The Multilateral Trading System:

A Development Perspective

Third World Network

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UNITED NATIONS DEVELOPMENT PROGRAMME

Contents

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Background papers are designed to generate discussion and feedback on issues of trade and sustainable human development for a series of consultations culminating in the UNDP Trade and Human Development Report in 2002.

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Preface

Events surrounding the WTO Ministerial meeting in Seattle in late 1999 became a kind of Rorschach test for how different constituencies view globalization—how different people and groups look at the same pictures but draw different meanings from them. Many developing country governments noted the asymmetry in the multilateral trading regime, which they viewed as dominated by a narrow agenda of a few industrialized countries,thereby marginalizing the genuine development concerns of the vast majority of the people. Civil society organizations (CSOs) from both the South and North, for their part, were equally upset that their constituencies'many concerns were once again excluded from the intergovernmental discussions and negotiations.

The breakdown in Seattle opened up the opportunity for a much-needed breathing space to discuss and debate the significance of trade for achieving the Millennium Development Goals (MDGs). The controversy surrounding the global trading system is not about whether trade is necessary, but about how the multilateral trade regime can operate in ways that support and foster human development.

As the dust settled on Seattle, we were convinced that given UNDP's vanguard role in advocating for human development and its 1999 Human Development Report on Globalization, our organization had a special responsibility to contribute to the trade debate. Our response was to conceptualize, design and implement a project,which came to be known as UNDP's Trade and Sustainable Human Development project.

The project was approved in June 2000 and has four main phases; first, the commissioning of several respected scholars and experts to write consultant papers on different aspects of trade and its global governance from a human development perspective; second, the convening of an advisory team of concerned and internationally respected government trade negotiators and diplomats,academics, civil society activists and senior UN colleagues to critically assess the consultant paper outlines and advise on the overall project strategy; third, the use of the draft papers as inputs into a series of consultations with both developing country governments and civil society organizations, both to obtain their feedback on them and understand their concerns more fully; and last but not least, drawing upon all of these and other inputs, to prepare a UNDP report tentatively entitled 'Trade and Sustainable Human Development.'

The UNDP project has had three interrelated objectives:

- To assist developing country governments and civil society organizations in ensuring that their countries can selectively and strategically seize the opportunities of global economic and trade integration for advancing national progress in human development and poverty eradication;
- To strengthen the participation and substantive negotiating and advocacy positions of developing countries in the debate and negotiations on the emerging global trading regime;

- To present a UNDP position on the human development outcomes of the current global trading regime and the reforms needed to make it more inclusive and balanced, thereby enabling trade to become an instrument for enhancing human development and reducing poverty.
- While consultations continue and UNDP's report is under preparation, the three consultant papers commissioned as part of the project are being made available. Indeed, an important part of the commitment of the project was to publish, in their independent right,each of the papers. We believe that they deserve to be widely read and used to inform the current debate on trade and development.

This paper, written by Third World Network,Malaysia, under the leadership of its Director, Martin Khor, analyses the global governance of trade from a development and developing country perspective with a particular emphasis on its institutional framework. The paper begins by looking at the role of trade and the world trading system in the context of development. It provides a useful analysis of the historical evolution of the world trading system in the post World War II period within which it contextualizes and analyses the current multilateral trade regime embodied in the World Trade Organization (WTO), using several WTO Agreements as illustrations. It then looks at the impact and implications of some of these agreements on development and developing countries,offering proposals for both improving the multilateral trading regime as well as for institutional and structural reform of the world trading system.

We hope the reader will find the paper informative and useful as a contribution to the ongoing debate on trade and development.

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Executive Summary

If trade is not an end in itself but a means to balanced, equitable and sustainable development, the current global trading system must be reoriented towards the satisfaction of the needs of the world's people. This report examines the present system and its implications and offers some suggestions for improving it.

For developing countries,external trade should be viewed as a crucial element of an overall development strategy towards sustainable growth and development. It should contribute to the generation of full employment, fulfillment of needs in areas of food, health, education, and all of this in the context of environmental sustainability. At the international level, it should cater to the needs of the least developed and developing countries, with guidelines and practical measures that improve their terms of trade, enhance their export capacity and sustain their balance of payments. Most importantly, trade policy should be seen as contingent on the specific conditions of each country depending on its level of development. A one-size-fits-all approach would not only not work but also, if enforced, potentially do more harm than good.

There are two main aspects to trade: imports and exports. There should be a balance between the two, at least in the long run, for a developing country's trade policy to be sustainable. Currently, developing countries face pressure on two fronts: rapid import liberalization (under IMF-World Bank conditionality and WTO rules), and uncertain export earnings (especially in cases of low supply capacity and declining terms of trade). Pressures for import liberalization derive from mainstream trade theory, which holds that it will lead to lower prices and increased efficiency in the domestic economy, thereby benefiting both consumers and producers.However, empirical evidence shows no straightforward correlation between trade liberalization and overall economic performance as measured by GDP growth.Moreover, in order to benefit from import liberalization,several other factors need to be addressed,including competitiveness levels,macroeconomic stability, market access for exports, governance and human, institutional and productive capacity. If imports are liberalized too rapidly when the conditions for its success are not present, there can be serious negative effects such as the de-industrialization, closure of local firms and job losses suffered by many countries.

Uncertain export earnings are a consequence of a lack of physical and technological infrastructure needed to make developing country exports competitive, as well as unstable and declining terms of trade.Developing country exports are concentrated in primary products, for which there has been a secular decline in world prices, leading to worsening terms of trade. Thus an increase in export earnings depends on a re-orientation of the export sector towards value-added manufactures and services, and simultaneously, greater competitiveness in those sectors. These objectives are further hampered by the presence of tariff and non-tariff barriers to markets in developed countries, especially in the sectors in which developing countries have a comparative advantage.

Currently, developing countries are being asked to increase imports, despite being unable to expand exports, and many have found their trade deficits widening significantly. The multilateral trading system should be redesigned to help countries build economic capacity towards devel-

opment—regulating commercial trade relations through rules that are balanced and that are designed to benefit developing countries, ensuring stable prices and fair terms of trade for developing countries' products, and permitting differential treatment to countries at different levels of economic development.

An examination of the evolution of the trading system shows that industrialization and rapid economic growth occurred in developed countries usually under conditions of protection of their domestic markets—though this does not imply that protection necessarily leads to industrialization or growth. The history of GATT and its successor, the WTO, is also replete with examples of how the major trading countries have been reluctant to agree to certain measures that would enable developing countries to benefit from the trading regime and how the rules of the system have been repeatedly bent to accommodate the protectionist interests of these major players. For several decades, the agriculture and textiles sectors remained outside the normal GATT disciplines on the insistence of the developed countries, and even after the Uruguay Round (which was supposed to herald the liberalization of trade in these sectors) their markets remain highly protected. Thus,developing countries have not been able to obtain their fair share of benefits from the trade system.

The objectives of the global trading system, as embodied in the GATT preamble, include: 'raising standards of living, ensuring full employment,growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods.' The system is based on the Most Favoured Nation principle, which means that benefits extended to any one trading partner must be extended to all other WTO members,implying that benefits are shared among members. The safeguards mechanism and the balance of payments provision allow members to restrict imports and thereby share their burden of relief with other countries. The system is also supposed to provide protection from unilateral trade-restrictive action. The dispute settlement mechanism is also fairly efficient in some ways.However, most developing countries have not been able to take advantage of it, and some have also been frustrated at certain panel and Appellate Body decisions. The enforcement mechanism is based on retaliatory action, which is far more powerful in the hands of rich countries than of poor countries. The system is also based on the principles of reciprocity and mutual advantage, which are in some important ways inappropriate for a system made up of countries with such diverse and unequal capacities.

Although significant benefits were expected to accrue to developing countries from increased market access, especially in agriculture, textiles and clothing, after many years of the WTO's existence, many of the anticipated benefits have not materialized. Access to developed countries'textile and agriculture sectors remains restricted,trade measures such as anti-dumping are used (often unjustifiably) against developing countries'exports,supply capacity remains weak in most developing countries, and a secular decline in commodity prices has adversely affected export earnings.

Developing countries face several types of problems in the WTO system. First, some of the structural features of the system and many of the existing agreements are imbalanced against their interests. Second, the anticipated benefits to developing countries have not materialized, a major reason being that the developed countries have failed to fulfill their commitments (e.g., in expanding market access in textiles and agriculture, or in providing special and differential treatment and assistance). Third,developing countries face mounting problems in attempting to implement their obligations under the rules. Fourth, they face intense pressures to accept new obligations being proposed by developed countries under the rubric of 'new issues' and a new

round. Fifth, the decision-making process is less than transparent or fair and makes it difficult for developing countries to adequately participate or to have their views reflected in the decisions of the organization, especially at Ministerial Conferences.

Improving the basic structure

Addressing these problems requires a system that effectively takes into account the different capacities of different categories of members at different stages of development, so that the outcome will be an equitable sharing of benefits. Given the inadequacy of the structure based on reciprocity, there should be some structural improvement to redress the problem of overall imbalance, and structural changes to compensate for the handicaps of developing countries in the WTO system.

Differential and special treatment to developing countries should be made into binding commitments, rather than 'best endeavor' clauses as at present. It should be formally accepted that developing countries undertake less and lower levels of obligations than developed countries. Thus,differential and more favourable treatment to developing countries should apply to levels of obligation and not be limited to longer implementation periods, as is usually the case at present. Developing countries should not be obliged to give up or refrain from policies or measures supporting technological development and diversification of production and exports. Developed countries should make concrete arrangements to encourage imports from developing countries.

Tariffs

It should be recognized that developing countries need to fine-tune their trade policy instruments to support the growth of specific sectors as a dynamic process, and thus require flexibility in raising and reducing tariffs. The current procedure for raising tariffs beyond the bound level is very cumbersome and should be made smoother and easier. For infant industry purposes,countries should be allowed to raise tariffs for a limited period to promote the establishment of an industry. The method of balancing the gains and losses in tariff negotiations should also be changed; the offer from a developing county should be evaluated not merely in terms of current trade but mainly in terms of future prospects for developed countries when the developing country's growth would enlarge its market.

Textiles and agriculture

These sectors are both important to exporters in developing countries and subject to import restrictions or barriers by developed countries. In the case of textiles, although under the Uruguay Round developed countries agreed to progressively phase out their quotas over ten years to January 2005,they have retained most of their quotas even after seven years of implementation.Genuine liberalization was avoided by the device of 'liberalizing' mainly products that were not actually restrained in the past. This has raised doubts as to whether developed counties will adhere to the 2005 deadline.They should give assurances in both deed and word that they intend to honour their commitments at the scheduled time, for example, by accelerating genuine liberalization. The International Textiles and Clothing Bureau (ITCB) has proposed that at least 50 per cent of the imports of products that were under specific quota limits should be liberalized by 1 January 2002.

In the case of agriculture, the WTO Agreement on Agriculture (AoA) set disciplines for market access, domestic support and export subsidies, and developed countries were expected to reduce protection. In reality, developed countries have been able to maintain high levels of protection. Many set very high tariffs in several products; thus, even after the required 36 per cent reductions, they remain prohibitively high. Domestic support has also

remained very high; in fact, the total amount of domestic subsidies in OECD countries has actually risen as there was an increase in permitted types of subsidies that more than offset the decrease in subsidies that come under discipline. The export subsidies budget in developed countries is also to be reduced by only 36 per cent.

Meanwhile, developing countries are facing serious implementation problems.They have had to remove non-tariff controls and convert these to tariffs. Many have lower agriculture tariffs (some owing to reductions under structural adjustment) and (except for LDCs) are expected to reduce bound rates progressively. Developing countries also have had low domestic subsidies (due to financial constraints), which they are not allowed to raise beyond a *de minimis* level and (except for LDCs) must reduce them if they are above this level. Increased competition from imports has threatened the small farm sector in many developing countries and increased fears of food insecurity. An FAO study in 14 developing countries concluded that liberalization in the agriculture sector has led, variously, to an increase in the food import bill, a decline of local production in products facing competition from cheaper imports, and a general trend towards consolidation of farms and displacement of farm labour. Promises to provide food aid to net food-importing developing countries (NFIDCs) and LDCs have also not been fulfilled. Instead, food aid to these countries fell significantly and their ability to finance their increasing food bills deteriorated.

To rectify this situation, domestic and export subsidies and tariff peaks in agriculture in developed countries should be drastically reduced. Meanwhile, developing countries must be allowed greater flexibility on the grounds of food security, protection of rural livelihoods and poverty alleviation. Food production for domestic consumption in developing countries (as well as the products of their small and non-commercial farmers) should be exempt from the AoA disciplines of import liberalization and domestic subsidy. Also, these countries should be able to use the special safeguard mechanism, whether or not they have taken to tariffication.There should be an agreement to effectively assist net food importing countries.

Subsidies

There is an imbalance in the treatment of subsidies. Subsidies mostly used by developed countries (e.g., for R&D and environmental adaptation) have been made non-actionable (immune from counter-action) while subsidies normally used by developing countries (for industrial upgrading, diversification, technological development etc.) have come under actionable disciplines. Subsidies such as the latter need to be recognized as an instrument of development rather than one of trade distortion, and should be exempt from countervailing duty and other forms of counter-action.

Standards

International standards are used in determining permitted measures that countries can take under the agreements on technical barriers to trade and on sanitary and phytosanitary measures. Though they have to abide by these standards, developing countries are unable to participate in the standard-setting institutions due to inadequate expertise and/or resources.Thus,standards are set without adequately paying attention to the situation of developing countries and this may affect their market access. Developing countries should be assisted to participate fully in the formulation of standards. There should also be a rule that new standards can be set only if a minimum number of developing countries have been able to participate in the process.

Balance of payments provisions

Article XVIIIB of GATT 1994 allows developing countries to restrict imports if they face balance of payments (BOP) problems. However, the method of operation and some new decisions have made this provision less effective, and an important instrument for reducing the imbalance in the system has been made almost non-operational. The WTO increasingly relies on IMF reports to determine whether or not a balance of payments problem exists. The IMF includes volatile and uncertain short-term flows (e.g., portfolio investments) and uncertain reserves in its assessment of a country's foreign reserves, thereby tending to overestimate them. The current criterion of deciding on whether a BOP problem exists thus appears faulty. Further, a recent decision in a dispute requires the developing country concerned to give priority to tariff-type action over direct import control measures. This has reduced the capacity of developing countries to deal with the problem quickly and effectively. To correct these problems, the rules should specify that the existence of a balance of payments problem will be determined on the basis of long-term and stable reserves and flows only, and that developing countries' foreign-exchange-reserve requirements will be assessed on the basis of future development programmes rather than on past trends. Also, the determination of the existence of a BOP problem should be made by the General Council, based on the recommendation of the balance of payments committee, using the IMF reports as inputs only. Current rules (designed to deal with temporary BOP problems) should be supplemented with new rules to provide relief for structural BOP problems.

Services

Since services enterprises in developed countries have far greater capacity than those in developing countries, the liberalization of services under the General Agreement on Trade in Services (GATS) has mainly benefited the former. Enterprises in developing countries generally lack the supply capacity to benefit from liberalization in developed country markets. In an area where developing countries do have an advantage, such as the movement of labour, developed countries have not been prepared to undertake liberalization. Although developing countries are allowed under GATS to liberalize fewer sectors and transactions, it is not specified how this is to be operationalized. Negotiations on financial services showed that developed countries insisted on higher levels of commitments from developing counties.

There is a lack of adequate data on the services trade, making it difficult to assess the effects (in terms of gains and losses to a country and to developing countries as a whole) of GATS and services liberalization. Other problems for developing countries include supply constraints and barriers to services exports to developed markets, and challenges faced from attempts by developed countries to alter the basic architecture of GATS. There have also been concerns that GATS would affect the provision of and access to social services to the public.

Measures should be taken to deal with these problems. The lack of data needs to be addressed, and until then, developing countries should not be expected to undertake further obligations. The special provisions for developing countries (Arts. IV and XIX.2) should be implemented, and a mechanism set up to monitor implementation. Developed countries should take concrete steps (e.g., providing incentives to domestic firms) to encourage the import of services from developing countries. There should be concrete measures and time frames for liberalizing the movement of labour from developing countries to developed countries. The GATS provisions for flexibility in the choice of sectors and pace of liberalization for developing countries should be preserved. In discussions on developing new rules (including on domestic regula-

tion), care should be taken to ensure that governments have both options and flexibility to make their own domestic regulations and that their policies are not adversely affected. Clarification of the nature and scope of exceptions for government services should be made, along with an assessment of whether (and to what extent) countries can have adequate flexibility in making national policies for basic services.

Intellectual property rights

The Trade Related Intellectual Property Rights (TRIPS) Agreement sets high minimum standards for all members. This one-size fits all approach is heavily tilted in favour of holders of technology as opposed to its consumers and users. The share of developing countries in the ownership of patents worldwide is minuscule and thus almost all the benefits from owning IPRs (such as royalties and extra profits resulting from the ability to charge higher prices) accrue to the developed countries' firms and institutions. The granting of monopoly rights to IPR holders has curbed competition and enabled them to charge higher and often exorbitant prices. Under TRIPS, members cannot exempt medicines from patentability, in contrast to the pre-TRIPS situation where many countries did not allow patents for the pharmaceutical sector. The high prices of some medicines that has been facilitated by TRIPS has caused a public outcry, especially in relation to drugs for treating HIV/AIDS. The high-standard IPR regime is also making it more costly or difficult for local firms in developing countries to use patented technology. Further, TRIPS makes it mandatory for members to allow patenting of some life-forms and living processes, as well as intellectual property rights protection for plant varieties. This has facilitated the spread of 'biopiracy,' in which indigenous knowledge and biological wealth of developing countries is patented mainly by developed country firms. Promised technology transfer to poor countries has also not been forthcoming.

Many measures are required for TRIPS to be more balanced in rules and implementation. Developing countries must be able to make maximum use of the flexibility in the agreement. They should be allowed to choose between various options in devising legislation, free from external pressure or influence. The mandated review of Article 27.3b of TRIPS should eliminate the artificial distinctions between those organisms and biological processes that can be excluded from patents and those that cannot. One way to do this, as proposed by the Africa Group in the WTO, is to agree that all living organisms and their parts, and all living processes, cannot be patented. It should be determined that nothing in the TRIPS Agreement prevents members from taking public health measures, including compulsory licensing and parallel importation, which can make medicines accessible and affordable to the public. The TRIPS objectives and transfer-of-technology provisions (including Arts. 7, 8 and 66.2) should be operationalized. Developing countries should also be given flexibility to exempt certain products and sectors on the grounds of public welfare and the need to meet development objectives. Finally, WTO members should consider whether the WTO is the appropriate institution to house an agreement such as TRIPS, which is basically a protectionist device.

Investment measures

Under the Trade Related Investment Measures (TRIMS) Agreement, governments are constrained from adopting certain investment measures that oblige or encourage investors to use local materials or restrict imports, as this is counter to GATT's Article III (on national treatment) and Article XI (on quantitative restrictions). The illustrative list of prohibited measures

includes local content policy (which developing countries had used to increase the use of local materials and improve linkages to the local economy) and some aspects of foreign exchange balancing (aimed at correcting balance of payments problems).Implementation of TRIMS has already caused problems in several developing countries, some of which have requested extension of the transition period. To rectify these problems,developing countries should be given another opportunity to notify existing TRIMS; and the transition period should be extended for all developing countries in line with their development needs. Provisions should be introduced that allow developing countries flexibility to use investment measures for development objectives. The review process should consider exempting developing countries from disciplines on local content and trade balancing policies. Moreover, there should be no extension of the illustrative list; nor an attempt to extend the agreement to cover investment rules per se.

Trade and environment

There have been public concerns about both the adverse environmental effects of trade, and the need to prevent environmental issues from being used as the basis for protectionism against developing countries'products. International trade and trade liberalization can contribute to environmental degradation. However, in handling this problem, developing countries and their products should not be penalized. Concepts such as processes and production methods (PPMs),internalization of environmental costs, and eco-dumping, if applied in the WTO context, could pose a protectionist danger against products of developing countries,which have lower environmental standards in production processes. Discussions on the complex links between environmental standards, PPMs and trade, if any, should be held outside of the WTO. There should not be rules in the WTO that link environmental standards to trade sanctions.

Environmental problems requiring rules should be dealt with through multilateral environment agreements (MEAs). The WTO should not be an obstacle to MEA measures agreed to on genuinely environmental grounds. Countries should not inappropriately invoke the notions of 'free trade principles' or WTO rules to counter attempts to forge international agreements that deal with genuine environmental problems.

Discussions in the WTO on trade and environment should be carried out in the wider context of sustainable development. The critical component of development should be given adequate weight and the UN Conference on Environment and Development (UNCED) principle of 'common but differentiated responsibility' should apply. The WTO should give priority to discussing the effects of TRIPS on the environment and sustainable development, and the agreement amended to take this into account. The issue of domestically prohibited goods should also be given more emphasis.

New issues and a new round

Proposals have been made (mainly by developed countries) to expand the WTO mandate by negotiating agreements on several new issues. The first set of these includes investment rules, competition policy and government procurement. These three issues have a similar theme: to expand rights and access of foreign firms and their products in developing countries' markets, and to curb or prohibit government policies that encourage or favour local firms and the domestic economy. The proposed investment rules would put greater pressure on governments to liberalize foreign investments and to bind the level of liberalization;prohibit or otherwise discipline 'performance requirements';allow free inflows and outflows of funds; and protect

investors' rights, for example, through strict standards on compensation for 'expropriation.' The proposed rules on competition would require members to establish competition law and policy. Within that framework, it is proposed that the WTO non-discrimination principles be applied, so that foreign products and firms can compete freely in the local market on the basis of 'effective equality of opportunity,' and policies and practices that advantage local firms and products could be prohibited or otherwise disciplined. Some developed countries have also sought to bring government procurement policies (presently exempt from WTO multilateral disciplines) under the system,whereby non-discrimination principles would apply, with the effect that governments would have to open their procurement business to foreigners and the current practice of favouring locals would be curbed or prohibited. This serious step is unpopular with developing countries. Thus the current proposal is for an agreement confined to transparency in government procurement. If such an agreement is established, it is likely that attempts would be made to extend it to market access. These three issues are subjects of a 'study process' in working groups.

The second set of issues relate to labour and environmental standards. Attempts to bring these (and possible rules) to the WTO for discussion have been strongly resisted by developing countries,which fear they will be used as protectionist devices against their products.

Developed countries have advocated that at least the first set of new issues be taken up in a new round of negotiations. Many developing countries have objected. Among their concerns are: (i) new obligations arising from these issues would further curtail their development options and prospects; (ii) these are non-trade issues and bringing them into the WTO would be inappropriate and distort and overload the trading system; (iii) the WTO should focus on resolving problems arising from existing agreements and the mandated agriculture and services negotiations instead of launching negotiations in new areas that would divert attention; (iv) they seriously lack understanding of the issues and resources to negotiate on them. These concerns are justifiable and make it inappropriate to launch a new comprehensive round that includes the proposed new issues as topics for negotiating new agreements.

Dispute settlement system

The dispute settlement system is a powerful arm of the system. It has the potential to provide protection to weak trading partners; in practice, however, weak countries are handicapped. Enforcement of rights and obligations by taking retaliatory action against an erring country is often impractical for a weak country, which, given the economic and political cost, will hesitate to take retaliatory action against a strong one. The ultimate relief provided by the enforcement mechanism is thus heavily weighted against weak countries. Further, the high cost of raising and pursuing a dispute in the panel and Appellate Body (AB) makes most developing countries hesitant to do so. Delays in relief and inadequate relief also work against developing countries.

Moreover, it appears that the panel and Appellate Body have engaged in substantial interpretations of the rules,thereby shifting power from the legislative organs of the WTO. Despite the rule that panel and AB recommendations and rulings cannot add to or diminish the rights and obligations in the agreements, and that the right of authoritative interpretation is vested in the Ministerial Conference and General Council, the interpretations have in many cases significantly added to the obligations and eroded the rights of developing countries. Also, the legalistic approach to trade disputes that has developed has some negative implications. Since a consensus is required (by members sitting as the dispute settlement body) to reject a panel or AB report,in effect panel and AB decisions are almost automatically accepted. Moreover, the WTO

Secretariat has been playing a major and inappropriate role in guiding the dispute settlement process, raising questions about the impartiality of the Secretariat and the system.

There should be a mechanism in the rules that provides for joint action by all members against an erring developed country, if a developing country successfully brings a complaint and the situation reaches a stage when retaliation against a developed country is to be applied. In addition, in cases where a developing country's position is upheld against that of a developed country, the rule should provide financial compensation to the developing country for the costs of pursuing or defending the case, retrospective from the time the action was initially taken. Further, countries should be explicitly prohibited from enacting legislation that permits unilateral action in the area of trade covered by the WTO; nor should countries be allowed to threaten such retaliation or publish a list of products to be penalized, the value of which is several times that of the actual trade damage claimed, as these have been used to exert pressure on countries.

To improve the structure and operational aspects of the dispute settlement system, the following are some suggestions:institutional and structural separation between the WTO Secretariat and the work of servicing panels and the Appellate Body (which can be carried out by an independent bureaucracy); restrictions on the behind-the-scenes role of the WTO Secretariat (it should play its role, if any, in the open, before the panel and in the presence of the parties to the dispute); Appellate Body members should get legal advice from the pleadings and arguments of the parties about the law, and not from the Secretariat; and rulings should be binding on parties by the present negative-consensus method, but cannot be made a precedent nor become an authoritative interpretation to be applied in future unless the interpretation is adopted and approved in a separate process by the General Council through a positive consensus (this can prevent expansion of the WTO's remit as is now taking place); the General Council can also give an instruction that panels and ABs should not undertake substantive interpretations.

Transparency and participation in the WTO

Unequal capacity has led to unequal degrees of participation by developing countries, a problem made worse by the relative lack of transparency in key WTO operations. To start with, most developing countries are seriously understaffed both in capitals and in Geneva and are thus unable to follow or take part in WTO deliberations. Despite the 'one country one vote' rule, in practice, a few major countries have been able to dominate decision-making in critical aspects, using informal meetings to make decisions among a small group of members that are then passed along to other members. The so-called Green Room process of exclusive decision-making is especially prevalent at and before Ministerial Conferences,where important decisions are taken. 'Consensus-building' is also normally embarked on when proposed by major players as opposed to developing countries.

The WTO needs to evolve more inclusive, participatory and transparent methods of discussion and decision-making, in which all members are fully enabled to participate and make proposals. Decision-making procedures and practices that are non-transparent and non-inclusive (including 'Green Room' meetings),especially before and during Ministerial Conferences, should be discontinued. The WTO secretariat should also be impartial and seen to be impartial. In particular it should not be seen to be taking sides with more powerful countries at the expense of the interests of developing countries. The system must reflect the fact that the majority of members are developing countries and must provide them with adequate means and with appropriate procedures to enable them to voice their interests and

exercise their rights. Further, citizen groups must be allowed to follow developments in WTO and channels opened to make their views better heard.

There are also several issues relating to trade that are of critical concern to developing countries, but which are not dealt with by the WTO. They include the following.

Weak supply capacity. Many developing countries are unable to realize the benefits from trade because of their weak or inadequate capacity to produce, market and export. Thus even if there is better market access, this supply constraint prevents them from taking advantage of it. There should thus be a coordinated programme by various agencies to increase these countries' supply capacity.

Correcting for declining terms of trade. The continual weakening of commodity prices, especially in relation to prices of manufactures, has led to a trend decline in the terms of trade for many developing countries.Between 1980 and 1989, Sub-Saharan African countries suffered a 28 per cent decline in terms of trade, causing them a $56 billion income loss (15-16% of GDP) in 1986-89. Although this is the single most important trade concern for a large number of developing countries, and one which used to have high priority, especially in the UN Conference on Trade and Development (UNCTAD), it has been neglected in recent years, and international cooperation (e.g., through producer-consumer commodity agreements) has faded. UNCTAD and the Common Fund for Commodities should review the experience of commodity agreements and look into the possibility or desirability of reviving them. One possibility is to initiate a new round of commodity agreements aimed at rationalizing the supply of raw materials (to take into account the need to reduce depletion of non-renewable natural resources) while ensuring fair and sufficiently high prices (to reflect their ecological and social value). Absent producer-consumer cooperation, producers of export commodities could decide to rationalize global supply so as to better match global demand. The periodic increase in oil prices obtained through coordination among producing countries is an example of the benefits that producers can derive from such cooperation.

Towards a trading system for development. The report also makes suggestions for some systemic and structural aspects of the global trade system. First is the need to rethink the dominant model of trade policy. Instead of acting on the assumption that rapid liberalization is beneficial for developing countries, the stress should be on the appropriate quality, timing, sequencing and scope of import liberalization and the need for fulfilling conditions for successful opening up. If conditions for success are not present,import liberalization can cause overall problems.Thus, a new approach is needed whereby developing countries are given the flexibility to make strategic choices in trade and other related policies. The need for such flexibility should be reflected in WTO rules and operations; and the World Bank and IMF should also review their conditionalities relating to trade. In addition,developed countries need to liberalize more rapidly in areas of export interest to developing countries, since the former have the capacity to restructure their economies, and since they have for so long unfairly restricted access to developing countries in areas such as textiles, agriculture and selected industrial products. Moreover, if developed countries provide more meaningful market access to developing countries, the latter will have more opportunities to expand their export earnings, thus increasing their future capacity for successful import liberalization.

There is also a need to reorient the WTO towards sustainable development as the main priority and operational principle. Since liberalization is only a means to an end, and its process has to be carried out with great care, the objective of development should guide the work of the WTO, and its rules and operations should be designed to produce development as the outcome. This requires a fundamental rethinking of the WTO mandate and scope. The test of a rule, proposal or policy should not be whether it is 'trade distorting' but whether it is 'development distorting.' Since development is the ultimate objective while reduction of trade barriers is only a means, the avoidance of development distortions should have primacy over the avoidance of trade distortions. Some 'trade-distorting' measures could be required to meet development objectives; and the prevention of development-distorting rules,measures and approaches should be the overriding concern. Developing countries should aim to attain appropriate liberalization rather than maximum liberalization. WTO rules can be reviewed to screen out those that are development-distorting, and developing countries can be exempted from following rules preventing them from meeting their development objectives.

There should also be a rethinking of the mandate and scope of the WTO. First,issues that are not related to trade should not be included as subjects for rules. Second, a review of the issues that are currently in the WTO should be made to determine whether the WTO is indeed the appropriate venue for them. There should be serious consideration of transferring the TRIPS agreement from the WTO as well as whether it is more appropriate for GATS to operate as a *sui generis* agreement with its own organization outside of WTO. Third, within the WTO's traditional ambit of trade in goods,there is a need for a more realistic and sophisticated approach to liberalization in relation to developing countries, informed by actual conditions and the historical and empirical record. Imbalances in agreements related to goods should be ironed out, with the 'rebalancing' designed to meet developing country needs and to be more in line with the realities of the liberalization and development processes. With these changes, the WTO can better play its role in designing and maintaining fair rules for trade and thus contribute to a balanced trade system designed to produce and promote development.

A reformed WTO should be seen as a key component of the international trade system, coexisting and cooperating with other organizations within the framework of the trading system. Several critical trade issues could be better dealt with by other organizations,which should be given the mandate, support and resources to carry out their tasks effectively. UNCTAD should be revitalized to better fulfil its traditional roles,including assisting developing countries to build their production and trade capacity; ensuring reasonable prices and earnings for commodity-producing developing countries,addressing restrictive business practices of big companies, and promoting technology transfer to and development in developing countries.

For trade to serve development needs, complementary reforms in the global financial system are needed in order to meet developing country needs for stable and equitable terms of trade, avoiding balance of payments difficulties, reducing debt, creating a more stable system of capital flows and exchange rates and securing financing for development.

Other issues that impact on and are impacted by trade (including environmental, social, cultural and human rights issues) should be monitored and assessed in such fora as the UN Environment Programme (UNEP), the World Health Organization (WHO), the International Labour Organization (ILO) and the UN Human Rights Commission. These organizations should also be able to take or propose measures to deal with these issues where necessary.

With regard to governance, for international trade to be reoriented towards development, a

conceptual and operational framework would have to be drawn up within which the roles of the various institutions would be clarified. The coordination function could be carried out under the United Nations, in the context of the Economic and Social Council (ECOSOC) or one of its bodies, or a new body functioning under its direction.

Finally, it is important that the system of governance of the trading system should be open and transparent in its operations, and become both participatory and democratic, with the developing countries being able to fully participate in decisions. The deliberations should, in principle, also be open to non-governmental organizations. Citizen groups and the public in general must be able to follow what is going on and have channels open to them to make their views and their voices heard.

Postscript: The Doha Ministerial Conference and After

This report was prepared before the WTO's Fourth Ministerial Conference in Doha in November 2001. The Postscript updates the report by describing the three main documents emerging from the Conference: a general Ministerial Declaration, a Declaration on TRIPS and public health, and a Decision on Implementation-related Issues and Concerns. The work programme emerging from Doha will be very heavy, and involve new negotiations in several areas, including the following: market access in non-agriculture products;some aspects of trade and environment; clarification of certain rules and of the dispute settlement system; the set of implementation issues and concerns; the mandated agriculture and services negotiations and the mandated reviews of TRIPS and TRIMS. Also in the work programme are more focused discussions on the four Singapore issues; examination (in two new working groups) of the issues of 'trade, debt and finance' and 'trade and technology transfer';electronic commerce; and small economies.

Perhaps the most controversial aspect of Doha and its preparatory process was the treatment of the Singapore issues. Despite opposition by a large number of developing countries to negotiations in these issues, successive drafts of the Ministerial Declaration (released in Geneva and then in Doha) committed members to negotiations. Views of developing countries in these and other areas were ignored in the drafts, causing frustration among them and raising anew the issues of non-transparency and lack of democracy. In a final working session,several developing countries requested amendments to the final text to remove the commitment to negotiate the Singapore issues, and this led to a compromise in which the Conference chairman announced that an explicit consensus would be needed at the Fifth Ministerial Conference before negotiations could proceed. Nevertheless, the Declaration indicates that the discussions on these issues until the next Ministerial Conference will take on the tone of pre-negotiations.

The Doha process also provoked dissatisfaction in many developing countries with the non-transparent, manipulative and undemocratic nature of decision-making in which the views of a large section of the membership were systematically ignored in the most important text embodying the most significant decisions of the WTO Conference. A hotly disputed draft of the Ministerial Declaration produced in Geneva was transmitted unchanged (and without indicating differences of views on crucial topics) to the Doha Conference, thus placing developing countries at a great disadvantage. Doha also saw the return of the 'Green Room' process where a small, exclusive group of countries negotiated parts of the final Declaration in a marathon all-night session. Unless the decision-making system and procedures are reformed to enable fair and effective participation of developing countries, their efforts to promote their interests and views will not bear fruit.

PART I:
Trade, The Trading System and Development

Trade and Development

Trade should not be an end in itself but a means to balanced, equitable and sustainable development. The global trading system should thus be oriented towards the satisfaction of the material and non-material needs of the world's people. Aspects of trade that can serve this goal should be encouraged and promoted. Aspects that are inappropriate, at least at particular periods or in particular conditions facing a country, should be treated with caution. This can be contrasted with the current dominant approach, the main goal of which is the attainment of 'free trade' in all countries, and whose main operational principle is the removal of 'trade distortions' on the assumption that there is an automatic link between trade liberalization, on the one hand, and development,poverty eradication and improvement of people's welfare, on the other.

The rules and regulations that govern relationships between countries and constitute the multilateral trade regime should also provide an enabling framework that encourages and promotes greater balance in the world economy, taking into account the great imbalances in production and trade capacities between developed and developing countries.Countries with stronger capacities can better afford to operate on a free trade basis, as their production units are more efficient and able to compete globally than are countries with weaker capacities. The latter should be given greater flexibility so that their domestic units of production can remain viable; indeed, these units should receive capacity-building support through both domestic state assistance and international cooperation so that they can participate in global trade and compete on better terms. Differential treatment of countries with different capacities is, therefore, essential if there is to be fairness in the operations and outcome of the trading system.

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The multilateral trade regime should also recognize and facilitate the implementation of national development strategies of developing countries. It should assist in satisfying their needs for domestic savings, productive investment,technology development and domestic capacity building, including the strengthening of local enterprises, cooperatives and farms. It is on the foundation of stronger domestic productive capacity that weaker countries will be able to improve their export performance and benefit from the trading system.

Developing countries, depending on their particular situation over time, also need to strike a fine balance between the competing claims of production oriented to the domestic and external markets, as well as between obtaining inputs from domestic and external sources. It is important that they attain this balance within the context of an overall development strategy in which external trade, while viewed as an important and even crucial element, is nevertheless viewed as only one element in generating conditions for the complex and dynamic processes of sustained growth and sustainable development.

At the national level,trade should contribute to employment growth, the eradication of poverty, the attainment of greater social equity, and the fulfillment of basic needs (in food, health,education, housing and information), within the context of environmental sustainability.

At the international level, the trading system should cater especially to the needs of the least developed and developing nations,which comprise the majority of the world's population. Members of the trading system as a whole should identify the weaknesses of less developed members, and adopt operational principles, rules and practical measures to assist them in improving their terms of trade, their capacity to export effectively and beneficially, their ability to tailor their imports to the conditions of the domestic economy, and their ability to have a balance of trade and overall balance of payments that is healthy or at least sustainable.

In contrast to this ideal system, the actual operation of world trade exhibits many imbalances, owing partly to the differences in capacities between developed and developing countries and the inequalities in the terms of trade of their main exports (commodities and manufactures); and partly to the rules of the multilateral trading system. These imbalances combine with inappropriate trade policies and development policies to place developing countries in a position in which they are unable to surmount their weak productive and trading capacities.

Trade Liberalization, Development, and the Need to Balance Imports and Exports

Trade liberalization, which has become an extremely fashionable policy prescription, should not be seen as a panacea, as it is only one of several potential instruments for development. To realize its potential, and enable liberalization to work in favour of development requires conditions tailored to the specific requirements of each country. The 'optimal' conditions for trade may differ from country to country, depending on such factors as the stage of development, resource endowment, and conditions relating to market access and prices of traded products. Thus, a one-size-fits-all approach will not work and, if enforced, might cause more harm than good. Each country has to make decisions on what, for it, constitute appropriate processes, degrees and sequencing of trade and trade liberalization. The role of trade (and what constitutes appropriate trade policy) may be different for countries with different conditions, including differences in levels and stages of development. The multilateral trading system should, therefore, be sensitive to the differential needs of different countries.

The relationship between trade liberalization and development lies at the heart of trade and development policy. There are two main aspects to trade: imports and exports. It is necessary to attain a balance in the development of each and in the relationship between the two. The factors determining imports and those that determine exports may differ. A developing country may be able to control how fast it liberalizes its imports, through policies relating to tariff and non-tariff barriers. However, it is much less able to influence the level and rate of growth of its exports,especially in the short term.

Trade liberalization has major implications in this context.Developing countries now face two major types of problems that hinder their effective and beneficial participation in international trade: pressures to liberalize their imports,affecting local production units in various sectors,including industry and agriculture; and the lack of adequate export earnings,export capacity or opportunities. Many developing countries have taken measures to rapidly liberalize their imports, and these have caused a surge in the inflow of imports. However, the growth of export earnings has lagged, due to a combination of factors, including a decline in commodity prices, continuing barriers to industrial exports and supply constraints. As a result,there have been greater imbalances between imports and exports in many developing countries, adding to their trade deficits and external debt problem. The difficulties caused by import liberalization and the

hurdles faced in attempts to expand exports are dealt with below, followed by the consequences of poorly planned trade liberalization.

Pressures for Rapid Import Liberalization and Need for a More Realistic Approach

Pressures on developing countries to rapidly open their economies to imports result from the WTO's operational principles and rules as well as policy prescriptions of the International Monetary Fund, the World Bank, regional development banks and bilateral aid donors imposed as conditions of debt rescheduling, new loans and aid. According to orthodox theory, trade protection has negative effects, while trade liberalization brings benefits. While the negative effects of trade liberalization are sometimes recognized,they are seen as only temporary. According to the proponents of rapid liberalization, cheaper imports benefit the consumer, and generate greater efficiency in local firms that are forced to compete to survive. Inefficient firms should close down,freeing resources to move to more efficient sectors, including for exports, and this is expected to generate new jobs and higher revenues. Overall, the economy is expected to gain.

However, this theory has been challenged by empirical evidence that indicates that there is no straightforward correlation between trade liberalization and overall economic growth. 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 export growth of LDCs, on the other. In fact, it found that in many LDCs, trade liberalization had been accompanied by de-industrialization, and where export opportunities expanded they were 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) and are elaborated later in this paper.

Orthodox theory is also challenged by an emerging view that several other pre-conditions have to be present before trade openness can be of net benefit to developing countries. These include an adequate level of competitiveness of local firms or farms, the capacity to overcome supply-side constraints in producing for exports, adequate levels of prices for the export products of developing countries, and the existence of export opportunities or adequate market access for their products. Other factors increasingly stressed by the international financial institutions include macroeconomic stability and good economic governance. In the absence of some or all of these prerequisites, import liberalization may not result in the projected benefits and may instead produce adverse results. It is thus critical to decide on the appropriate timing of liberalization in relation to the presence or absence of these prerequisites. A more realistic approach would enable developing countries to first establish these conditions and integrate trade liberalization into their overall national development strategy when and where appropriate, rather than pressuring them to move towards an overly hasty liberalization of imports.

Difficulties and Constraints on Developing Countries' Efforts to Expand Exports

In many developing countries, rapid liberalization and increased imports were not matched by a corresponding expansion of export earnings. Most developing countries still depend on a few export commodities, the prices of and demand for which are usually beyond their control. There has been a continuous decline in the price of commodities in relation to prices of manu-

factures. This has been exacerbated by the emergence of substitutes. This combination of factors has adversely affected the export earnings and prospects of many developing countries in their traditional export sectors.

To realize its export potential, a country must have the physical infrastructure and the human and enterprise capacity to produce competitively for both the local and export markets. This is a long and difficult process, making it unrealistic to expect that a developing country can quickly shift its resources from uncompetitive domestic industries threatened by the fast pace of import liberalization to globally competitive export industries.Even in the theoretical and analytical literature, there is no consensus on how developing countries can build the necessary conditions to enable them to successfully participate in the world market as major non-commodity exporters.

It is rare for a developing country to be able to become a world-class exporter of modern industrial products based on its own locally owned enterprises. The Republic of Korea, following a path pioneered by Japan, is one of the few such examples. However, Japan and the Republic of Korea developed their industries in a pre-WTO environment. Today, with WTO rules that severely constrain the use of subsidies for local industries,prohibit investment measures favouring the use of local components, and make it difficult or costly for local industries to make use of technology that is subjected to intellectual property protection, it is far more difficult for developing countries to enable local companies to compete successfully in the world market for modern industrial products.

A few developing countries have succeeded in developing export industries based primarily on FDI. Foreign companies based in these countries made use of their own technology and marketing channels (often buying inputs and selling the finished products to their own associate or parent companies) to export. However, most of the industries are labour-intensive rather than high-technology, and the host countries have to work hard to remain competitive as the foreign companies can easily shift their operations to other countries that have lower costs. Moreover, it is erroneous to believe that developing countries in general can base their strategies for employment generation,export growth and GDP growth primarily on FDI. While it is true that FDI has significantly contributed to attaining these goals in a few countries, such as Singapore and Malaysia, it is because of the extraordinarily high concentration of FDI in these countries that it has been able to do so. If FDI were evenly spread over all developing countries, the amount per country would be too insignificant to enable it to be the main basis for job absorption or the growth of industrial exports, and most of these countries would not be able to rely on it to generate sufficient industrial exports to supply the basis for their development.

Therefore, what is much more important for developing countries as a whole is the development of their local industry, services and firms.They should rely on their own domestic capital and enterprises to generate jobs, livelihoods, growth and exports (if that country is to succeed as an exporter). As a rule, they also need to go through the process of building their own enterprises and industries through the efficient mobilization and use of savings; investment in health, education and skills development;development of management and marketing skills; and accessing and upgrading technology. To break into the export market, companies must also establish regional and international marketing channels, brand development, or strategic alliances with bigger companies. For a country to go through these

processes successfully may not be an impossible task, but it is a very difficult one, requiring planning, discipline and hard work at every stage, with many risks and no guarantee of success.

Even then, successful export performance will also depend on market access, especially for developing countries, and the extent of this access will be largely beyond the control of any individual developing country. There are currently many tariff and non-tariff barriers in developed countries to several products of export interest to developing countries which will need to be removed if the export potential of developing countries is to be realized. As UNCTAD has pointed out, developing countries have been striving hard, often at considerable cost, to integrate more closely into the world economy. But protectionism in developed countries has prevented them from fully exploiting their existing or potential comparative advantage. The missed opportunities for them due to trade barriers are estimated at an additional $700 billion in annual export earnings in low-technology industries alone (UNCTAD 1999c: 143).

The Consequences of Poorly Planned Trade Liberalization

The above discussion has pointed out that there are different determinants of the behaviour and performance of the two main aspects of trade: imports and exports. In order to maintain a sustainable trade policy, which also assists in development, a developing country has to aim for balance between imports and exports. If there are persistent negative imbalances, there will likely be adverse consequences for growth and development. For example, if import liberalization proceeds while conditions for successful export growth are not yet in place, the resulting increased trade and balance of payments deficits may add to external debt and the debt-service burden, thereby reducing growth and increasing unemployment.

In the short run, the trade deficit can be sustained by attracting enough foreign credit and capital to cover it. However, if the deficit is long-term and structural, the inflow of capital will not necessarily help, as it increases vulnerability to a larger capital outflow later. Moreover, the large inflow of foreign direct investment (FDI) and credit or portfolio capital can add to future balance of payments problems even on the current account, due to large outflows of investment income.

As indicated, 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 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 in these countries contributed to this negative phenomenon. According to UNCTAD, it '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' (ibid: vii).

It is thus imperative to reorient trade policy and the WTO operational principles away from the simplistic assumption that trade liberalization necessarily has a positive impact on developing countries. If the trading system is to meet the development needs and goals of developing countries, the criterion by which a policy should be judged should be whether it is development-consistent or development-distortive, rather than whether it is trade-consistent or trade-distortive.

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The Relationship of Trade to Other Economic Policies

Trade and other economic policies should be mutually consistent and supportive. This is particularly important in the case of finance. On the one hand, trade policies should not result in greater problems in the external finances of developing countries. Sustainable trade balances and sustainable balance of payments are necessary to enable developing countries to avoid falling into structural deficits and an external debt trap. On the other hand, the global financial system should also promote conditions that support healthy trade. The instability that characterizes the present global financial system has been harmful to trade as shown by the Asian financial crisis of 1997-98 and the negative trade impact of the recessions it caused. There is thus an urgent need for reform of the global financial architecture in a manner that supports rather than undermines development-enhancing trade.

Structure of the Report

Following this discussion of the role of trade and the world trading system in the context of development, the report provides a brief history of the evolution of the current trading system in Part II and analyses that system as it is embodied in the World Trade Organization in Part III, taking several WTO agreements as illustrations. Part IV examines the impact of the WTO and some of its major agreements on development and developing countries since its establishment in 1995. Part V offers proposals for improving the multilateral trading system. Finally, Part VI provides some longer-term proposals for institutional and structural reforms.

PART II: History and Evolution of the Trading System

Free Trade: Myths and Realities

A number of myths and misconceptions surround the origins and evolution of the international trading system. One such misconception is that the General Agreement on Tariffs and Trade (GATT) 1947 and its successor the WTO are based on the practice of 'free trade'. The reality is that they regulate international trade on the basis of negotiated rules. Proponents of GATT/WTO often employ 'free trade' rhetoric,contributing to the public perception that the system uniformly maintains the principle and practice of free trade. But, as pointed out in an earlier era by Hecksher (1934), free trade theories have always been advanced by the major developed countries to further their own interests.

The GATT/WTO system is governed by rules, which reflect the balance of power among members that adopt them. Throughout the post-war GATT/WTO system, decision-making power has been held largely by the major trading parties. The rules do not reflect free trade for all products. Significantly, for most of the post-Second World War period till now, developed countries have maintained protection in two major sectors, agriculture and textiles, in which developing countries have a comparative advantage. Thus 'free trade' has not been practised by developed countries in areas that matter greatly to developing countries, and this neglect has been facilitated by the rules of the system.

Mercantilists and free-traders both believed in and promoted exports; free-traders also believed in freeing imports,irrespective of what the other countries did. To the extent that the post-war GATT system (and the exchange of concessions) has been based on the principle of reciprocity, it is mercantilist or neo-mercantilist. It has become even more so since the 1980s, with governments, and often their leaders personally, promoting the interests of their countries' corporations — whether it be at the GATT/WTO, through bilateral influence and pressure or even through taking planeloads of business leaders along on state visits (Raghavan 2001g).

Another popular misconception is that today's developed countries were able to grow fast economically because they practised free trade. The reality is that during their own development and industrialization processes, these countries protected their domestic industries behind tariff walls. Tariff liberalization took place when the home industries were sufficiently strong or efficient to stand up to competition from imports. The industrial revolution began in Britain towards the end of the 18th century, under conditions of mercantilism,and provided the basis for the growing export trade for textiles and other industries.Britain did not adopt the *laissez faire* principles of Adam Smith's free market nor Ricardo's free trade, until its manufacturing productive capacity was much greater than that of other countries.

In the second half of the 19th century, Britain was preoccupied with spreading the free trade doctrine in Europe. Starting with the Anglo-French trade treaty of 1860, and the subsequent treaties between France and other Europeans that incorporated the most-favoured-nation treatment, there was a period of 'tariff disarmament' in continental Europe. But this

trend did not last long. In the three decades preceding the First World War, rising protection was the common trend in continental Europe, particularly after France and Germany found that 'free trade' benefited Britain but not themselves. Both countries raised their tariffs, though gradually, also in response to the inflow of cheap grain from the United States and Russia and the Long Depression of the 1870s. By 1913 all of the large countries had adopted protectionist policies. The United States, at the end of its Civil War, began import-substitution industrialization behind rising tariff barriers. Historically from the time of the Revolution to the Civil War, the American States played a major role in promoting economic development(Handlin 1947). Japan (after gaining autonomy over tariff policy) introduced tariff protection for its industries in the late 1890s. However, the British, French and other European colonies (in what is now the developing world) practised economic liberalism, under the rule of the metropolitan powers. These colonies suffered from arrested industrialization or, as in the case of India, de-industrialization. The British established a market for its textiles and other products in India, firstly through the East India Company, and then in 1857 by direct British rule, thereby destroying the local textile industry (Raghavan 2001g).

The foregoing historical outline shows that industrialization and economic growth took place in the developed countries under conditions of protection, though this does not imply that protection always leads to or results in industrialization and growth (see e.g., Bairoch 1993;Bairoch and Kozul-Wright 1998; Hobsbawm 1994).

The Havana Conference and the Origins of GATT

Following the creation of the World Bank in 1944 and the IMF in 1945, GATT 1947 was an offshoot of an attempt to create the third pillar of the post-war international economic system, the International Trade Organization (ITO). The ITO was to be embodied in the Havana Charter to result from the Havana Conference. Preparatory work was initiated by the UN Economic and Social Council (ECOSOC), but its origins go back earlier, to discussions and agreements between the United States and Britain during the Second World War. The U.S. position was that all non-tariff barriers should be abolished and tariff barriers reduced through international negotiations (Dam 1970: 12). In the economic sphere, the two wartime allies agreed on common action (open to others of 'like mind') to expand production,employment and exchange of goods; elimination of all forms of discriminatory treatment in international commerce; and reduction of tariffs and other trade barriers.

As leading industrial powers, both the United States and Britain saw their prosperity as dependent on the ready supply of cheap raw materials and expanding markets for manufactured goods. During and immediately after the war, the two governments advocated the worldwide reduction of tariffs, the removal of trade barriers and 'equal access to the markets and raw materials of the world.' Their discussions focused on the 'removal' of restrictions to trade by others, and there is very little reference in the discussions to the problems that would be faced by the 'undeveloped (UN terminology of those times for what are now called 'developing') countries. Under pressure from its self-governing colonies (Australia,Canada, New Zealand), the UK made some half-hearted attempts to assert the right of undeveloped countries to apply tariffs for a limited period, under adequate safeguards, to protect their infant industries. The United States,however, was not willing to make even this concession.

In talks relating to the Havana Charter, the United States proposed that all non-tariff

barriers be prohibited forthwith, within a code for international trade that would limit the right of governments to interfere with the free flow of trade (Dam 1970). The U.S. 'code' approach would establish a framework that included the reduction of tariffs, a flat prohibition of all non-tariff barriers, and severe limits on the right of governments to interfere with private trade. It was the commercial policy framework formulated and pushed by U.S. diplomats in the 1940s, in the Preparatory Committee for Havana, that produced the General Agreement (the commercial policy chapter of the Havana Charter) and its provisional protocol of application pending the entry into force of the Havana Charter. This approach did not change over time, and it has been very much evident through the twists and turns of the various rounds of GATT negotiations (and the changes made to the framework), culminating in the Uruguay Round and the WTO (Raghavan 2001g).

The United Nations convened the International Conference on Trade and Employment in Havana in 1948. The United States took the view that the less developed countries could best pursue economic development by participating in the multilateral trading system, and with the lowest possible level of tariffs. This view had the varying support of Canada, the UK and some others. India, Brazil and Australia took the opposite view, demanding special Charter provisions for economic development, and for flexibility to use tariffs and other barriers for infant-industry protection. The Charter chapter on economic development and reconstruction was based on the compromise that emerged.

The Havana Charter, drawn up at the Conference and signed by participating countries, included provisions on Employment and Economic Activity, Economic Development and Reconstruction, Commercial Policy, Restrictive Business Practices (of private parties), Intergovernmental Commodity Agreements and Institutional Provisions. It also envisaged the establishment of an International Trade Organization (ITO) with a comprehensive mandate and programme.However, after the Havana Conference, the U.S. Senate quickly made clear that it would not ratify the Charter and the then U.S. President Harry Truman in effect withdrew it from consideration rather than have the Senate vote to turn it down.

With the U.S. decision not to ratify, the Havana Charter did not come into effect, and the International Trade Organization was not established. However, the provisions relating to tariffs and other matters on import and export had been finalized earlier in the preparatory process for the Havana Conference and were included in what was called the General Agreement on Tariffs and Trade, which was signed 30 October 1947. Through a Protocol of Provisional Application, the signatory countries agreed to bring the GATT into operation provisionally from 1 January 1948, without waiting for the full Charter to come into effect. The GATT therefore came into operation as an interim step and continued until 31 December 1994, after which it continued as an annex to the Marrakesh Agreement establishing the WTO (Das 2001d).

When the proposal for the ITO collapsed, so too did the Charter provisions on international commodity agreements and those relating to economic development.However, a very attenuated form of the latter crept into GATT in Article XVIII and Article XVIII:B, which was added during the revisions to GATT that occurred in 1955.

Interestingly, as a point of historical comparison, no one at that stage seemed to have talked about the 'balance of rights and obligations' that had already been established, nor was it mentioned that those seeking a change in the rules would have to pay a price. This con-

trasts with the present debate in the WTO, where developed countries appear to be asking developing countries to pay a price or to be prepared to give fresh concessions in return for recognizing their requests to interpret or change the rules in order to resolve problems of implementation of the WTO agreements.

The Haberler Report, UNCTAD and After

In the history of the post-war GATT/WTO system, there has been a major recurring theme: that developing countries have not been able to obtain their fair share of benefits from the trading system. Through the decades, from the 1950s to the present,developing countries have expressed dissatisfaction and frustration at the barriers placed on the products of export interest to them by the developed countries. Despite reports,processes and promises established to deal with this complaint, the same problems have remained and continue to plague the trading system.

In the history of the post-war GATT/WTO system, there has been a major recurring theme: that the developing countries have not been able to obtain their fair share of benefits from the trading system.

In the 1950s, the complaints from the developing world that their interests were not adequately taken into account led to the establishment of an expert committee (comprising Professor Haberler as chairman, and Meade, Tinbergen and Campos as members) by the GATT Contracting Parties. The Haberler Committee Report of 1958 stated that the problems faced by the less developed countries were due to trade policies of the developed countries. The GATT Contracting Parties agreed to undertake a programme of action and set up three committees; one of these, Committee III, had the responsibility of looking at the trade measures restricting the trade of the developing world (GATT Basic Instruments, 7th Supplement 1959).

The Committee III report showed that high tariffs faced the exports of developing countries over a wide range of products—vegetable oils, coffee, tea,cocoa, jute products, cotton products, leather goods and a variety of sophisticated manufactured products. The report also revealed that in addition, these exports faced domestic taxes and levies that in fact restrained consumption. Since there were no 'equivalent' domestic products, the internal taxes were not seen as a violation of GATT, and yet they came in the way of demand and hence imports.GATT agreed to deal with them.

However, over the years, the barriers to developing countries'products have remained. Twenty years after the Haberler Report, this was the situation at the end of the Tokyo Round of multilateral trade negotiations in 1979 (GATT 1979). Under the category 'Tropical Products',there were 4,400 dutiable items at tariff-line level on which the developing world put in requests for tariff concessions. According to the official GATT report on the outcome, concessions were granted on 2,930. The Secretariat data masks the smaller number of real concessions, since it combines together the Most Favoured Nation (MFN) concessions that were bound, and the Generalized System of Preferences (GSP) concessions that were not. The secretariat report says that concessions and contributions were granted more particularly on such categories of products as coffee and tea and extracts,spices, cocoa and cocoa products, and miscellaneous meat and meat products.There was less progress on areas of importance to the developing countries,including fishery products,honey, unprocessed and processed fruits and vegetables, vegetable oils and sugar and sugar products. This category of products still faces high tariff barriers and tariff rate quotas in terms of the WTO Agreement on Agriculture in the European Communities (EC), the United States and Japan.

The requests from developing countries in the Tokyo Round under Customs Cooperation Council Nomenclature (CCCN), chapters 25-99 focused on rubber and rubber products, leather and leather products (including footwear), wood and wood products, paper and paper products, textile fibres and textiles not covered by the Multi-Fibre Arrangement (MFA). The GATT report notes that although there were some important concessions in some sensitive areas,such as leather products and footwear, the level of concessions in such areas was smaller than it was for others (GATT 1979).

Several of the 'barriers' identified at the time of the Haberler Report (1957-58) remained in 1979 at the end of the Tokyo Round, and, indeed,they so remained even after the Uruguay Round! The official report on the Tokyo Round also points out that on the issue of internal taxes— sales or value added taxes, applied without discrimination and thus legal under GATT Article III — requests to remove selective taxes on items such as coffee, cocoa, tea (processed and unprocessed), spices, vegetable oils and tobacco were met only by an undertaking by some developed countries *not to increase* such taxes on beverage crops and spices.

The report on the Tokyo Round also noted discrimination on the basis of rules of origin and processing against developing countries' exports as well as quantitative restrictions against their agricultural exports. (After the Uruguay Round most of these primary products still face very high tariffs and also tariff quotas administered non-transparently, and sanitary and phytosanitary (SPS) measures used to restrict imports.)

The 1958 GATT Programme of Trade Expansion (a study programme of the Haberler Report) and the 1963 Action Programme called for standstill on all new tariff and non-tariff barriers,elimination within one year of illegal quantitative restrictions,elimination of duties on primary products, reduction and elimination of tariffs on semi-processed and processed products and elimination of internal taxes that inhibit consumption of these products. The ministers of all developed countries,except those from the European Economic Community (EEC), agreed to the work programme, and the EEC endorsed the objectives in principle. But by the end of 1963, the developed countries still refused to commit themselves to a programme to lower the barriers. Several of the trade barriers identified in the 1960s against exports of the developing world still remain as barriers in 2001 (Raghavan 2001g).

Concerns by developing countries over their lack of benefits in trade and other issues led to the creation in 1963 of the UN Conference on Trade and Development, at which these countries' demands were tabled. The following year, in response to the emergence of UNCTAD, the GATT Contracting Parties agreed through a protocol to the addition of Part IV (on Trade and Development) to GATT, which came into force a year later. Part IV recognizes the need to provide 'more favourable and acceptable conditions of access' for developing countries'primary products, and increased access 'under favourable conditions' for processed and manufactured products of export interest to less-developed countries. But obligations in Part IV are not legally binding and have remained on the basis of implementation on a 'best-endeavour effort.'

The developed countries were never happy with UNCTAD and the UN becoming involved in economic and trade issues in order to fill in the gaps in the trading system. When Canada sought U.S. support for the Multilateral Trade Organization (MTO; renamed the WTO at the last moment) in 1993, a major argument was that this would put an end to UNCTAD involvement in trade matters.

This brief history shows that at every stage, GATT and the major trading nations moved

only very reluctantly to enable developing countries to draw benefits from the trading system, and always without any contractual rights and obligations (Raghavan 2001g).

Accommodating Major Power Interests: Textiles and Agriculture

The outstanding examples of the way in which the principles and rules of the system have been bent to accommodate the interests of the major players are found in the treatment in GATT/WTO of two major sectors: textiles and agriculture. Although the developed countries took the lead in establishing the GATT framework for free trade across borders, and they constantly preach the virtues of free trade and demand that developing countries eliminate their trade barriers, they have themselves adopted highly restrictive policies to protect their agriculture and textiles sectors. To make possible these protectionist national policies, the GATT Contracting Parties (CPs) agreed to allow departures from the general GATT principles and normal GATT rules for these two sectors.

Textiles and Clothing

In the early 1950s, the extraordinary growth of manufacturing exports from Japan began causing apprehension among developed countries, most of which resorted to outright discrimination against Japanese products. This practice continued even after 1955, when Japan entered GATT, through invocation of Article XXXV (on non-application of the agreement between particular contracting parties) on the ground that Japan was a low-wage country. In the late 1950s, as some of the developing countries began exporting manufactured products (mainly textiles and clothing, and leather products), the instruments fashioned to keep out the Japanese products were invoked.

In 1959, at U.S. request, GATT Contracting Parties decided to consider the 'question of avoidance of market disruption'–an attempt to continue illegal quantitative restrictions. The working party sidestepped the argument that GATT had sufficient provisions to deal with the problem (e.g., the safeguards provisions in Article XIX), and instead advocated a procedural approach for (1) explicit recognition of the problem of 'market disruption,' (2) multilateral consultations for 'constructive solutions,' (3) procedures for 'orderly expansion of international trade' and (4) existing rights and obligations of GATT not to be prejudiced (GATT Basic Instruments, 8th Supplement 1960; 9th Supplement 1961). The Contracting Parties agreed to avoid 'market disruption.' Using a detailed definition (provided by the GATT Secretariat), they decided to establish a permanent working party to consider 'market disruption' and, with the assistance of the International Labour Organization (ILO), to produce a report on the factors underlying this phenomenon. Meanwhile, the Japanese government entered into a series of 'voluntary export restraint' agreements to avoid market disruption, under which Japan was to limit exports of 'sensitive' products and which enabled importing countries to take special measures.

GATT then moved to give special attention to the products said to be causing the greatest market disruption—exports of cotton textiles from India, Pakistan and Hong Kong. And with the launch of the Kennedy Round came the short-term cotton textile agreement (1 October 1961 to 31 September 1962), followed by the long-term agreement—1962-67, later extended by another three years. This was replaced by the Multi-Fibre Arrangement (MFA) in 1973, initially for four years, but repeatedly extended until 1994, with more and more restrictions added on (through expansion of product coverage).

The special restrictive regime for textiles involved fixed limits or quotas for the export of

textiles and clothing from developing to developed countries. Some of the textile fibres and products not covered by the MFA at the time of the Tokyo Round (1973-79) were brought under the MFA (and the discriminatory quota restrictions) in the successive protocols for extension,including one on the eve of the launching of the Uruguay Round. Thus, it also appears that every time GATT claimed it was launching a trade-liberalizing new round of negotiations, this was accompanied by more restrictions and 'authorized departures'from the GATT principles relating to the exports of the developing world.

Part of the Uruguay Round outcome was the Agreement on Textiles and Clothing (ATC), which came into effect in 1995. Under the ATC, quotas are to be progressively phased out over 10 years. However, almost seven years later, and following three stages of its implementation, there has been little real liberalization, and restrictions could remain until the end of the 10-year period on 1 January 2005. Indeed, the question has been raised as to whether restrictions will be removed even then (see Parts III and IV below).

Agriculture Waivers

Although the United States took the position, in its negotiations with Britain preceding the Havana Conference, that countries should remove all quantitative restrictions, the U.S. Agriculture Department wanted the agriculture sector to be excluded. The result was the exception for agriculture and fisheries products in Article XI of GATT (dealing with general elimination of quantitative restrictions). But the United States found that even this 'tailor-made' provision did not suffice to justify its quantitative restrictions on imports of dairy products. A complaint by the Netherlands was upheld, and the Dutch obtained permission to retaliate in 1953. The United States then enacted Section 22 of the U.S. Agriculture Adjustment Act, and quotas were imposed on imports of cotton,wheat,peanuts,oats, rye and barley and products made out of these, as well as dairy products. The GATT Contracting Parties gave a broad waiver to the United States over Section 22. Some of the European countries (Belgium, Luxembourg and Germany) that had been maintaining restrictions, citing balance of payments problems, faced difficulties when their currencies became convertible, and also sought waivers for agriculture (GATT Basic Instruments, 3rd Supplement 1955; 4th Supplement 1956). In a sense the U.S. waiver led the way to and encouraged the EEC to launch its Common Agriculture Policy (CAP) as an essential element of the Rome treaty of integration (Raghavan 2001g).

The U.S. waiver was maintained from the mid-1950s to 1995, when the Uruguay Round Agreement on Agriculture (AoA) came into effect. The EEC system of high subsidies to protect European farmers was also built up and maintained during this period. While the AoA (which is supposed to impose disciplines on import protection and domestic and export subsidies) has been in operation for several years, developed countries still maintain high tariff protection, and the total value of their subsidies has in fact increased (see Parts III and IV).

The GATT Rounds

There were eight rounds of trade negotiations under GATT: Geneva (1947), Annecy (1948), Torquay (1950), Geneva (1956), Dillon (1960-61), Kennedy (1964-67), Tokyo (1973-79), and Uruguay (1986-94). The Uruguay Round resulted in the Marrakesh Agreement that established the WTO. The first six rounds concentrated mainly on tariff reduction. The Tokyo Round also included other issues, resulting in codes applicable only to countries that accepted them. The

Uruguay Round was very comprehensive, and included tariffs, several other trade areas, and two non-trade issues (services and intellectual property rights).

If the post-war history of business cycles of expansion and recession is examined, it is clear that there have been as many cases of recession after the conclusion of a GATT negotiating round as cases of expansion.Thus, economic expansion cannot be cited to applaud GATT, without also blaming it for the recessions. While statistical analyses suggest that tariff reductions have a 'substantial economic effect,' assertions about a net positive effect and 'welfare gains' for everyone in a country or across countries differently situated, and about causation,are open to challenge (Raghavan 2001g).

In every round of multilateral trade negotiations, just before and after its conclusion, the GATT secretariat and its economists, as well as some other trade economists,usually produce projections of tariff cuts leading to the expansion of world trade valued at so many billions of dollars. But as Kenneth Dam concedes: 'The effect of tariff reductions on promotion of world trade is problematical. No one has yet devised a satisfactory method of determining the economic effect of tariff reductions, since the effect depends on unmeasurable factors such as elasticities of supply and demand... Even after the fact, it is difficult to isolate the impact of tariff reductions from all of the other factors affecting the rate of importation....' (1970: 56-57).

The post-war expansion of the world economy was due to the operation of a number of macroeconomic processes, including Keynesian economic policies, and the expansion of trade was an effect rather than the cause of economic growth.

There is a view that GATT was responsible for the post-war expansion of trade, production and employment, and that the eight rounds of GATT multilateral trade negotiations brought about liberalization of world trade and expansion of employment.However, an alternative view is that the post-war expansion of the world economy was due to the operation of a number of macroeconomic processes,including Keynesian economic policies, and that the expansion of trade was an effect rather than the cause of economic growth. In this view, the GATT processes merely facilitated the expansion of trade to accommodate the productive forces at work (Raghavan 1990; Kelkar 1986).

Until the Kennedy Round, the tariff negotiations in the GATT 1947 trade rounds were all bilateral, and based on reciprocal exchange of concessions. In fact, until Article XXVIII *bis* (on tariff negotiations) was added, the only basis for tariff negotiations in GATT was a product-by-product basis, and thus entirely based on 'reciprocity.' And thus too, the emphasis was on 'principal suppliers' and their rights when amendments to tariff schedules were sought. However, there is no definition of 'reciprocity' in GATT. It was only after Article XXVIII *bis* was added in the Kennedy Round that a linear approach for tariff cuts was added, and this was also adopted in the Tokyo Round.

A Ministerial meeting in Tokyo launched the Tokyo Round in 1972. The declaration (para. 7) contained an announcement that the developed countries did not expect reciprocity from developing countries for commitments made to them, and the latter were not expected to make contributions inconsistent with their individual development, financial and trade needs. The developed countries also agreed to take special measures to promote the exports of the developing countries and recognized the importance of maintaining and improving the Generalized System of Preferences (GSP) and application of differential and more favourable treatment to the developing countries.They also decided to pay special attention to the problems of least developed countries.

Though GATT (in the secretariat report on the Tokyo Round) has made the claim that various steps had been made to give effect to the promises to the developing world in the Tokyo Ministerial Declaration, in fact the situation as assessed by these developing countries at the end

of the Round was that there were more problems for them and no particular benefits. Even the GATT Secretariat's report could claim only the legal basis for the GSP, rather than any bound tariff cuts and market openings, as a positive outcome of the Tokyo Round negotiations in response to the concerns of developing countries.

On industrial products,negotiations resulted in tariffs on all the products being reduced from the pre-Round 7.2 per cent weighted average to a post-Round 4.9 per cent. But products of export interest to the developing world did not fare well. In terms of the tariff escalation with progressively higher stages of processing, the tariff barriers to developing countries' exports were not small. Moreover, their principal manufactures and semi-manufactures — textiles and clothing, footwear and other leather and leather products, and other labour-intensive goods — faced both tariff barriers and non-tariff barriers. The MFA covering their textiles and clothing exports was also tightened up.

Several of the issues that the developing world had identified as important remained unresolved: a comprehensive safeguards agreement,liberalization of the trade in tropical products and other agricultural commodity exports,tariff escalation and peaks, and so on. At the end of the Tokyo Round, these were put onto a work programme, which in fact was launched only at the 1982 GATT Ministerial meeting.

The Uruguay Round and After

Until the Kennedy Round, the major aim of the developed countries had been to enter the markets of other developed countries. The developing world was seen essentially as a source of raw materials. It was only after the Kennedy Round that the developed countries became interested in breaking into the markets of the developing world. This objective became even more evident in the Uruguay Round, preparations for which took place in the early 1980s.

At the conclusion of the Tokyo Round in 1979, U.S. negotiators said that they were to be the last major negotiations for the century. But two years later, they called for new negotiations and new issues — and for greater integration of the developing countries, a code phrase for their assuming more obligations. At a GATT Ministerial meeting convened in 1982, U.S. negotiators brought their new issues (investment,intellectual property rights, services and high-technology goods) on to the agenda. They also sought to deal with agriculture, and proposed a new 'North-South Round' — ostensibly to give more benefits to the South but in fact to gain access to markets of the developing world, particularly those of the newly industrializing countries. The 1982 meeting resulted in a work programme, with services as a subject for exchange of information among interested parties; and the issue of intellectual property rights (IPRs) merely figured as 'counterfeit goods.' But from 1984, the United States began pushing for a new round that would include services, investment and intellectual property. It also intended to attack the protectionist agricultural policies of the EC.

At the outset, developing countries were fairly united, and did not want to enter into any new round until the unfinished GATT business of past rounds was taken up and resolved. Unfinished business included improving market access for developing countries by reducing tariff and non-tariff barriers to their exports; clarifying and strengthening some of the rules, such as the comprehensive safeguards agreement; and ending voluntary export restraints. A preparatory process was set up in GATT, but it did not make much progress, and there was a sharp division along North-South lines. A break in the developing-country front came when Singapore used the opportunity of an Association of South-East Asian

Nations (ASEAN) summit to convince other ASEAN members to agree to the U.S. demands for launching a new round, holding out the prospect of the ASEAN getting better market access (Raghavan 2001g).

After this, the United States, Japan, Canada and the EC began meeting with a group of developing countries, resulting in the Colombian-Swiss ('cafe au lait') text for the 1986 Ministerial meeting at Punta del Este. At the same time, a group of developing countries,led by Brazil and India, stood up against such a round. A compromise brokered by the EC resulted in the launching of the Uruguay Round, with GATT negotiations in goods on one track and separate negotiations in services on another, with the stipulation that when the results were established in each, the ministers would meet to decide on the implementation and institutional arrangements. At the time the Uruguay Round was launched, it was argued that such a large number of items for negotiations was needed, and the bargain was that developing countries would agree to negotiate on the new issues of services, trade-related aspects of intellectual property rights (TRIPS) and trade-related investment measures (TRIMS), in return for which they would get better market access in goods.

Interestingly, before the Punta del Este meeting, the United States, as it had done in previous new rounds, had the Multi-Fibre Arrangement extended again, with even more restrictions.

At the time the Uruguay Round was launched in 1986, the U.S. administration had no fast-track authority, which came only in 1988. But the U.S. Omnibus Trade and Competitiveness Act that provided such authority, and set the negotiating objectives and mandate for the U.S. negotiators, also enacted the S.301 family of trade laws (S.301, Special 301 and Super 301), each of which defined the obstacles to U.S. trade in other countries,and provided for investigations and actions to be undertaken by the U.S. Trade Representative. This threat of sanctions operated throughout the round,which lasted through 1993, and was responsible for several of the developing countries yielding to the U.S. demands on TRIPS and in several other areas.

The Punta del Este Declaration treated negotiations on goods as a 'single undertaking' and those on services separately, with ministers agreeing (in Part III) that the two tracks should begin and end at the same time, and that when the results of both were established the ministers would decide on implementation of all the results. However, by the end of the Round, the two tracks had merged, with the Uruguay round package of agreements treated as a single undertaking. Moreover, while the negotiating mandate on Functioning of the GATT System (FOGS) did not envisage the creation of what would ultimately become the WTO, the final package placed the agreements on goods, services and intellectual property all under the roof of the new WTO, and all subject to its integrated dispute settlement system, thus enabling cross-sectoral retaliation as part of the WTO enforcement mechanism.

Each part of the Uruguay Round negotiations was held among a small group of countries, in a highly non-transparent process known as the 'Green Room' negotiations, in which the developed countries confronted a few leading developing country opponents and applied pressure on them to yield (see Part IV). Since relatively few developing countries were invited to the Green Room meetings, the developed countries enjoyed a level of participation and influence far greater than their share of the membership.

When the 1988 Montreal mid-term meeting failed to settle the issues in agriculture,

safeguards, textiles and clothing and TRIPS, GATT Director-General Arthur Dunkel,as chairman of the Trade Negotiations Committee (TNC), was asked to hold consultations to find a compromise. In fact, he presented a package of proposals that favoured the United States and EC over the developing world, which was forced through in subsequent negotiations (Raghavan 1989a-k).

In 1990, the Brussels Ministerial meeting failed to reach conclusion. When the negotiations resumed in Geneva, negotiations in key areas followed the same pattern among small groups of delegations, with Mr. Dunkel, at the end of 1991, providing compromise texts in each of the deadlocked areas. While the Uruguay Round negotiations were launched on the basis that decisions would be taken by consensus,Mr. Dunkel, in December 1991, presented a package text (the 'Dunkel text') to a TNC meeting and announced that its parts could be reopened and changed only by consensus.

It must be noted that at the time the TNC met for this purpose, the compromise package text had not yet been distributed to the TNC members, and there had been no express decision that this would be the procedure to be followed.Comments on the text or the procedures were heard and recorded only when the TNC met in 1992.

In the subsequent talks, whenever developing countries raised questions about particular parts, Mr. Dunkel told them to talk to their 'partners' and create a consensus for reopening, a practice continued under his successor, Mr. Peter Sutherland. Wherever the United States or EC requested changes, negotiations were reopened, often in offices of some of the key delegations, and the resulting packages given to Mr. Sutherland, who then presented them to meetings of heads of delegation where they were deemed to have been accepted by consensus (Raghavan 1993c-g).

During the period of negotiations, some fanciful figures of gains for the developing world were projected to result from the Uruguay Round, and these were used to induce developing countries to come on board. However, the outcome, it is now recognized,was meagre (Raghavan 1992, 1993b). Another major premise used to induce developing countries to accept the Uruguay Round agreements and the establishment of the WTO and its integrated dispute settlement mechanism was that these would put an end to U.S. unilateralism. But U.S. unilateralism continues, and whether or not any actual retaliation under U.S. S.301 would survive a challenge at the WTO, the United States still wields the threat of unilateral sanctions, to withhold or restrict market access on goods of countries it considers to have gone against its trade interests. The chilling effect of this threat is very much part of the reason why so many developing countries have yielded in trade negotiations.

The Uruguay Round negotiations were concluded in December 1993 and the agreements were signed at the Marrakesh Ministerial meeting in 1994. The WTO agreements include GATT 1994, 12 agreements in the goods area, the General Agreement on Trade in Services (GATS), the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) and the Dispute Settlement Understanding (DSU).

The Uruguay Round resulted in the transformation of GATT into the WTO. The GATT system expanded to incorporate new areas (including services, intellectual property and investment measures) and moved into 'new frontiers.' First, the new issues expanded the GATT mandate to make and enforce rules on issues beyond trade, thereby extending the WTO's authority to subjects beyond trade. Second,whereas the old GATT system made

multilateral rules that only affected members' tariff and non-tariff measures (or trade policies 'at the border'), many of the WTO's agreements involve the domestic policies of members as well. Thus, the 'trading system' has become invasive, in that it now affects some of the critical domestic policies that lie at the heart of development strategy and planning. The WTO now places limits on whether a country can subsidize its local industries and whether investment measures to boost domestic firms and business can be used; influences the manner in which countries treat foreign investments and foreign investors (through the services agreement); and has also imposed on all members a minimum set of high standards for intellectual property protection. Third, the WTO has a strong enforcement system through its integrated dispute settlement system, which enables not only retaliation by one member against another for failing to meet its obligations, but also cross-sectoral retaliation. This means not only that its rules are more likely to be followed, but also that developed countries have looked on the WTO as a vehicle through which policies in their interest can be disseminated and enforced.

Having rules that can be enforced is one thing; and having good rules that promote balance and fairness in outcome is another.

Meanwhile, it has become clear that the commitments made to developing countries, to persuade them to make such heavy concessions in accepting the new issues, have not been fulfilled. In the historical descriptions above, it was demonstrated that the products in which developing countries have a comparative advantage have consistently been protected in developed countries. It now appears that history has repeated itself. The agricultural and textiles sectors continue to be heavily protected, and many other industrial products that the developing countries can export are still facing tariff peaks, tariff escalation and other trade barriers, including anti-dumping actions.

The establishment of the WTO has brought significant additions to the rules of the trading system, and these rules have a stronger enforcement system, thus reinforcing the claim that the WTO is a rules-based system. However, having rules that can be enforced is one thing; and having good rules that promote balance and fairness in outcome is another. As this study will show, there are many flaws in the rules of the WTO with serious implications and effects for developing countries. A strong enforcement system for flawed rules cannot be said to be serving a good function. Therefore it is of critical importance to assess the rules of the WTO and to rectify their weaknesses.

Following the Uruguay Round, major developed countries attempted to introduce more 'new issues' onto the WTO negotiating agenda. At the 1996 Singapore Ministerial meeting they succeeded in establishing working groups in four areas: trade and investment, trade and competition, transparency in government procurement and trade facilitation. Attempts by developed countries, led by the EC, to launch a new round that would include these issues have been opposed by several developing countries. Meanwhile, many developing countries put forward a set of proposals to resolve the many problems arising from the implementation of the Uruguay Round agreements. Failure by members to agree on the contents of a Ministerial Declaration led to the collapse of the 1999 Seattle Ministerial meeting. In 2000 and 2001, discussions continued at the WTO, with major developed countries intensifying their campaign to launch a new round with the new issues, and many developing countries continuing to make clear their opposition or discomfort to taking on more obligations. The developing countries have also been disappointed and frustrated that their requests for resolving the implementation issues have so far not been taken seriously by the developed countries.

PART III: The Current Trading System: Instruments, Opportunities and Problems

The areas covered by the WTO/GATT system are: trade in goods,trade in services and protection of intellectual property rights. The WTO rules lay down disciplines for governments in the formulation of laws, procedures and practices in these areas, and in some cases,they also prescribe disciplines for firms.

The rules regarding trade in goods aim to promote competition among the goods of different countries,largely through reduction of tariffs and disciplines on non-tariff measures affecting their import and export.Import tariffs were very high before GATT came into operation. Negotiations at the time GATT was established and in successive rounds reduced the tariffs to their current comparatively low levels. The average trade-weighted tariff on industrial products in the developed countries fell to 15 per cent by the mid-1950s, to 10 per cent by the late 1960s, to 6 per cent by the late 1970s and finally to about 4 per cent in the Uruguay Round. Developing countries also very substantially reduced their industrial tariffs in the Uruguay Round. For example, India's trade-weighted average tariff on industrial products has been reduced from 71.4 per cent to 32.4 per cent, Brazil's from 40.6 per cent to 27 per cent, Chile's from 34.9 per cent to 24.9 per cent, Mexico's from 46.1 per cent to 33.7 per cent, Venezuela's from 50 per cent to 30.9 per cent, and so on (Das 2001b).

Even though the tariffs of developed countries have been substantially reduced,they remain comparatively high on the products of interest to developing countries. Also, in several product chains of interest to developing countries,developed countries have progressively higher tariffs on products with higher processing, a feature which has come to be known as tariff escalation.All this restricts opportunities for the export of industrial products from developing countries and discourages industrial upgrading.

The disciplines in the non-tariff areas are mainly on conditions and procedures for restricting imports under special circumstances, for counter-action against unfair trade practices, for enforcement of product standards and for certain procedural matters. Some of these were developed in the Tokyo Round (1973-79), and were applicable to the countries that adopted them. They were further elaborated and refined in the Uruguay Round and have been made applicable to all WTO member countries.

The rules in the area of services aim at progressive elimination of domestic regulations for the import and operation of services in order to promote competition among the services and service providers of different countries.There are both overall disciplines relating to the import of services and specific ones relating to particular service sectors. The General Agreement on Trade in Services (GATS) provides a framework for WTO member countries to choose the sectors on which they would undertake commitments and lay down conditions for entry and national treatment. The agreement provides for progressive liberalization of various service sectors with the stipulation that the developing countries may choose to liberalize only a limited number of sectors and transactions.

The rules for protection of intellectual property rights (IPRs) in the TRIPS Agreement prescribe certain minimum levels of protection of IPRs in the WTO member countries. While a country may provide higher levels of protection at its discretion, all countries must provide the prescribed minimum levels of protection for the various types of IPRs included in the agreement. The rules prescribe the rights of the IPR holder, the duration of the rights, the conditions and procedures for putting limitations and constraints on these rights and the relief against violation of the rights.

Enforcement of rights and obligations in WTO agreements is ensured through an integrated dispute settlement process, spelled out in the Dispute Settlement Understanding (DSU). When a country perceives that its right has been violated by another country or that another country has not adhered to its obligation, it can make a complaint. A panel of experts will examine the issues and give its recommendations. The DSU prescribes the operational mechanism by which the recommendations have to be accepted and acted upon. If a country fails to act, the complaining country is allowed to take retaliatory action against the erring one.

Positive Elements of the System

The WTO system has the potential to impact positively on international trade, as noted by Bhagirath Lal Das (2001b). Among its positive elements are:

1. It provides an opportunity for sharing benefits among members. The Most Favoured Nation (MFN) principle contained in Article 1 of GATT 1994 prescribes that the benefits provided by a member to any country will be extended to all members. It is through the operation of this principle that developing countries obtained the benefit of tariff reductions in the past, most of which had been achieved as a mutual exchange of concessions among developed countries. Even though the MFN principle has been eroded by the emergence of regional trading arrangements, it continues to be an important pillar of the system.
2. It provides for burden-sharing in times of crisis for a member. This is attained through:
   - the safeguards provision (Article XIX of GATT 1994 and the WTO Agreement on Safeguards), which is used by a member to restrict imports when its domestic industry suffers injury from imports or there is a threat of such injury;
   - the balance-of-payments provision (Articles XII and XVIIIB of GATT 1994), which enables a member to take import-restrictive measures if it faces a balance-of-payments problem. Article XVIIIB applies to developing countries, whereas Article XII applies to all members, though developed countries have now given up applying such measures.

   In both cases the burden is shared by the entire membership by accepting the limitations to the imports into that country.
3. It provides protection to a member against possible harassment by other members through unilateral trade-restrictive actions. The WTO dispute settlement process generally resolves disputes between members quite efficiently. (Details, including the problems in the process, are discussed below.) The system of redress of grievances is particularly important for a weak party, which is often in need of protection.

As discussed, developed countries have found the GATT/WTO system very useful in expanding their trade opportunities. These particular features make it also relevant and potentially useful to the weaker trading partners, particularly developing countries. In fact, several developing countries that are not presently in the WTO have applied for membership largely because of these features. But unfortunately the system has not worked to the satisfaction of the majority of its members, especially developing countries, owing to a number of other problems,

systemic, structural and operational. There are problems in the basic principles and structure, in the negotiating process, in the current agreements and finally in the operation of the agreement; and there are severe deficiencies, imbalances and inequities in the agreements as well.

System Expectations and the Opportunity Gap

The WTO framework has given rise to certain expectations by member countries. Reduction of tariffs and disciplines on non-tariff trade-restrictive measures have resulted in expansion of opportunities for trade in goods. Liberalization in the service sectors has enhanced the possibilities and potential for expansion of service transactions across borders. And protection of IPRs has given a boost to the creation of new IPRs. But these opportunities cannot be used equally by all countries, primarily because of the vastly differing levels of capacity for their utilization, especially between developed and developing countries (ibid.) Effective utilization of the opportunities provided by the system requires the following:

- the existence of domestic supply capacity in goods and services;
- the possibility of expansion of domestic supply capacity in the short/medium term;
- existence of linkages with major markets;
- existence of scientific and technological base for research and innovation;
- a favourable external environment (i.e., support from other countries to assist a country to make use of the opportunities).

Naturally the countries with high supply capacity will have higher utilization of the opportunities. With a few exceptions, developing countries have very low supply capacity in the goods sectors, and still less in the services sectors. They also have weak linkages with the major markets, as their trading firms are very weak compared to those of developed countries. The possibility of expansion of supply capacity and the development of linkages is also not bright, as this requires a high level of financial resources and access to technology, both of which are limited in developing countries. The rapid development of technology and its incorporation in production, transport and communication is likely to enhance the gap between the supply capacities of developed and developing countries, serving to widen the gap in the utilization of opportunities provided by the WTO system.

The situation is much worse in the area of IPRs. A very high proportion of current IPRs and much of the potential for new IPRs are in developed countries. Developing countries' share is meagre, leaving a big gap in utilization of the opportunity for creation of new IPRs offered by the trading system. Development of IPRs requires financial resources for education, training and research and also linkages with research institutions, which all but a few developing countries do not have. The resource requirement may grow even higher in future, as research and technological innovation becomes more sophisticated.

In addition to all these factors, the external environment has not been favourable to developing countries, as their efforts at expansion of production and exports have been repeatedly stifled by policies and measures in the developed countries. As soon as they developed supply capacity and became competitive in some sectors, the developed countries imposed import restraint, initially through direct import control measures (including through special regimes in derogation of normal GATT rules such as in textiles) and later through so-called 'grey area' measures, a series of anti-dumping measures and more recently via considerations of environmental protection. The pressure for including a social clause in the WTO framework is seen by developing countries as yet another potential means of import control in the developed countries.

Industries in developed countries have generally chosen to pressure their governments for protection rather than adopt the longer term course of trying to adjust to the emerging competition. To the extent that they have succeeded, the burden has fallen mainly on developing countries.

Objectives and Structural Problems of the Trading System

The WTO has some good objectives. The preamble of the Marrakesh Agreement establishing the WTO states that relations between the parties in the area of trade and economic relationships should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the world's resources and expanding the production and exchange of goods. But the means chosen to achieve these objectives is by entering into 'reciprocal and mutually advantageous arrangements' on trade between countries. Further, the ultimate means of enforcement of the rights and obligations in the system is through retaliation against the erring country. Both these techniques are inadequate and inappropriate for a system such as the WTO (Das 2001b).

The WTO has some good objectives. But the means chosen to achieve these objectives and the ultimate means of enforcement are inadequate and inappropriate for a system such as the WTO.

Reciprocity is clearly inadequate as the guiding principle for a system with a membership whose levels of development are spread over such a wide range. By its very nature, the instrument of reciprocity will involve 'getting' by 'giving'. Those with higher capacity to 'give' will 'get' more, and those with small capacity will naturally not derive much benefit. In such circumstances, the principle of reciprocity has the inherent deficiency of enhancing disparity among members. Similarly, the principle of 'mutual advantage' is likely to yield unequal results for the strong and the weak in international economic arrangements, if the strength and power of nations is a factor influencing the results, as it is in the case of trade (ibid.).

As the deficiency of reciprocity as the basis of exchanging concessions was recognized,differential and more favourable treatment to the developing countries was incorporated in Part IV of GATT. While developed countries undertook specific responsibilities in favour of developing countries,they were never seriously implemented. The instrument of differential and more favourable treatment to developing countries has been very much blunted in WTO agreements that emerged out of the Uruguay Round.

There is also the problem of enforcement of rights and obligations. Despite the potential benefit for all countries offered by the dispute settlement process, in practice, the weak countries are handicapped, since the ultimate means of enforcing rights and obligations is by taking retaliatory action against the erring country. Owing to the potential economic and political costs, a weak country, particularly a developing country, will hesitate to take such action against a strong country; thus retaliation is an effective enforcement mechanism only between two strong countries.

Specific Problems and Imbalances in the Agreements

Considering the background in which the GATT/WTO system emerged, it should be no surprise that the agreements are full of inequities and imbalances. A detailed analysis of the features and imbalances of the WTO agreements has been carried out by Bhagirath Lal Das (1998a, 1999,2001b); the following discussion draws substantially from this analysis.

The starting point is an examination of the agreements in textiles and agriculture, which have been a testing ground for the multilateral trading system for a long time. Throughout, the interests of powerful industry lobbies in the major developed countries have taken precedence over upholding the integrity of the multilateral trading system, and in so doing have revealed the hypocrisy of these countries championing of open and free trade and of their professed reliance on market forces.

Textiles

The WTO Agreement on Textiles and Clothing allows the major developed countries,namely, the United States, the EC and Canada, to maintain severe restrictions on imports from the developing countries in respect of over 1,000 textile products;whereas the developing countries do not have any such restrictions on their imports.

In the mid-1960s, as U.S. and Western European textile industries found themselves unable to compete with exports from developing countries, their governments, rather than follow a true market-oriented approach and allow these non-competitive industries to either become competitive or die, decided to ignore the rules. If they thought that the problem was of a short-term nature, another course for them would have been to take steps to restrain imports under the safeguards provision of GATT. But this would have meant restraining imports from all countries, including other developed countries. So instead they sponsored a special regime of international trade in textiles that would permit them to selectively restrict imports from developing countries. Although this special regime was technically abolished in 1995, when the WTO agreements came into force, the restrictions continue under the terms of the Agreement on Textiles and Clothing, which stipulates abolition of all such restrictions only on 1 January 2005.

By 1995, developing countries had already been subjected to this highly unequal regime for nearly 35 years, and it was expected that in the wave of liberalization in the new WTO system, the restrictions would be abolished altogether. Instead, however, the major developed countries insisted on, and obtained, concessions from developing countries in return for a promise to bring the textiles sector under normal trade rules in 2005.

The manner by which the WTO textiles agreement has been implemented by the major developed countries has, moreover, added to the inequity. Although the developed countries have technically fulfilled their commitment in progressive liberalization, in fact very little genuine liberalization has taken place, even after more than six years of the ten-year transition period (see Part IV below). This has been possible because of a severe deficiency in the agreement; the base on which the percentages are to be calculated is a long list of products (itemized in an annex) that includes a large number of textile items that have not been under restraint. Since developed importing countries had the option of choosing products from this list, the major developed country members at each stage chose mostly those products that had not been under restraint. This allowed them to comply with the letter of the rules, but not with its spirit.Moreover, since the rules provide for 'progressive liberalization', rather than a sudden liberalization at the end of the 10-year implementation period, it can be seen as violating the letter of the agreement as well.

Another major deficiency in the agreement is that it does not put a specific obligation on the developed importing countries to take positive structural adjustment measures in this sector. In the absence of such measures, it is feared that the domestic industry, which has a strong influence, may put pressure on the governments, as it has in the past, to continue with restrictions. Such pressure was the reason for installing a special trade regime in this sector in GATT. 'Progressive liberalization' as envisaged in the agreement provided the opportunity for gradual adjustment of the industry to a free import regime over the span of 10 years.But, since the industry, as explained, has complied in such a way as to avoid liberalization to date, it is likely to cry for help again when it is faced with sudden liberalization in January 2005. The tardy process of liberalization and absence of any positive structural adjustment measures make it doubtful whether the major developed countries will abide by their obligation for full liberalization at that time.

Agriculture

The WTO Agreement on Agriculture has permitted the developed countries to increase their domestic subsidies (instead of reducing them), to substantially continue their export subsidies and to provide special protection to their farmers in times of increased imports and diminished domestic prices. Most developing countries, on the other hand, have previously provided little or no agricultural subsidies and the agreement constrains them from having or increasing such subsidies.They now find themselves in a situation where they cannot use domestic subsidies beyond a *de minimis* level (except for very limited purposes), cannot use export subsidies and cannot provide special protection measures for their farmers. In essence, developed countries are allowed to continue to distort agricultural trade to a substantial extent and even to enhance this distortion; whereas developing countries that had not been engaging in such distortion are not allowed the use of subsidies (except in a limited way) or special protection. All this needs some explanation and clarification.

Agriculture had eluded the normal discipline of the multilateral trading system right from the beginning. GATT contained only a soft discipline in agriculture, while the Tokyo Round (1973-79) could not finalize any discipline in this area. Finally, the Uruguay Round (1986-94) resulted in a comprehensive agreement,covering market access, domestic subsidies (called domestic support in the agreement) and export subsidies.

However, the agreement is one of the most imbalanced and deficient agreements emerging out of the Uruguay Round. Countries were asked to reduce their domestic subsidies over a span of time: the developed countries by 20 per cent in six years and the developing countries by 13.3 per cent in 10 years. The *de minimis* level was defined as 5 per cent of production for developed countries and 10 per cent of production for developing countries.Countries having subsidies below these respective levels did not have to make any reduction. Since all but a few of the developing countries had no domestic subsidies beyond the *de minimis* level at that time, they did not have to make any reduction.Developed countries with high levels of domestic subsidies were allowed to continue these up to 80 per cent after the six-year period, while developing countries (with a very few exceptions) were prohibited from having subsidies beyond the *de minimis* level,except in a limited way.

In addition, many types of domestic subsidy have been exempted from reduction, most of which are used by the developed countries. While these countries reduced their reducible subsidies to 80 per cent, they at the same time raised the exempted subsidies substantially. The result is that total domestic subsidies in developed countries are now much higher compared to their level in 1986-88, which is taken as the base level for the reduction of reducible subsidies. In the 24 OECD countries combined, the value of domestic support in agriculture (as measured by the Total Support Estimate) rose from US$276 billion (the annual average for base period 1986-88) to US$326 billion in 1999 (OECD 2000). (See Part IV for further discussion.) The professed reason for exempting these subsidies in developed countries from reduction is that they do not distort trade. However, such subsidies clearly enable farmers to sell their products at lower prices than would have been possible without them.

The reduction exemptions applicable to developing countries are limited to four items: input subsidy given to poor farmers; land improvement subsidy; diversion of land from production of illicit narcotic crops; and provision of food subsidy to the poor. The scope is very limited and hardly a half-dozen developing countries use these subsidies (Das 2000a, 1998a). Moreover, subsidies exempt from reduction and used mostly by developed countries (Annex 2 subsidies)

are immune from counter-action in the WTO; they cannot be subject to the countervailing duty process or the normal dispute settlement process. Those exempt from reduction and used by developing countries (listed above) do not have such immunity, however.

As for export subsidies, developed countries were to reduce their budget outlays by 36 per cent and the quantity of exports covered by the subsidies by 21 per cent over six years. The reductions for developing countries were 24 per cent and 14 per cent respectively over ten years. This has enabled the developed countries to retain 64 per cent of their budget allocations and 79 per cent of their subsidy coverage after six years. The developing countries, on the other hand, had generally not been using export subsidies, except in a very few cases. They are now prohibited from doing so.

The inequity relating to the special protection of farmers arises from what is called the process of tariffication. Countries that had been using non-tariff measures for import restraint, that is, quantitative limits on imports, were obliged to remove them and convert them into equivalent tariffs. Countries that undertook such tariffication for a product got the benefit of the 'special safeguard' provision, which enables them to protect their farmers when imports rise above some specified limits or prices fall below some specified levels. Countries that did not undertake tariffication did not get this special facility. This has been clearly unfair to developing countries, which, with few exceptions, did not have any non-tariff measures and thus did not have to tariffy them. The result is that developed countries, which were using trade-distorting methods, have been allowed to protect their farmers, whereas developing countries, which were not engaging in such practices, cannot provide special protection to their farmers (Das 2000a; 1998a).

This inequity and imbalance appears aggravated when one considers the limitation to the use of the general safeguard provision in the agriculture sector. One necessary requirement for taking a general safeguard measure is that there be injury (or threat thereof) to domestic production, which will be extremely difficult to demonstrate in this sector because of the large dispersal of farmers across the country.

Apart from these specific problems in the areas of subsidy and protection, there is a basic problem with the agreement. The WTO Agreement on Agriculture is based on the assumption that production and trade in this sector should be conducted on a commercial basis. Agriculture in most developing countries is not a commercial operation, however, being instead carried out largely on small and household farms. Most farmers take to agriculture not because it is commercially viable, but because the land has been in possession of the family for generations and there is no other source of livelihood. If such farmers are asked to face international competition, they will almost certainly lose out. This will result in large-scale unemployment and collapse of the rural economy, which is almost entirely based on agriculture in a large number of developing countries.

Agriculture in most developing countries is not a commercial operation, being instead carried out largely on small and household farms. If farmers are asked to face international competition this will result in large-scale unemployment and collapse of the rural economy.

Subsidies

In the area of general subsidies too, there is an imbalance in the treatment of those generally used by developed and developing countries. The subsidies mostly used by developed countries, such as those for research and development, for the development of undeveloped regions and for environmental adaptation, have been made totally non-actionable. This means that they are immune from counter-action through the imposition of countervailing duty or through the normal WTO dispute settlement process. But the subsidies normally used by developing countries, such as those for industrial upgrading, diversification, technological development, and so on, have not been given any such favoured treatment. It may be argued that developing countries

can also use the immune subsidies; but the current reality is that these measures are mostly used by developed countries and have got full protection.

Standards

The WTO agreements with regard to standards are those on technical barriers to trade and on sanitary and phytosanitary measures. These agreements are intended to enable countries to set mandatory standards for industrial and agricultural products for the protection of human beings, animals and plants but there is a restriction that standards should not be framed or used as unnecessary obstacles to international trade. Though countries have the option of formulating domestic standards, in practice they are almost obliged to use international standards, owing to two stipulations in the agreements. One states that if a country uses an international standard,it will be presumed that there is no unnecessary obstruction to international trade. The other states that if a country formulates its own separate domestic standard, it has to prove that the international standard is not appropriate or practical for its specific situation.

Though developing countries are practically compelled therefore to use international standards,they are not able to participate in the setting of these standards. Two main bodies formulate these standards,viz., the International Standards Organization and the *Codus Alimentarius*. While developed countries are fully represented in these bodies, along with their major firms, developing countries lack adequate expertise and/or financial resources to participate in their meetings. As a result,standards are set without taking into account the special situation of developing countries, which will have a serious effect on the market access of their products.

Balance-of-Payments Provisions

One of the special provisions meant to benefit developing countries is the one contained in Article XVIIIB of GATT 1994, which allows these countries to take import-restrictive measures if they face balance of payments (BOP) problems.However, the method of operation and some new decisions have made this provision less effective and less useful, rendering an important instrument for reducing the system's imbalance almost non-operational. The provision itself does not define what constitutes a BOP problem. Further, it does not put any restriction on the type of import-restrictive measures the developing country invoking it will adopt. While this gives a developing country considerable flexibility, the current practice puts severe constraints both on the eligibility of a developing country and on its options for deciding on BOP measures.

Normally the IMF is expected to give a report on the BOP situation of the country concerned. Previously, it used to present a factual report on the country, and the BOP Committee of GATT used to determine whether there was a BOP problem. Now the IMF report also gives its views on whether such a problem exists. Further, in coming to a conclusion, the IMF report takes into account the total foreign exchange reserves, inflows and outflows.Thus even highly volatile and uncertain reserves and flows (e.g., portfolio investments) get included. Uncertain reserves which can be taken out at any time do not give a sound basis for foreign exchange strength to the country inasmuch as hardly any commitment of foreign exchange outgo can be made on that basis.Thus, the current criterion of deciding on whether a BOP problem exists appears faulty.

There is also the problem of what type of action can be taken to address a BOP problem. The latest decision requires the developing country concerned to give priority to tariff-type action over direct import control measures. The latter can be taken only when the developing

country provides sufficient reasons as to why the former will not be adequate to deal with the problem. It is well known that although price-based measures may have an import-restrictive effect, the results are more uncertain and delayed compared to those of direct import control measures. This provision has effectively reduced the capacity of developing countries to deal with the problem promptly and effectively.

Services

In the operation of the WTO rules on services and IPRs, there is almost total negation of the principle of reciprocity and mutual benefit as the basis for concessions in the GATT/WTO system.In practice, the concessions in these two areas are overwhelmingly one-sided,given by developing countries in favour of developed countries; thus these two agreements are very imbalanced.

In the services areas covered by the liberalization commitments in the WTO General Agreement on Trade in Services, the supply capacity lies almost entirely in the developed countries. Hence, the commitments on liberalization of the entry of services are almost exclusively to the benefit of the developed countries. Of course, it can be argued that a country may benefit at times by the use of imported services, as it may improve the production and trading process. But such benefit can be realized by developing countries through the use of appropriate import policies for these services, without having to make a commitment on liberalization in the WTO. Once such a commitment is made, it cannot be modified without giving adequate compensation. Such commitments are clearly concessions by the developing countries to the developed countries, for which they get hardly anything in return, since they lack the supply capacity to take advantage of the liberalization of such services sectors in the developed countries.

Developing countries might have derived some benefit if developed countries had liberalized services and modes of supply of services where movement of labour is involved,allowing them the opportunity to supply some such services to the developed countries. But the latter are not prepared to do this on the ground that immigration issues are involved.Thus, the sectors and modes where the developed countries have the supply capacity have been taken up for liberalization, while the few areas from which the developing countries would have derived some benefit have not been given attention.

GATS itself also has some grave deficiencies. Some principles and objectives have been enunciated which would appear to be for the benefit of the developing countries; but these have not been integrated into the commitment process. The manner in which they will be brought into operation has not been laid down. Thus they continue to be mere expressions of good intentions, without being transformed into enforceable obligations.

Similarly, regarding obligations, there is a specific obligation that developing countries will be called upon to liberalize fewer sectors and fewer transactions. But how this provision will be operationalized has not been specified. In fact, the experience of negotiations on the liberalization of financial services has shown that major developed countries were insisting on higher levels of commitments from developing countries. Since the manner in which the provision should be implemented was not specified in the agreement, it has provided no protection to developing countries.

Intellectual Property Rights

The TRIPS Agreement in the WTO concerns the protection of IPRs. Its very inclusion has brought about an imbalance in the WTO system, since almost all intellectual property is in the hands of the developed countries. The developing countries do not have much of the intellectu-

al property covered by the agreement; and as such they do not enjoy any reciprocal benefit from its protection. In fact, they have lost a lot of flexibility in this matter, as they cannot be selective in the protection of intellectual property, nor can they discriminate in favour of their domestic intellectual property if they have any.

The experience of the few years of implementation of the agreement thus far shows that developing countries have been unable to protect some of the major sources of their intellectual property from being appropriated by foreign corporations and institutions. The biological wealth of the developing countries represents the source materials for many new items of intellectual property of the firms of the developed countries. These firms get protection of exclusive rights over the intellectual property, without any compensation to the country or community from which the source material for its creation came. The agreement does not at present prevent this. Similarly, there is a vast body of indigenous knowledge in the developing countries that has not been formally put on record in the modern sense. Yet such indigenous materials and their use have been in existence for generations in several developing countries. Often, however, it is the firms of the developed countries that obtain protection of such materials and use it in their names. The agreement has not provided any protection against such exploitation.(See Part IV for further discussion of implementation problems in TRIPS.)

Dispute Settlement Process

The mechanism for enforcement of rights and obligations in the WTO, the dispute settlement process, is a powerful arm of the system. However, the ultimate instrument for enforcement through this process is retaliation against the erring country, which is not practical or useful for developing countries. Even in several other ways, the process is less useful in actual practice to developing countries than to developed countries.

When a country has a grievance against another country, it can formally raise a dispute in the WTO and ask for its resolution. A panel of experts hears the complaint,gives its findings and recommendations. If any party is not satisfied, it can appeal to the standing Appellate Body (AB). The process has been made effective by the arrangement that the findings and recommendations of the panel/AB are bound to be approved. If the respondent country has been found to have done something wrong, it has to take corrective action within a fixed time frame. Thus, the recommendations cannot be ignored or blocked, nor can there be undue delay in implementation. Generally, the respondent country, if found to have done something wrong, takes corrective action promptly and willingly. And yet the system, in practice, is deficient and imbalanced for the developing countries in several ways.

Consider the question of retaliation as the last resort for enforcement of rights and obligations. Even though in normal cases a situation may not arise when retaliation will be necessary, it does become relevant and necessary in really sensitive and difficult cases. And it is these types of cases which the developing countries fear most. Also the efficacy of a system is judged mainly by its functioning in really difficult cases. In such cases, a complaining country may well have to resort to retaliation against the respondent erring country. Retaliation should thus not be seen as an extremely remote possibility. In fact, the problem of adequate implementation of a panel/AB recommendation has generated controversy in a large number of cases in the WTO at present.

Retaliation would mean that the complaining country would be imposing high tariffs on some products from the erring country, making those products available to the consumers of the complaining country at higher prices, or obliging them to purchase them from some other

countries. There is an economic cost involved in either case; and a developing country may find it difficult to shoulder that burden. A developing country will also naturally hesitate to take retaliatory measures against powerful developed countries. It will have to weigh the political cost before taking such action. Further, a retaliatory action by a developing country may not have any significant impact on the erring country if it is a major developed country, because the level of its exports to the developing country may be very low in proportion to its total exports.

The weak trading partners, particularly the developing countries,are disadvantaged in this regard for other reasons too, including the high cost involved in the dispute settlement process, the delay in relief and inadequate relief in the best of situations.

Raising a dispute and pursuing it in a panel and the AB is very costly. So is defending a case as respondent. Generally the legal expertise for such matters is located in the major developed countries; and a developing country may have to seek their help either to raise a dispute or to defend itself against the complaints of others. Thus a developing country will seriously weigh the financial burden before deciding to launch a complaint. By contrast, a major developed country will not have such hesitation,because it can easily afford the cost. The result is highly inequitable, given the vast difference in the capacity of developed and developing countries in this regard. Even if a dispute is raised,full relief may take nearly 30 months; and by then the weak economy of a weak trading partner could have suffered irreparable damage. There is much less resilience in the production and trade in developing countries compared to that in the developed countries; hence, the damage due to the delay may be much higher in the former than in the latter.

Moreover, the relief is prospective, namely, from the time the implementation of the recommendations starts after the adoption of the report of the panel/AB. There is no provision for retrospective compensation with effect from the time the error was committed. For a developed country this may not mean much of a loss, but for a developing country the loss may be heavy because of its weak economy.

There are also several problems that have emerged in the operations of the dispute settlement system (DSU) since the establishment of the WTO (see Raghavan 2000c). First, there is a controversy relating to a situation when there is a disagreement between parties to a dispute as to whether the losing party has properly complied with a ruling or recommendation of the panel. In such a disagreement, the issue is whether a Member has the right to unilaterally determine whether or not the other party has properly implemented the panel ruling, and if the determination is negative, to move to impose trade retaliation measures, or whether the determination of compliance has to be done by the original panel. The controversy relates to apparent conflicts arising from the wording of Articles 21, 22 and 23 of the DSU. It arose in the banana dispute between the United States and the EC when the United States claimed it can determine for itself whether the other party has complied, and that if it determines that it has not, it can seek authorization straight away under Article 22.6 to take retaliatory measures and suspend concessions (without going through the Article 21.5 process of referring to the original panel on whether or not the erring member has complied with the ruling). This unilateral U.S. action generated some uncertainty and disquiet among members (Raghavan 2000c:7-9).

Second, the panel/AB process itself is creating further burdens of obligations on the developing countries by engaging in very substantial interpretations of the rules. The interpretations have in many cases significantly added to the obligations of the developing countries and eroded their rights. The DSU itself (in Article 3.2) makes clear that 'recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agree-

ments.' The right of authoritative interpretation is vested in the Ministerial Conference and/or the General Council, whose role it is to clarify or clear up ambiguity or uncertainty in or conflicts over interpretations of the agreements. However, in several cases (for example, the disputes over the Indonesian car, over India's balance-of-payments, and over Brazil's aircraft subsidies), the panel and appeal process engaged in substantial interpretations of the provisions of the agreements, which resulted in expanding the obligations or reducing the rights of developing countries. In some cases the panels and Appellate Body went to the extent of adjudicating between two conflicting provisions of the agreements, as exemplified in the Indonesian car dispute (ibid: preface, 10-13,25). According to the Indian Ambassador to the WTO, major and smaller trading entities and nations are becoming equally concerned over the tendency of panel and Appellate Body decisions to encroach on the remit of the legislative organs of the WTO (Khor 2000e: 8).

Major and smaller trading entities and nations are becoming equally concerned over the tendency of panel and Appellate Body decisions to encroach on the remit of the legislative organs of the WTO.

Third, the extremely legalistic approach to trade disputes that has developed is having negative implications. In the earlier dispute settlement system under GATT, panel rulings and recommendations were required to be adopted by the Contracting Parties, and this was done in practice by positive consensus (i.e., agreement by all). However in the present WTO system, panel decisions are adopted by negative consensus (Article 16 of the DSU states a panel report shall be adopted at a meeting of the Dispute Settlement Body (DSB), unless the DSB decides by consensus not to adopt it). Thus consensus is required to reject a report, and since the winning party can withhold any potential consensus to reject a report, in effect panel or Appellate Body (AB) decisions are automatically accepted. With the exception that a party to the dispute can appeal to the AB against a panel ruling, it is almost impossible for the membership to challenge or set aside the reports of the panels and AB, even if they have clearly made errors or have gone beyond their jurisdiction. While on the one hand it may be useful to have the security of an automatic DSU process, on the other hand, the automatic adoption of panel reports has landed developing countries in a situation where their rights have been reduced and their obligations increased through panel and AB interpretations and rulings, even though these bodies are not supposed to add to or diminish the rights and obligations.

Fourth, the WTO secretariat has been playing too large a role, and an inappropriate role at that, in guiding the DSU process. According to C. Raghavan:

> From the time a dispute is sent to a panel process until the end of the proceedings, the system now works such that the secretariat has assumed a very important role — from the choice of panelists (in view of the increasingly few cases where the disputants themselves agree on the composition of a panel, the naming of panelists by the WTO Director-General now threatens to become the general practice rather than an exception) through to the panel proceedings' (quoted in Khor 2000e: 9).

Some panelists have privately indicated that the secretariat provides notes and briefs to panels,including on items that negotiators had intended in the texts, without the knowledge of the parties, including when the hearing is over; and the secretariat also guides the drawing up of conclusions and reports.Thus, the WTO Secretariat services the negotiations and the administering/supervisory bodies, namely the Councils on Trade in Services, Trade in Goods and the TRIPS. It also has a hand in the adversarial dispute process, in what is clearly a violation of the norms of judicial or quasi-judicial systems, either Anglo-Saxon or *droit administrative*, and brings into question the impartiality of the multilateral trading system (ibid.; Raghavan 2000c).

PART IV: The Impact of the WTO on Developing Countries

The WTO agreements have had significant effects on and implications for developing countries. Many are facing serious problems arising from the implementation of the Uruguay Round agreements, while not obtaining the expected trade benefits. Meanwhile, proposals to expand the WTO by introducing new issues and areas into its remit has raised several concerns, as has the lack of transparency and limited participation of developing countries in the WTO. This part discusses these issues as follows:

- Continued lack of benefits to developing countries;
- Problems for developing countries resulting from implementation of obligations under the WTO agreements;
- Trade, environment and sustainable development;
- The proposed expansion of the WTO into new areas;
- Transparency and participation in WTO processes.

Lack of Anticipated Benefits for Developing Countries

At the conclusion of the Uruguay Round, developing countries fully expected that in return for agreeing to expand the mandate of the GATT system to areas such as intellectual property rights and services (in which they were expected to make obligations without getting reciprocal gains) they would benefit significantly from increased access to developed countries' markets, especially in agriculture, textiles and clothing. However, since the WTO came into being, these benefits have mostly not been forthcoming, while traditional problems such as low commodity prices and declining terms of trade continue to plague developing countries' trade performance. Developing countries also complain that developed countries still apply non-tariff barriers to their products,such as anti-dumping measures. This lack of benefit from the trade system has led to a growing disillusionment among policy-makers and the wider public in many developing countries.

Continued Protection in Sectors of Most Interest to Developing Countries

One of the most disappointing aspects of the trading system is that developed countries have continued to keep their markets protected in sectors that are of most interest to many developing countries. The post-Second World War history of the trading system reviewed in Part II showed that the interests of developing countries have never been adequately taken into account, while Part III elaborated on how the agriculture and textiles and clothing sectors, in which developing countries have comparative advantage, have largely not been liberalized. Even after the Uruguay Round, which presumably made provisions for liberalization, access to the developed countries' markets in these two sectors has in effect not significantly improved.

As B.L. Das points out (2000a: 2):

> In agriculture and textiles and clothing…it is clear developing countries have received little or no benefit, but have had to take on iniquitous obligations. In fact in agriculture, as in textiles and clothing, a fraud has been perpetrated on developing countries in

terms of liberalization of trade and improving market access to their exports. Under the Agreement on Textiles and Clothing (ATC), the promise of liberalization of the trade and its progressive integration into GATT (by removal of discriminatory quotas) has been implemented by grouping all the products, the overwhelming majority [of which are] not under restraint, in the same category ... and technically liberalising the unrestrained products, without any meaningful liberalization of trade. In the agriculture sector, the major developed countries have technically fulfilled their obligation of reducing domestic subsidies when in reality, by a very clever use of the provisions of the Agreement on Agriculture, which thus shows up the faults in the drafting of the rules, they in fact have increased the quantum of subsidy. It shows that the pronouncements of the industrialized countries in the WTO about liberalization and reduction of subsidies in agriculture are not backed by political will.

Textiles and Clothing

The frustrations of developing countries are most keenly felt in the case of textiles. The 10-year phase-out of this special treatment under the Agreement on Textiles and Clothing was supposed to be the Uruguay Round's greatest benefit to the South. However, after seven years of the implementation period, liberalization on a proportionally phased or progressive basis has not really occurred, due to the developed countries' choice to 'endload' implementation. Most products chosen for 'liberalization' so far were not actually restrained in the past.

The agreement requires the developed countries to liberalize 16 per cent, 33 per cent and 51 per cent of their imports by volume (of 1990), respectively on 1 January 1995, 1 January 1998 and 1 January 2002. The major developed countries have technically fulfilled their obligation until 1 January 1998 while in fact removing the import restrictions only negligibly. In the first stage, starting on 1 January 1995, while Canada liberalized only 0.27 per cent of restricted products, the United States and the EC liberalized none of them. In the second stage, starting on 1 January 1998, liberalization of the restricted products by the United States, the European Union (EU) and Canada was only 1.30 per cent, 3.15 per cent and 0.70 per cent, respectively (Das 2001b).

As stated by the chairman of the International Textiles and Clothing Bureau (ITCB) (comprising 24 countries) to the WTO, the situation in June 2000 was as follows: although 33 per cent of trade in the sector had been 'integrated' by the restraining countries in a narrow technical sense, this comprised mainly imports of products which were not under restriction. At the second stage of integration (covering the period January 1998 to December 2001), quota restrictions have been removed on only 13 out of 750 U.S. products; 14 out of 219 EC products; and 29 out of 295 Canadian products, leaving the great bulk of restrictions still in place. Thus,developing countries have not received meaningful increases in their access possibilities (Hong Kong, China 2000: 2). The notifications of the proposed liberalization in the third stage (covering the period January 2002 to December 2004) by the United States and the EC indicate that liberalization will cover only 55 and 52 products. Based on this data, the ITCB executive director commented: 'Looking at the situation differently, we have calculated that, in value terms,merely 15 per cent of trade that was under quota restrictions in the US shall have been freed of quotas by the end of ten years. In the case of the EU, the figure will be a little over 20 per cent. It is easy to see that the great bulk of restrained trade will still be under restriction until the very last of the ten year period' (Ahmad 2000: 4).

Agriculture

Another major disappointment is that developed countries have made little progress in reducing protection and subsidies in the agriculture sector, which is an area of high potential export growth for many developing countries. Several years after the Uruguay Round agreement came into force, however, the reality is that:

- High tariffs on selected items of potential interest to the South have had to be reduced only slightly.

In the first year of the agreement, there were tariff peaks at very high rates in the United States (sugar 244%, peanuts 174%); the EC (beef 213%, wheat 168%); Japan (wheat 353%), and Canada (butter 360%, eggs 236%) (Das 1998a: 59). According to the agreement, developed countries had to reduce their tariffs by only 36 per cent on average by the end of 2000, and thus the rates for some products remain prohibitively high (Das 1998a).

- Domestic support has increased rather than decreased.

Although the agreement was supposed to result in decreases in domestic support in agriculture, in fact, the overall value of such support has increased. The agreement obliged developed countries to reduce the Aggregate Measurement of Support (AMS), which is a measure of domestic support, by 20 per cent during 1995-2000 from the average annual level of the base period of 1986-88. However, two categories of subsidies are exempted, and while the major developed countries did reduce their AMS, they also increased their exempted subsidies significantly, thereby offsetting the AMS reduction,which resulted in an increase in total domestic support. According to OECD data, the Producer Subsidy Equivalent (PSE) for all developed countries rose from US$247 billion in the base period to US$274 billion in 1998. In the EC it rose from US$99.6 billion in the base period to US$129.8 billion in 1998, and in the United States from US$41.4 billion to US$46.9 billion over the same period (Das 2000a: 2-3). A more comprehensive coverage of domestic support in agriculture calculated by the OECD is the Total Support Estimate (TSE), which for the 24 OECD countries rose from US$276 billion (annual average for base period 1986-88) to US$326 billion in 1999 (OECD 2000).

As explained in Part III, what is even more ironic is that most developing countries,by contrast, had previously little or no domestic or export subsidies. They are now barred by the Agriculture agreement from having them or raising them in the future (Das 1998a: 62).There is clearly a major imbalance in a situation in which developed countries with very high domestic support are able to maintain a large part of their subsidies (and, due to loopholes in the agreement, to raise their level) while developing countries with low or no subsidies are prohibited from raising their level beyond the *de minimis* amounts.

- Export subsidies are still high.

Regarding export subsidies, the agreement also committed developed countries to reduce the budget outlay by 36 per cent and the total quantity of exports covered by the subsidies by 21 per cent. The base level was the average annual level for 1986-90 and the reduction is to be done over the period 1995-2000. Thus, even in the year 2000 the level of export subsidies is allowed to be as high as 64 per cent of the base level (Das 2000a: 3).

Industrial Tariffs

In the case of industrial tariffs, the developed countries reduced their trade-weighted average

tariff for industrial products from 6.3 to 3.8 per cent as a result of the Uruguay Round. However, they have continued to maintain tariff peaks and tariff escalation in some industrial products that are of export interest to developing countries. This has also been a barrier to the developing countries' efforts to export industrial products and to produce and export processed raw materials or to climb up the value-added chain for their basic commodities.

A study for UNCTAD (Supper 2000) found significant numbers of tariff peaks among the Quad countries (Canada, EU, Japan and United States) in the industrial sector, especially for food industry products; textiles and clothing; footwear, leather and travel goods; automotive products; and consumer electronics and watches. Tariff escalation is particularly pronounced precisely in those sectors that offer a realistic chance for developing countries to enter into industrial exports (e.g.,food, textiles, clothing and shoe industries, wood industry products). Among the items subject to tariff peaks are orange juice (31%), peanut butter (132%) and certain tobacco products (350%) in the United States. For footwear, post-Uruguay Round MFN rates will reach about 160 per cent in Japan (for leather shoes valued at US$25); 37.5 to 58 per cent for certain rubber, plastic and textile shoes in the United States; and 18 per cent for shoes in Canada (ibid: 89-103).

Use of Non-Tariff Barriers

Even as a meaningful increase in market access has not materialized, developed countries have continued their use of some non-tariff protectionist measures to block products of developing countries. A significant part of these have been applied to textile and clothing products. Among the measures reported by the ITCB are: (i) a large number of unjustified safeguard actions for new restrictions; (ii) changes in rules of origin; (iii) unduly cumbersome customs and administrative procedures; and (iv) anti-dumping actions,particularly targeting products that were already under quota restrictions (Hong Kong, China 2000: 2).

An UNCTAD study on the impact of anti-dumping and countervailing duty actions found that these are now the most frequently used trade remedies. Developed countries are the main users of anti-dumping measures, while developing countries have also increased their use. In the first five years of operation of the WTO agreements (1995-99) there were 1,229 anti-dumping initiations of which 651 (or 53%) were initiated by developed countries and 578 (or 47%) by developing countries and economies in transition. However, developing countries continued to be the main targets of anti-dumping measures, accounting for 818 (66.6%) of the 1,229 cases. 'This has the effect of creating instability and uncertainty for their exports,which has resulted in reductions in trade volumes and market shares for their goods' (UNCTAD 2000b: 1). As they can be invoked relatively easily, anti-dumping actions are now the most frequently used trade measure, and have become a mechanism under which governments can cede to strong sectoral protectionist pressures. In the United States, as of August 1999, 110 (or 37%) anti-dumping orders were related to steel, which had a major impact on exporters.After an anti-dumping order was issued, Argentine exports of carbon steel wire rod to the United States declined 96 per cent from 68,335 net tons in 1983 to 2,756 net tons in 1997, a year after the duty was imposed. Mexican exports of the same product also fell by 94 per cent from 2,882 tons in the year preceding the duty imposition to 112 tons the year after. Imports sharply declined or ceased in many other cases,such as steel wire rope from the Republic of Korea and Japan (UNCTAD 2000b: 7).

Meanwhile, nearly 20 per cent of the EC's anti-dumping measures in the first five years of the WTO's operation were related to textiles, aimed primarily at exports from developing coun-

tries. These exports had already been subject to quota restrictions. There was repeated recourse to anti-dumping action against several products from a number of developing countries. For example, the EC repeatedly initiated investigations from 1994 to 1997 over grey cotton fabrics originating from six countries (China, Egypt,India, Indonesia, Turkey and Pakistan), causing concern to textile-exporting countries. According to the International Clothing and Textiles Bureau (ITCB), EC import volume of cotton fabrics from the six targetted countries fell from 121,891 tons in 1994 to 88,306 tons in 1997 and their market share fell from 59 per cent in 1993 to 41 per cent in 1997. The case was ultimately dropped with no anti-dumping duties imposed (UNCTAD 2000b: 8). Anti-dumping measures that are used against developing countries can have immediate impact on trade flows and prompt importers to seek alternative sources of supply. Even if duties are not imposed finally, the initiation of investigations itself creates a huge burden for developing countries,which feel they have been 'harassed'.

Anti-dumping measures that are used against developing countries can have immediate impact on trade flows and prompt importers to seek alternative sources of supply. Even if duties are not imposed finally, the initiation of investigations itself creates a huge burden for developing countries, which feel they have been 'harassed'.

Continued Lack of Supply Capacity in Most Developing Countries

A major reason why developing countries are unable to benefit from trade is their lack of capacity to produce and market. Thus, even if there is market access for these countries,especially the LDCs, this 'supply constraint' prevents them from being able to take advantage of the access. