anti-dumping, subsidies and countervailing measures) and dispute settlement. Also part of the work program will be the set of "implementation issues and concerns" which developing countries had earlier put forward, and of which only a few items have so far been resolved; and the four Singapore issues: investment, competition policy, transparency in government procurement and trade facilitation. There is also the discussion in two new working groups (trade, debt and finance; and trade and technology transfer) which had been proposed by developing countries. There are also discussions on other issues, including electronic commerce, special and differential treatment, capacity building, LDCs and small economies. The negotiations are to be supervised by a Trade Negotiations Committee, and concluded by 1 January 2005, and the outcome of the negotiations shall be treated as parts of a "single undertaking."

As B. L. Das (2002) points out: "It is a program much heavier than that of the Uruguay Round of the Multi-lateral Trade Negotiation. Almost all the major items of the Uruguay Round, like agriculture, services, subsidy, anti-dumping, regional trading arrangement, dispute settlement, industrial tariff and some aspects of TRIPS form part of the negotiations in the Work Program. Environment has also been included in the subjects of negotiation. Besides, intense work is envisaged on Singapore issues (i.e., the new areas of investment, competition policy, transparency in government procurement and trade facilitation) as well as in the area of electronic commerce. The short time span of three years set for this work makes the task particularly arduous for the developing countries."

According to Das, the new Work Program enhances the imbalance in the WTO system significantly. "Instead of eliminating the existing imbalance, it has in fact enhanced it by giving special treatment to the areas of interest to the major developed countries and ignoring the areas of interest to the developing countries. Negotiations have been launched in a new area, viz., environment and the level of work has been enhanced and intensified in the areas of Singapore issues and electronic commerce. All these have been the subjects of deep interest to the major developed countries, while the developing countries have been resisting their being taken up in the WTO. The main proposals of the developing countries were those grouped as "Implementation Issues", where practically nothing has been done. The issues of great importance to many of them, e.g., textiles and Balance of Payment Provisions do not feature in the main text of the Work Program. Even the inclusion of the subjects of finance and technology is hardly significant for the developing countries as the work envisaged in these fields is of a

very general and broad nature. Similar is the situation regarding the provision on special and differential treatment for the developing countries which aims at making the relevant provisions more precise, effective and operational. There are very few special and differential provisions reducing the substantive levels of obligations of the developing countries. Hence this provision in the Work Program is hardly of great benefit to the developing countries. The Work Program is a gain for the major developed countries, but they have given nothing in return to the developing countries. This is totally contrary to the GATT/WTO process where reciprocity is expected to be the main guiding principle in negotiations. Reciprocity should not be assessed only in terms of specific commitments in agreements, but also in selection of items for special attention in the work. Sadly, the new phase of the WTO has started with enhancement of imbalance. Ironically the Work Program has been sometimes termed as a "development agenda" which is quite erroneous...The agenda of the Work Program has been totally set by the major developed countries guided by their own economic interests. The priority of the development of the developing countries is not reflected in it. " (Das 2002).

The following is a description of some of the issues in the work program.

D. Implementation Issues

On **implementation issues**, the Doha decisions are very disappointing. Das (2002) points out that the Ministerial Decision on implementation issues has only a few substantive decisions: (a) a clarification that the "reasonable period" referred to in the agreements on Sanitary and Phytosanitary Measures and Technical Barriers to Trade (between the publication of a measure or a standard and its coming into force) shall not normally be less than six months; (b) the "longer time frames for compliance" referred to in the agreement on Sanitary and Phytosanitary Measures in respect of products of interest to the developing countries is now clarified to be not normally less than six months; and (c) a concession in the agreement on Subsidies and Countervailing Measures, that regarding subsidies in developing countries having GNP per capita less than US\$ 1000 per year, a developing country will continue to be in this list until it reaches this level of GNP in three consecutive years; and also, a country which has been excluded from this list will be re-included when its GNP per capita falls below this level.

The rest of the Decision has the operative phrases like: "reaffirms", (a particular WTO body) "is directed to give further consideration", "urges Members", "takes note of", (a particular WTO body) "is instructed to review", "requests" (a WTO body) "to examine", "confirms the approach", "shall examine with special care", "recognizes", "underlines the importance", "agrees that ..interim arrangements...shall be consistent..", "agrees that (a WTO body) shall continue its review", "directs (a WTO body) to extend the transition period", (a WTO body) "is directed to continue its examination..", etc. (Das 2002).

Thus there has been hardly any progress on substantive issues despite several years of concrete proposals by developing countries to resolve the deficiencies and imbalances that have already given rise to problems. There is real concern that these "implementation issues" will be given low priority in the post Doha work program, as other issues (especially the issues already mandated for negotiations, and the Singapore issues which now have greater potential of approaching 'negotiation' status) are taken more urgently and distract away from the task or resolving existing problems. Developing countries should therefore maintain their previous position, that in the sequencing of the completion of negotiations and discussions in the post Doha program, the first order of priority is the resolution of implementation issues.

E. Agriculture

The negotiations on **agriculture** in the next years will be part of the WTO's built-in agenda (i.e., mandated in the Uruguay Round). The Doha Declaration states the negotiations will aim at reduction of export subsidies “with a view to phasing (them) out” and “substantial reductions” in trade-distorting domestic support. This will enable developing countries to demand the developed countries to curb their subsidies. However, Das also points out that the qualifying term “trade-distorting” can be used by the major developed countries to suggest that the so-called “green box” domestic support, listed out in Annex 2 to the Agreement on Agriculture and exempted from reduction commitment in the Uruguay Round, are not to be covered by the negotiations on reduction. These high subsidies, if allowed to be exempted and to increase further, will continue to enable high protection in the developed countries, and continue to damage developing countries' domestic production and export prospects.

The Doha Declaration also states an intention to “enable the developing countries to effectively take account of their development needs, including food security and rural development”. It specifies that special and differential treatment for the developing countries “shall be an integral part of all elements of the negotiations” and shall be “operationally effective” by embodying them both in the rules and the schedules of commitments. Developing countries should fully make use of these by advocating that to enable the continuation of the livelihoods of their small farmers, those countries that would otherwise be adversely affected by liberalization can be exempted from the disciplines of import liberalization and the prohibition of domestic subsidies with regard to their food products for domestic consumption. Farmers in many developing countries are already experiencing threats to their livelihoods and incomes resulting from an increase in imports of cheaper (and often subsidized) foods. A comprehensive assessment and continuous monitoring of the effects should be made. The major focus of negotiations should be the quick operationalizing of special and differential treatment for developing countries to prevent the continuation and worsening of the threat to farmers in developing countries as resolution of this problem is urgently required.

F. Services

Negotiations on **services** as part of the built-in agenda are also a major part of the post Doha program. The services agreement and implementation also contain basic imbalances. The developed countries have far greater capacity in the services sector whilst most developing countries are unable to take advantage due to weak capacity and supply constraints. Thus liberalization would lead to uneven benefits and costs. Moreover, much of the liberalization has been in areas and modes of supply of interest to developed countries (for example, financial services, telecommunications) whilst areas or modes of interest to developing countries (for example, Mode 4 or export of natural persons) have not made progress. Another problem is that there is a lack of data on the service trade and thus it is not possible to quantify the benefits and costs of liberalization for individual countries or of developing countries as a whole or in regions. This makes an assessment (of the effects and of the benefits and costs) of previous liberalization very difficult and does not allow for a basis on which to evaluate proposals and options for future action. Developing countries are expected to come under heavy pressure to open up more, and in more sectors, than they have so far committed. Recent revelations of a draft of the European Commission's list of requests show that developing countries will be asked to liberalize rapidly on a wide range of services.

The Doha declaration reaffirms the Guidelines for negotiations adopted on 28 March 2001 and also aims to achieve the objectives in Articles IV and XIX of the GATS which contain specific provisions for the developing countries. The former calls for liberalization of market

access in sectors and modes of supply of export interest to the developing countries. The latter provides for flexibility for the developing countries to liberalize fewer sectors and fewer transactions. Developing countries whose services enterprises and sectors are yet unable to withstand competition can make full use of the development principles and the provisions in GATS in their response to the requests, as they are fully entitled to. They should not be under any pressure from other Members to liberalize further; instead they should be given full flexibility to choose whether, in which areas, when and how much to offer. They can also insist that an adequate system of data be established and that an adequate assessment be made so that the future negotiations can be guided by information on previous actions and possible future options.

G. Industrial Products

The Doha Declaration has also launched negotiations on a new round of reductions on tariff and non-tariff barriers in industrial goods, under the term "**market access for non-agricultural products.**" The main interest of developing countries is that developed countries bring down their tariff peaks and tariff escalation in products of export interest to developing countries. Some developing countries could expand their export earnings should developed countries increase their market access. However, there are also poorer developing countries that are unable to take advantage due to weak supply capacity. The main interest of developed countries in the negotiations is that developing countries reduce their industrial tariffs. However, many developing countries are concerned about this, as they have already experienced closure or reduced production of local firms and even whole sectors, as well as significant job losses, as a result of previous liberalization (many of them under structural adjustment or loan conditionalities of the IMF and World Bank). Recent studies have shown the negative effects of over-rapid liberalization, and the process of "de-industrialization." [See Part D, Section 1, for a discussion on the deindustrialization effects in several countries]

In the negotiations, developing countries (especially those with a weak domestic industrial base) should be careful to safeguard their interests so that they are not pressurized to liberalize at a rate or in a sequence which their remaining local industries are unable to bear. The Doha declaration states that the coverage will "in particular" be on products of export interest to the developing countries, that the negotiations "shall take fully into account the special needs and interests of developing and least-developed country participants" and that there will be "less than full" reciprocity in the reduction commitments by the developing countries, including the least developed countries. These three points should be fully made use of by developing countries so that they may seek to minimize the costs and obtain some benefit. The first stage of negotiations in the post Doha program will be on working out the modalities. The positions for this important stage should be worked out, for the modalities (including the principles, the approaches and formulae) will largely determine the outcome of the negotiations. An assessment of the effects of previous liberalization on developing countries' domestic firms, employment and government revenue should be made, as the first phase of the process.

H. Trade and Environment

This issue has been under discussion in the WTO in its Committee on Trade and Environment. However the Doha meeting made a decision for the first time to include this topic as part of the negotiating agenda, signifying that on this issue some amendment of rules or establishing of new rules or both are intended. is a new area of negotiation included in the WTO as a part of the Work Program. Thus, Doha has for the first time placed trade and environment as a new issue for rule-making in the WTO, and the mandate of the WTO has correspondingly

been expanded. For the moment a few areas have been designated for negotiations; however the negotiating agenda under the broad environment umbrella may expand in future, with implications that may not now be foreseen.

Some aspects of this issue (contained in para. 31 of the Doha Declaration) are for negotiations while other aspects (para. 32) are not mentioned for negotiation, but for discussion. Aspects for negotiation are: (a) the relationship between WTO rules and specific trade obligations in Multilateral Environment Agreements (MEAs); (b) reduction of tariff and non-tariff barriers to environmental goods and services; and (c) procedure for information exchange between the Secretariats of MEAs and WTO committees. Other aspects for discussion include: (a) effect of environmental measures on market access; (b) the relevant provisions of the TRIPS Agreement; and (c) labeling requirements for environmental purposes.

The first negotiating issue (MEA-WTO relation) is complex. The intention of the EU, as previously indicated, is to give automatic or more automatic endorsement in the WTO for trade measures adopted in MEAs. At present any explicit endorsement is on an ex-post basis, and such measures can be challenged by a Member in WTO. However there has not been a challenge so far. The concern of many developing countries is that if a blanket approval is given (by a change of rules), then there is a much greater potential (and temptation) of MEAs being made use of (or even being established) for trade-protectionist rather than genuinely-environmental purposes. The question of what constitutes a legitimate MEA (including membership) that is eligible for automatic or near-automatic endorsement has also not been satisfactorily answered. The fear that automaticity can and will be used as a disguised protectionist device is legitimate and real, given the increase in protectionist sentiments in developed countries. On the other hand there is also a concern that the name of WTO or its rules and its free-trade principles have been invoked inappropriately by some countries in environment or trade policy fora in attempts to prevent or dilute measures to address genuine environmental and health issues. Such attempts do give the WTO and the trade system a bad reputation among officials and citizen groups involved in environment and health issues. A central concern therefore is the need to prevent the misuse of environmental issues to serve protectionist purposes, and the need to prevent the misuse of so-called "free-trade principles" to prevent legitimate and appropriate measures to protect the environment, safety and health.

On the second negotiating issue, Das (2002) has pointed out that reducing barriers on environmental goods and services should not be included under the heading "environment" as there are already negotiations on market access to industrial products which will cover the so-called "environmental goods." Similarly "environmental services" can be covered under the GATS negotiations. In any case, there is no clear definition of "environmental goods and services". If environmental goods are defined as products produced in an environmentally-sound way, then the concept of differentiating products according to their "processes and production methods" (PPMs) would have been "smuggled" into the trade negotiations and trade system, and this holds dangers for developing countries whose environmental standards are generally not as high and they may thus be placed in a situation of disadvantage.

The three discussion issues are also important. This is especially so because since the environment as a topic has already made a breakthrough into a negotiation mode, these "discussion issues" may well be graduated also into the negotiating mode at a future date. Developing countries have a particular interest on the TRIPS-environment-sustainable development relationship. Some of them have brought up problems for the environment generated by TRIPS, for example the facilitation of "biopiracy" (or the corporate patenting of plants, animals and genes) and the hindrance to the transfer of environmentally-sound

technology. Developing countries should actively participate in the discussions on the three issues.

I. Intellectual Property (TRIPS)

The WTO's TRIPS Agreement has generated a great deal of concern and controversy. Issues that have emerged include: the high prices of medicines and other consumer products; the facilitation of "biopiracy" (patenting of life forms, including plants and their functions which have already long been in public use); obstacles to technology transfer and upgrading due to the IPR holders' monopoly over technology; the promotion of monopolistic and anti-competitive practices and structures and their effects. On a systemic level, the issue is raised as to whether intellectual property, which is basically a device that enables monopoly and anti-competitive practices, should even be located within a trade organization whose purpose is supposed to be the promotion of free trade and competitive practices; and if not, then what to do about it. Moreover whilst the WTO is supposed to be based on the principle of reciprocal benefits, TRIPS has proven to be inherently and in practice very imbalanced, as developed countries (with greater technological capacity and with greater ability to use the IPR system) have reaped the overwhelming share of benefits amounting to large values, whilst developing countries are carrying the heavy burden of costs.

The post Doha work program provides opportunity to deal with the many problems arising from TRIPS. The Doha Declaration in its three paras. (17, 18, 19) on TRIPS mentions the following issues: TRIPS and medicines; geographical indications; the relation between TRIPS and the Convention on Biological Diversity; protection of traditional knowledge and folklore and other relevant new developments. It mentions the review of Article 27.3b (which deals with patenting of biological materials) and the review of Article 71.1 (the review of TRIPS); both reviews are mandated in TRIPS. A separate Declaration on TRIPS and Public Health was also adopted in Doha, and it directs the TRIPS Council to find a solution to problems faced by countries with insufficient manufacturing capacity in medicines to effectively use the TRIPS agreement's compulsory licensing provisions. In addition, there are many issues relating to TRIPS in the compilation of "implementation issues" to be resolved.

Developing countries have argued forcefully that they face many problems in attempting to implement (or in actually implementing) TRIPS. They should therefore make full use of the post Doha work program to raise all their concerns and advocate solutions. Meanwhile, in the overall review of TRIPS itself, the issue of the grave imbalances in the agreement and in its implementation, and the issue of the appropriateness or otherwise of TRIPS being in WTO should be raised; and progress made to resolve these issues.

J. The Singapore Issues: General

The most contentious aspect of the Doha Conference, and the preparatory process before it, involved the "Singapore issues." During the preparatory process, a large number of developing countries (mainly from Asia, Africa, the Caribbean and Central America) had made their views known that they were opposed to the commencement of negotiations on these issues, and that instead the "study process" on these subjects should continue in the WTO. However, these positions were not reflected in a draft Ministerial Declaration transmitted to Doha. At Doha many developing countries again stated (in their Ministers' statements presented at the official plenary, and during informal consultation meetings) their opposition to the draft Declaration committing the WTO to negotiate the Singapore issues. However, once again such a negotiating commitment was placed in two further drafts during the Conference. In the final

draft, which the Secretariat released on the Conference's last morning on 14 November, Ministers agreed, on all four issues, that negotiations would take place after the Fifth Ministerial Conference (scheduled in 2003) on the basis of a decision to be taken by explicit consensus at that Session on modalities of negotiations.

In the operational part of the relevant paragraphs (20 on investment, 23 on competition, 26 on transparency in government procurement and 27 on trade facilitation) the wording is as follows: "**....we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.**" This implies that a decision has already been taken in principle to start negotiations towards new agreements, and only the **modalities** of the negotiations have to be agreed to.

In a final consultation meeting on the same afternoon, more than ten developing countries suggested that the text be changed, to remove the commitment to negotiations on the four issues. India indicated it could not agree to the Declaration unless amendments were made. Eventually a compromise was worked out, in which at the formal closing ceremony the Conference chairman, Mr. Youssef Hussain Kamal, the Minister for Finance, Economy and Trade of Qatar, read out a "Chairman's understanding" that in relation to the four issues, a decision would indeed need to be taken at the Fifth Ministerial Conference by explicit consensus, before negotiations could proceed on the four issues. He also clarified that this would give each member the right to take a position on modalities that would prevent negotiations from proceeding until that member is prepared to join in an explicit consensus.

The statement that was read out at the Closing Session was as follows: "I would like to note that some delegations have requested clarification concerning Paragraphs 20, 23, 26 and 27 of the draft declaration. Let me say that with respect to the reference to an explicit consensus being needed in these paragraphs, for a decision to be taken at the Fifth Session of the Ministerial Conference, my understanding is that at that session a decision would indeed need to be taken by explicit consensus, before negotiations on trade and investment and trade and competition policy, transparency in government procurement, and trade facilitation could proceed. In my view, this would also give each member the right to take a position on modalities that would prevent negotiations from proceeding after the Fifth Session of the Ministerial Conference until that member is prepared to join in an explicit consensus."

This statement gave greater protection to developing countries that did not want to commit to negotiations. The text of the Declaration states that negotiations would begin after the 5th Ministerial on the basis of an explicit consensus on the *modalities* of the negotiations. However, the Chairman's statement clarifies that a decision by consensus needs to be taken before negotiations could proceed. By not stating that the required decision is on the modalities, the implication of the statement is that a consensus is needed on whether there should be negotiations.

Does the Chairman's statement have legal status? Das (2002) gives this opinion: "The Chairman has termed the first part of it [i.e. his statement] as "(his) understanding". Normally a chairman gets such understanding by a process of consultations with the participants in the meeting and he/she includes agreed formulations in his/her understanding. If there is no objection or reservation from the participants after the chairman has expressed his/her understanding, it is considered to be the collective wish of the meeting. In this plenary during this Conference, there was no objection or reservation from the participants after the Chairman

expressed his understanding. All this makes this part binding on the WTO process unless it is modified by a later WTO Ministerial Conference."

In any case, the Declaration has already laid out a work programme for the next two years for the four issues, with an agenda of specific topics that appear to be in the pre-negotiations mode (for example, in the area of investment, work will focus on scope and definition, transparency, pre-establishment commitments, exceptions, dispute settlement, and so on). Thus, there will be a serious and very heavy work programme already in respect of the Singapore issues in the period up to the Fifth Ministerial; and if a decision is taken then to begin negotiations, the workload will be increased further. And should the negotiations lead to the establishment of new agreements, the burden of obligations on developing countries will be much heavier and the scope of the WTO's mandate would immensely expand.

Whether that happens will depend on whether the developing countries deepen their understanding of the issues in the several months ahead, whether they consider it in their interest to have these proposed new agreements in the WTO, and whether they can persuade the developed countries to their position (or stand up to the latter's pressures) in the event they do not want these issues to be developed into WTO treaties.

Below is a description of each of the four Singapore issues (investment, competition, transparency in government procurement, trade facilitation) and the implications for developing countries should agreements of the type envisaged by their proponents be established.

K. Relationship between Trade and Investment

At the Singapore WTO Ministerial (1996), Ministers agreed to form a **working group** to study the relationship between trade and investment. It was explicitly stated **there was no commitment to negotiate an agreement**. For the next five years (1997-2001) the WTO Working Group on Trade and Investment held several discussions. Major developed countries pressed very hard to have the working group be transformed into a negotiating group that would negotiate an investment agreement in WTO. However, the majority of developing countries were extremely reluctant to agree to this. Some of these countries were strongly opposed. The reasons included: the inappropriateness of an investment regime in a trade organisation; the loss of policy autonomy over investment policy would damage development options; the lack of understanding of the issues and their implications for development; harmful effects of new obligations; diversion of time and human resources from other vital work in WTO. They wanted the study process to continue, and were adamant that negotiations for an agreement should not start.

They made their views known before and at Doha. However these views were not reflected in the draft Declarations, including the final draft that stated that negotiations would begin after the Fifth Ministerial on the basis of a consensus on modalities. As explained above, this was offset by the Chairman's statement at the final session in Doha. Thus, it is still not clear that there has been a binding commitment to establish an investment agreement in WTO.

Between now and the 5th Ministerial, work will proceed in the working group on trade and investment. This will be guided by: (1) the working out of the issue of modalities of negotiations, that had been mentioned in para. 20 of the Doha Declaration; (2) subjects mentioned in para. 22 "for clarification", i.e. clarification of scope and definition, transparency, non-discrimination, modalities for pre-establishment commitments based on a GATS-type, positive list approach, development provisions, exceptions and balance of payments safeguards, consultation and the

settlement of disputes; (3) other subjects mentioned in para. 22, i.e. any framework should reflect in a balanced way the interests of home and host countries, take account of development policies and objectives of host governments and their right to regulate in the public interest. There is mention also that the special needs of developing countries should be taken into account; due regard should be paid to other relevant WTO provisions; and account should be taken of existing bilateral and regional investment arrangements.

The diplomats in WTO will be preoccupied with these issues in the investment working group, which will meet several times during 2002. It is urgent that developing countries prepare their views and put forward their positions on the above issues at the working group.

The main proponents of an investment agreement would like international binding rules that allow freedom of foreign investors the rights to enter countries without conditions and regulations, and to operate in the host countries without most conditions now existing, and be granted "national treatment" and MFN status. Performance requirements and restrictions on movements of funds would be prohibited. There would also be strict standards of protection for investor's rights, in relation to "expropriation" of property. (A wide definition could be given to expropriation; the NAFTA experience is worth noting).

Due to the unpopularity of this extreme model, the major proponents are now offering watered-down versions, such as a GATS type approach, and possibly a plurilateral approach (in which countries not wanting to join an agreement can opt to stay out). These step-by-step approaches are aimed at getting Members to agree to the **concept** that investment rules belong to the mandate of WTO; and then to draw them into an agreement which appears not to be so harmful and where there is some space to make choices; and then later on to pressure them to liberalize more and more in terms of sectors and depth of policy measures. It should be recognized that the watered down versions are only shifts in tactics and not in the ultimate goals.

An international agreement on investment rules of this type is ultimately designed to maximize foreign investors' rights whilst minimizing the authority, rights and policy space of governments and developing countries. This has serious consequences in terms of policy making in economic, social and political spheres, affecting ability to plan in relation to local participation and ownership, balancing of equity shares between foreign and locals and between local communities, the ability to build capacity of local firms and entrepreneurs, and the need for protecting the balance of payments and the level of foreign reserves. It would also weaken the bargaining position of government vis-à-vis foreign investors (including portfolio investors) and creditors.

Thus an agreement of the type envisaged by the proponents could be damaging to the development options and interests of developing countries. The position that they could take is as follows. Investment is not a trade issue, and thus bringing it within the ambit of WTO would be an aberration and could cause distortion to the trade system. It is certainly not clear that the principles of WTO (including national treatment, MFN) that apply to trade in goods should apply to investment, nor that if they apply that it would benefit developing countries. Traditionally developing countries have had the freedom and right to regulate the entry and conditions of establishment and operation of foreign investments; restricting their rights could cause adverse repercussions.

With the principles underlying this position, developing countries could engage actively in the discussions of the working group on the issues mentioned in the Doha Declaration (see

above). Das (2002) has provided some suggestions for positions to be taken on the issues for clarification and discussion. For example:

- on **scope and definition**: the coverage of investment should be as limited as possible;
- **transparency**: the coverage should also be limited to availability of information;
- **non-discrimination**: it can be argued that for development purposes, developing countries need to have differential treatment of foreign and local investments and thus the national treatment principle is inappropriate in an investment framework;
- **modalities for pre-establishment commitments based on GATS-type positive list approach**: even if a country can theoretically choose the sectors, depth and speed of liberalization, a framework would have been created in which the developing countries will be subjected to pressures to liberalize, in contrast to the present where countries have flexibility and discretion over their investment policies.
- **development provisions**: one appropriate provision would be that developing countries will be totally free to apply conditions on the entry and operation of the foreign direct investment in accordance with its own perception and decision on its development process; they should have full policy autonomy and should not be required to justify their policies bilaterally or multilaterally.
- **Consultation and dispute settlement between Members**: the normal dispute settlement system of WTO should not apply.

Besides engaging in the issues listed in the Declaration, developing countries can also put forward issues of their own, for example the obligations of foreign investors to the host country; and the obligations of the home governments of foreign investors to ensure that the investors' obligations are fulfilled.

L. Interaction between Trade and Competition Policy

At the Singapore Ministerial (1996), Ministers decided to set up a working group on the interaction between trade and competition policy. There was a specific mention that this does not commit Members to negotiate an agreement in the WTO on competition. As in the case of the investment issue, most developing countries have voiced reluctance or opposition to the establishment of a WTO agreement on competition policy. However, with their views not adequately represented in the drafts of the Doha Declaration, there will now be a more intensive discussion of the issue in the WTO working group on trade and competition policy. As with the investment issue, the Declaration states that negotiations (on the interaction between trade and competition policy) will take place after the Fifth Ministerial on the basis of a decision on modalities. Similarly with investment, it is not clear that a decision has been made to negotiate an agreement.

In the meanwhile, more intensive discussions are scheduled on the issue. The Doha Declaration (para. 25) mandates that in the period until the Fifth Ministerial, the working group on the Interaction between Trade and Competition policy will focus on clarification of: (1) core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; (2) modalities for voluntary cooperation; and (3) support for progressive reinforcement of competition institutions in developing countries through capacity building. Full account shall be taken of the needs of developing and LDC countries and appropriate flexibility provided to address them.

In the discussions, developing countries should try to engage as fully as possible. It can be challenged whether the principle of non-discrimination is appropriate if applied to competition law and policy in developing countries. The needs of developing countries in general and the need for policy flexibility should also be clarified in the discussion. Moreover, since explicit consensus is also required on the "modalities", it is important for the discussion to clarify this issue, especially since there is no agreed definition of "modalities."

At present, there is hardly any common understanding let alone agreement among countries on what the competition concept and issue means in the WTO context, especially in terms of its "interaction" with trade and its relationship with development. The whole set of issues of competition, competition law and competition policy and their relation to trade and to development is extremely complex. The proposal of the proponents of a WTO agreement is to have multilateral rules that discipline Members to establish national competition law and policy. These laws/policies should incorporate the "core principles of WTO", defined as transparency, non-discrimination (MFN and national treatment.) Thus, the location of the venue of the competition issue and the agreement within the WTO would bias the manner in which the subject and the agreement is to be treated. In this case, the "core WTO principles" would be applied to competition.

Competition law and policy, in appropriate forms, are beneficial, including to developing countries. However each country must have full flexibility to choose a model which is suitable, and which can also change through time to suit changing conditions. Having an appropriate model is especially important in the context of globalization and liberalization where local firms are already facing intense foreign competition. In particular, developing countries must have the flexibility to choose the paradigm of competition and competition policy/law that is deemed to be more suitable to their level of development and their development interests.

The EU proposal for competition policy to provide "effective opportunity for competition" in the local market for foreign firms, and thus to apply the WTO "core principles" to competition law/policy would affect the needed flexibility for the country to have its own appropriate model or models of competition law/policy.

Competition can be viewed from many perspectives. From the developing countries' perspective, it is important to curb the mega-mergers and acquisitions taking place which threaten the competitive position of local firms in developing countries. Also, the abuse of anti-dumping actions in the developed countries is anti-competitive against developing countries' products. The restrictive business practices of large firms also hinders competition. However these issues are unlikely to find favour with the major countries, especially the US, which wants to continue its use of anti-dumping actions as a protectionist device. If negotiations begin, the EU interpretation of competition, i.e. the need for foreign firms to have national treatment and a free competition environment in the host country, could well prevail, especially given the unequal negotiating strength which works against the developing countries. The likely result is that developing countries would have to establish national competition laws and policies that are inappropriate for their conditions. This would curb the right of governments to provide advantages to local firms, and local firms themselves may be restricted from practices which are to their advantage.

What is required is a paradigm to view competition from a development perspective. Competition law/policy should complement other national objectives and policies (such as industrial policy) and the need for local firms and sectors to be able to successfully compete,

including in the context of increased liberalization. From a development perspective, a competition and development framework requires that local industrial and services firms and agricultural farms must build up the capacity to become more and more capable of competing successfully, starting with the local market, and then if possible internationally. This requires a long time frame, and cannot be done in a short while. It also requires a vital role for the state, which has to play the role of nurturing, subsidizing, encouraging the local firms. The build up of local capacity to remain competitive and become more competitive also requires protection from the "free" and full force of the world market for the time it takes for the local capacity to build up. This means that development strategy has to be at the center, and competition as well as competition policy has to be approached to meet the central development needs and strategy.

Therefore some of the conventional models of competition may not be appropriate for a developing country. On the other hand other models may be more appropriate, but their adoption may be hindered or prohibited by a WTO agreement on competition that is based on the "core principles of WTO."

There is yet not a convincing case for a multilateral set of binding rules to govern the competition policies and laws of countries; and there are especially justified grounds for serious concern if such an agreement were to be located within the WTO, as it is likely to be skewed in a way that is inappropriate for the development interests of developing countries as a result of the attempt by proponents to apply the "core principles" of WTO to the issue and to the agreement.

If a multilateral approach is needed, there are other venues that are more suitable, for example, UNCTAD which already has a Set of Principles on Restrictive Business Practices. Moreover, if the objective is to arrange for cooperation among competition authorities of countries, then it is unnecessary and inappropriate for the WTO to be the venue.

In the discussion on the issues mentioned in the Doha Declaration for the working group, the above points should be taken into account, especially in relation to the needs of developing countries and the need for their policy flexibility. As the list of issues in the Declaration is not an exhaustive one, developing countries can also add other issues for discussion. Das (2002) suggests that the following additional issues could be put forward:

- Obligations of the foreign firms to the host country.
- Obligation of the home government to ensure the foreign firms fulfil their obligations.
- Competitiveness of domestic firms: to consider measures to be undertaken by domestic firms, government and a possible multilateral framework to enable local firms (especially small firms) to remain or to be competitive and to grow.
- Competition impeded by government action (for example, anti-dumping action).
- Competition impeded by IPR protection
- Global monopolies and oligopolies and their effect on local firms in developing countries.
- Big mergers and acquisitions (by transnational companies) and their effects on developing countries.

M. Transparency in Government Procurement

The Singapore WTO Conference (1996) agreed “to establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and based on this study, to develop elements for inclusion in an appropriate agreement.” The decision does not specify that there must result an agreement; it only commits Members set up a working group to study the subject of transparency and based on this study to develop the elements to include in an *appropriate* agreement. It is thus important to discuss what an appropriate agreement, if any, should be like, from the perspective of the interests of developing countries and also their need for policy flexibility.

Before and at Doha, many developing countries put forward the view that they were not ready to negotiate an agreement in transparency in government procurement. However, these views were not adequately reflected in the Doha Declaration. As with the other "Singapore issues", the Declaration (para. 26) states that negotiations will take place after the Fifth Ministerial on the basis of a decision to be taken by explicit consensus on modalities of negotiations. Similarly with investment, it is not clear that a decision has been made to negotiate an agreement., especially when account is taken of the Chairman's statement at the closing session at Doha.

The Declaration also states (in para. 26) that negotiations will build on progress made in the working group on transparency in government procurement and take into account participants' development priorities. Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers.

The study in the working group, and the agreement, is only mandated to cover transparency (and not the practices themselves), and this limited scope has been reaffirmed by the Doha Declaration. However, the major countries advocating this issue had made clear their ultimate goal to fully integrate the large worldwide government procurement market into the WTO rules and system. At present, WTO Members are allowed to exempt government procurement from WTO market access rules. The exception are those Members who have joined the WTO's plurilateral agreement on government procurement. Hardly any developing country is a member of this plurilateral agreement. Since developing countries have found it unacceptable to integrate government procurement and its market access aspect into the WTO, the major developed countries devised the tactic of a two-stage process: firstly, to draw in all Members into an agreement on transparency; and secondly, to then extend the scope from transparency to other areas (for example, due process) and then to the ultimate areas of market access, MFN and national treatment for foreign firms. This is clear from various papers submitted to the WTO.

If the integration of procurement into WTO eventually takes place (as is clearly the aim of the major developed countries), governments in future will not be allowed to give preferences to local companies for the supply of goods and services and for the granting of or concessions for implementing projects. The effects on developing countries would be severe.

Government procurement and policies related to it have very important economic, social and even political roles in developing countries:

- The level of expenditure, and the attempt to direct the expenditure to locally produced materials, is a major macroeconomic instrument, especially during recessionary periods, to counter economic downturn.

- There can be national policies to give preference to local firms, suppliers and contractors, in order to boost the domestic economy and participation of locals in economic development and benefits.
- There can be specification that certain groups or communities, especially those that are under-represented in economic standing, be given preference
- For procurement or concessions where foreign firms are invited to bid, there could be a preference to give the award to firms from particular countries (e.g. other developing countries, or particular developed countries, with which there is a special commercial or political relationship).

Should government procurement be opened up through the national treatment and MFN principles, the scope and space for a government to use procurement as an instrument for development would be severely curtailed. For example:

- If the foreign share increases, there would be a “leakage” in government attempts to boost the economy through increased spending, during a downturn.
- The ability to assist local companies, and particular socio-economic groups or ethnic communities would be seriously curtailed.
- The ability to give preferences to certain foreign countries would similarly be curtailed.

Given the great importance of government procurement policy as an important tool required for economic and social development and nation building, it is imperative that developing countries retain the right to have full autonomy and flexibility over its procurement policy. The attempts to draw this issue into the WTO are thus of grave concern.

Given the ambitions of the major countries, it is realistic to anticipate that following the establishment of an agreement on transparency, there will be strong pressures to extend its scope to also cover market access, or the rights of foreign companies to compete on a "national treatment" basis for the procurement business. Thus, the discussions on “transparency” and on a “transparency agreement” should be seen in the light of the strategic objective of the majors to draw in the developing countries into the real goal of market access and full integration of procurement practices. Therefore if there is an agreement on transparency, it is likely to be the start of a slippery slope that could lead, in years ahead, to a full market-access agreement.

Developing countries have yet to fully comprehend and appreciate the desirability, degree of appropriateness and implications of even a transparency agreement in WTO, especially as to how it would affect social, economic and political development. This point should be made clear at the discussions in the working group. Some of the key issues of interest to developing countries which should be brought up in the forthcoming discussions are:

- Clarifying the definition and scope of "transparency" and ensuring that the elements to be agreed on do not go beyond "transparency." Although the Doha Declaration specifies that the negotiations shall be limited to transparency aspects, the definition of "transparency" should be made clear and agreed to. The exercise does not in any way transgress into the area of market access. According to Das (2002), transparency means the availability of information on the rules and practices and also the final decisions, and may also include availability of information on tenders and specifications of products to be procured. "It must not include the areas of evaluation of offers, decision making

process and relief to the unsuccessful tenderers, as these are the elements of substantial decisions and not transparency. During the work in the Working Group in 1999, some major developed countries had placed proposals in this area which went much beyond transparency and tried to cover the area of decision making. This type of effort should be resisted" (Das 2002).

- The costs and practical requirements of administering and implementing even a transparency agreement. The resources and expenses as well as practical aspects of implementing a transparency agreement are likely to be prohibitive. The working group should arrange for an assessment to be made of any proposed agreement.
- Making use of the development perspective in deciding on the scope of coverage (e.g. the threshold of value of procurement, the type of procurement, the definition and level of government).
- Addressing the serious concern that by introducing the subject, even in the limited transparency aspect, that this would lead step by step to market access issues. This concern has to be adequately addressed first for there to be a reasonable degree of comfort to discuss transparency; what are the ways in which these concerns can be fully addressed?
- The issue should not be linked to the dispute settlement system in WTO; the agreement, if any, should be in the form of non-binding guidelines and not a legally binding agreement.

N. Trade Facilitation

As with other Singapore issues, a decision on negotiations in this subject will be taken at the Fifth Ministerial. It is thus also not clear whether there will be negotiations towards an agreement on trade facilitation in the WTO. The Doha Declaration (para. 27) states that until the Fifth Ministerial the Council for Trade in Goods shall review and as appropriate clarify and improve relevant aspects of Articles V, VIII and X of GATT 1994 and identify the trade facilitation needs and priorities of Members, particularly developing and least developed countries. [Article V is on freedom of transit, Article VIII is on fees and formalities connected with import and export and Article X is on publication and administration of trade regulations.]

Although the term "trade facilitation" may seem innocuous, the establishment of multilateral rules in this area may be disadvantageous to developing countries as they may find it difficult to adhere to the standards or procedures envisaged. According to Das (2000): "There are grave dangers involved in the potential agreements in this area if the proposals of the proponents are incorporated in the form of binding commitments. The main objective of the proponents is to have the rules and procedures similar to theirs adopted by the developing countries. It ignores the wide difference in the administrative, financial and human resources between the developed countries and developing countries. Also it does not give weightage to the wide difference in social and working environment." For example, it may be proposed that physical examination of goods by the customs authorities should only be in a small number of cases selected on a random basis to improve the flow of goods through the customs barrier. But this increases the risk of avoidance of payment of adequate customs duties. Such a practice

may be appropriate for the major developed countries where the chances of leakage is negligible, but it may not be appropriate for the developing countries where leakage is higher.

Das adds that clarification and improvement of the rules in these areas will add to the commitments of the developing countries in the WTO, adding new burdens and may have adverse implications too. Negotiators at the WTO should obtain the input of the trade and customs administrative machinery so as to know the possible problems and adverse effects of proposals being put forward. Developing countries should put forward the view that improvements in trade facilitation should be made through national efforts aided by technical assistance, rather than through imposing additional obligations in the WTO. If the consideration of the problems in these areas results in some solutions, these should, at best, be adopted only as guiding principles or as flexible best endeavor provisions, not enforceable through the dispute settlement process (Das 2002).

IV. CONCLUSIONS: RETHINKING TRADE POLICY AND THE MULTILATERAL TRADE SYSTEM

A. Rethinking Trade Policy and the Nature and Timing of Liberalization

Given the problems and imbalances in world trade, there is the need for a rethinking of the dominant model of trade policy that has advocated across-the-board rapid liberalization for developing countries.

For a successful trade policy, a country has to "calibrate" and aim for balance between the two major aspects of trade, i.e. imports and exports. Many developing countries do not possess yet the factors required for sustained export growth. They face supply constraints. Moreover the main exports of many developing countries are primary commodities, the prices of which have declined significantly through time. Also, market access for products of export interest to many developing countries still face serious market access impediments. Thus the export performance of many developing countries has not been good and in the short and medium term the prospects for their significant improvement is not bright. Yet they have been under pressure to rapidly liberalize their imports. If import liberalization proceeds whilst the conditions for successful export growth are not yet in place, there can be adverse results, such as increases in the trade deficit and balance of payments difficulties, which then adds to the level of external debt and greater debt servicing burden, leading to retardation of economic growth and increased unemployment.

In the recent experience of many developing countries, trade liberalization can (and often does) cause imports to surge without a corresponding (or correspondingly large) increase in exports. UNCTAD's Trade and Development Report 1999 found that for developing countries (excluding People's Republic of China) the average trade deficit in the 1990s was higher than in the 1970s by 3 percentage points of GDP while the average growth rate was lower by 2 percentage points. Inappropriate trade liberalization contributed to this negative phenomenon. "It (trade liberalization) led to a sharp increase in their import propensity, but exports failed to keep pace, particularly where liberalization was a response to the failure to establish competitive industries behind high barriers."

However, this theory has been challenged by empirical evidence that there is no straightforward correlation between trade liberalization and overall economic growth performance as measured by gross domestic product (GDP). For example, a 1994 UNCTAD

study of 41 least developed countries (LDCs) over ten years found 'no clear and systematic association' between trade liberalization and devaluation, on the one hand, and the growth and diversification of output and growth of output and exports of LDCs, on the other. In fact, it found that in many LDCs, trade liberalization had been accompanied by de-industrialization, and where exports expanded they was not always accompanied by the expansion of supply capacity (Shafaeddin 1994).

Disturbing evidence of post-1980 liberalization episodes in the African and Latin American regions have also been described by Buffie (2001: 190-91).

For example, Senegal experienced large job losses following liberalization in the late 1980s; by the early nineties, employment cuts had eliminated one-third of all manufacturing jobs. The chemical, textile, shoe, and automobile assembly industries virtually collapsed in Cote d'Ivoire after tariffs were abruptly lowered by 40% in 1986. Similar problems have plagued liberalization attempts in Nigeria. In Sierra Leone, Zambia, Zaire, Uganda, Tanzania, and the Sudan, liberalization in the eighties brought a tremendous surge in consumer imports and sharp cutbacks in foreign exchange available for purchases of intermediate inputs and capital goods, with devastating effects on industrial output and employment. In Ghana, liberalization industrial sector employment plunged from 78,700 in 1987 to 28,000 in 1993 due mainly to the fact that "large swathes of the manufacturing sector had been devastated by import competition". Adjustment in the nineties has also been difficult for much of the manufacturing sector in Mozambique, Cameroon, Tanzania, Malawi, and Zambia. Import competition precipitated sharp contractions in output and employment in the short run, with many firms closing down operations entirely.

Some developing countries outside Africa have also experienced similar problems. According to Berrie (2001: pg190): "Liberalization in the early nineties seems to have resulted in large job losses in the formal sector and a substantial worsening in underemployment in Peru, Nicaragua, Ecuador and Brazil. Nor is the evidence from other parts of Latin America particularly encouraging." The regional record suggests that the normal outcome is a sharp deterioration in income distribution, with no clear evidence that this shift is temporary in character.

It would be important for a compilation of experiences in the Asian Pacific region to be made, especially of the countries with a weaker industrial base.

Trade liberalization should not be pursued automatically or rapidly, as an end in itself. Rather, what is important is the quality, timing, sequencing and scope of liberalization (especially import liberalization), and how the process is accompanied by (or preceded by) other factors. If conditions for success are not present yet in a country, then to proceed with import liberalization (or liberalization of services, including investments) can lead to negative results or even persistent recession.

Developing countries need adequate policy space and freedom, to be able to choose between different options in relation to their trade policies. Developing countries must have the scope and flexibility to make strategic choices in trade policies and related policies in the area of finance, investment and technology, in order to make decisions on the rate and scope of liberalization. This principle should be integrated into the WTO system of principles and rules.

B. Reorienting the WTO Toward Development as the Main Priority

The preamble to the Marrakesh Agreement recognizes the objective of sustainable development and also the need for positive efforts to ensure the developing countries secure a share in international trade growth commensurate with the needs of their economic development. However, in practice, development is not seen as a primary WTO objective; nor was it a primary purpose of the Uruguay Round or the Marrakesh Agreement.

In the preparation for the Doha Ministerial, many developing countries (in their own regional Ministerial conferences and in their statements at the WTO) strongly advocated for the Ministerial Conference to decide on reorienting the WTO in order to place development concerns at the center of the organization's rules and work. Although the substance of the Doha Declaration has not been development-friendly (and is in many ways contrary to the interests of development), the Declaration does make the following statement: "The majority of WTO members are developing countries. We seek to place their needs and interests at the heart of the Work programme adopted in this Declaration." (para. 2). If we are to take seriously that the main objectives of the WTO are to promote the trade and development of developing countries, then the logical question to resolve is, what would it take to orient the WTO to become such a pro-development organisation?

The objective of development should become the overriding principle guiding the work of the WTO, and its rules and operations should be designed to produce development as the outcome. Since the developing countries form the majority of the WTO membership, the development of these countries should be the first and foremost concern of the WTO.

The test of a rule, proposal or policy being considered in the WTO should not be whether that is "trade distorting" but whether it is "development distorting." Since development is the ultimate objective, whilst reduction of trade barriers is only a means, the need to avoid development distortions should have primacy over the avoidance of trade distortion. So-called "trade distortions" could in some circumstances constitute a necessary condition for meeting development objectives. From this perspective, the prevention of development distorting rules, measures, policies and approaches should be the overriding concern of the WTO.

The re-orientation of the WTO towards this perspective and approach is essential if there is to be progress towards a fair and balanced multilateral trading system with more benefits rather than costs for developing countries. Such a reorientation would make the rules and judgment of future proposals more in line with empirical reality and practical necessities.

Taking this approach, the goal for developing countries would be to attain "appropriate liberalization" rather than to come under the pressure of attaining "maximum liberalization."

The rules of WTO should be reviewed to screen out those that are "development distorting", and a decision could be made that, at the least, developing countries be exempted from being obliged to follow rules or measures that prevent them from meeting their development objectives. These exemptions can be on the basis of special and differential treatment.

C. Reconsidering the Introduction of the Proposed "New Issues" into the WTO

It is argued above that there is a need to rethink trade liberalization and to re-orient the WTO towards development objectives. These require reforms to the existing WTO system. Before such reforms are implemented, it would be counter-productive to introduce yet more "new issues" into the WTO which would further burden the developing countries with

inappropriate obligations and which would make the system even more imbalanced. There should thus be a consideration of the proposed new issues, from a development perspective.

The proposals for bringing in new issues (the Singapore issues, especially investment, competition, transparency in government procurement; and environmental and social standards) are inappropriate for the following reasons:

- The WTO is a multilateral trade organisation that makes and enforces rules. It should stick to its mandate for dealing with trade issues.
- Principles (such as transparency, national treatment) and operations, that were created for a regime dealing with *trade* issues may not be suitable when applied to *non-trade* issues.
- The "new issues" are not trade issues and do not belong to the WTO. If these issues are to be discussed internationally, other more appropriate venues should be found for them. If they are nevertheless brought into the WTO, they will lead to a distortion and possibly to a destabilization of the multilateral trade system, to the detriment of world trade.
- The major proponents are seeking to bring non-trade issues into WTO, not because this would strengthen the trade system, but because the WTO has a strong enforcement mechanism (its dispute settlement system with the remedy of trade sanctions). Thus, if developing countries are members to agreements lodged in the WTO, there is the strong possibility of their compliance. However, the "contamination" of a system created for trade issues with non-trade issues, may cause serious damage to the WTO. Moreover, the fact that developing countries are likely to comply with binding rules backed by a strong enforcement mechanism does not necessarily mean that the outcome is appropriate. If the rules are inappropriate, then the fact that they are binding and complied with would actually worsen an inappropriate outcome.
- If these non-trade issues are brought into WTO, and WTO principles as interpreted by developed countries are applied to them, developing countries will be at a serious disadvantage, and would lose a great deal of their policy flexibility and the ability to make national policies of their own.
- During the Uruguay Round, the developed countries already brought in new issues: intellectual property, services and investment measures. These agreements (TRIPS, services, TRIMS) are already causing many serious problems, giving rise to the "Implementation Issues." Prof. Jagdish Bhagwati, the renowned trade economist, and advisor to the GATT director general Arthur Dunkel during the Uruguay Round, has published in the Financial Times that it was a mistake to have introduced intellectual property into the WTO as it is not a trade issue, has distorted the trade system, has been non-reciprocal (as most patents belong to developed countries and the developing countries have had to bear the high costs of royalty payment), and that the agreement should be taken out of the WTO. The lesson should be learnt from the inappropriate introduction of non-trade issues in the Uruguay Round, so that this is not repeated.

- Even without the "new issues", the present agenda of the WTO is very full and indeed already overloaded. It includes implementation issues, the built-in agenda of agriculture and services negotiations and the mandated reviews of TRIPS and TRIMS, the many other items of the post-Doha programme and the routine work of the many committees, the trade reviews, and the dispute cases. Introducing new issues into the WTO will make the overload much worse, and distract from the other work of WTO dealing with trade and other existing issues as listed above. Developing countries do not have the manpower and financial resources to cope with negotiations on new issues as well as the other items on the agenda.

The WTO should therefore be limited in scope to dealing with trade issues, which have a legitimate place within a system of multilateral trade rules, and these rules and the system must primarily be designed or re-designed to benefit developing countries, which form the majority of the WTO membership. There is at present no system for determining if or how new issues are brought into the WTO. Such a system should be established. Issues to be brought under the competence of WTO should meet certain criteria, such as that:

- The issue is a trade issue appropriate for a system of multilateral trade rules;
- The WTO is the appropriate venue, and there are no venues that are more appropriate.
- The issue is sufficiently "mature" in that Members have an understanding of it and how it relates to WTO and to their interests.
- If brought into the WTO, the issue (and how it will be interpreted) will clearly be to the interests of developing countries, which are the majority of the membership.
- There must be a consensus of all Members that the issue should be brought in, and how it should be brought in. And this should be a genuine consensus based on a full understanding by all Members which are allowed to participate fully in the decision-making process in Geneva and at the Ministerial Conference itself.

D. Rethinking the Scope of the WTO's Mandate over Issues and the Role of Other Agencies

It is misleading to equate the WTO with the "multilateral trading system", as is often done in many discussions. In fact the WTO is less than and more than the global trade system. There are key issues regarding world trade that the WTO is not seriously concerned with, including the trends and problems of the terms of trade of its Members, and the problems in primary commodity markets (including low commodity prices). On the other hand, the WTO has become deeply involved in domestic policy issues such as intellectual property laws, domestic investment and subsidy policies. There are also proposals to bring in other non-trade issues including labour and environment standards.

The WTO and its predecessor the GATT have evolved trade principles (such as non-discrimination, MFN and national treatment) that were derived in the context of trade in goods. It is by no means assured or agreed that the application of the same principles to areas outside of trade would lead to positive outcomes. Indeed, the incorporation of non-trade issues into the WTO system could distort the work of the WTO itself and the multilateral trading system.

Therefore, a fundamental rethinking of the mandate and scope of the WTO is required. Firstly, issues that are not trade issues should not be introduced in the WTO as subjects for

rules. This rule should apply at least until the question of the appropriateness and criteria of proposed issues is dealt with satisfactorily in a systemic manner.

Secondly, a review should be made of the issues that are currently in the WTO to determine whether the WTO is the appropriate venue for them. Prominent trade economists such as Prof. Jagdish Bhagwati and Prof. Sreenivasen have concluded that it was a mistake to have incorporated intellectual property as an issue in the Uruguay Round and in the WTO. There should be a serious consideration, starting with the mandated review process, of transferring the TRIPS Agreement from the WTO to a more suitable forum.

Within its traditional ambit of trade in goods, the WTO should reorientate its primary operational objectives and principles towards development, as elaborated in the sections above. The imbalances in the agreements relating to goods should be ironed out, with the "re-balancing" designed to meet the development needs of developing countries and to be more in line with the realities of the liberalization and development processes.

With these changes, the WTO could better play its role in the designing and maintenance of fair rules for trade, and thus contribute towards a balanced, predictable international trading system, which is designed to produce and promote development.

The WTO, reformed along the lines above, should then be seen as a key component of the international trading system, co-existing, complementing and cooperating with other organizations, and together the WTO and these other organizations would operate within the framework of the trading system.

Other critical trade issues should be dealt with by other organizations, which should be given the mandate, support and resources to carry out their tasks effectively. These other issues should include: (i) assisting developing countries to build their capacity for production, marketing, distribution and trade; (ii) the need for monitoring and stabilizing commodity markets, with a view to ensuring reasonable prices and earnings for commodity-producing developing countries; (iii) addressing the restrictive business and trade practices of transnational corporations that reduce the conditions for smaller firms to engage in production and trade; (iv) addressing the problems of low commodity prices and developing countries' terms of trade. These issues can be dealt with by various UN bodies, especially a revitalized UNCTAD.

E. Transparency and Participation in the WTO System

The Doha Conference and its preparatory process have also raised again the issue of transparency and the limited ability of developing countries to participate in decision-making. Although the developing countries prepared themselves well and played an active role in making their views known at the WTO meetings and consultations in Geneva, their views were not reflected properly (and in some areas not at all) in the several drafts of the Ministerial Declaration that were produced in Geneva and subsequently at Doha. Although the contents of the last Geneva draft were heavily disputed by many developing countries, it was nevertheless transmitted without change and in a form that did not incorporate the various diverging views and options, thus placing the dissenting developing countries at a grave disadvantage. The biases in the process in favour of developed countries, and the disadvantage to which developing countries have been placed in the negotiations, have caused exasperation and frustration among the delegations of several developing countries, as well as among many non-governmental organizations and social movements which witnessed the events and the processes.

Although promises have been made many times (notably at the Singapore Ministerial Conference and after the Seattle Ministerial Conference), by the developed countries and by the management of the WTO Secretariat, to do away with untransparent and selective processes such as the exclusive "Green Room meetings", and to ensure greater participation of developing country Members, the unsatisfactory procedures and methods used before and at Doha have made clear that the situation is even less satisfactory than ever and thus that there is an imperative for reform in the decision-making processes and procedures of the WTO. Until this is undertaken, it is unlikely that the developing countries' efforts to improve their position and promote their interests in the WTO and in the multilateral trading system will bear fruit.

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ⁱ The Doha WTO Ministerial Declaration 2001 is available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm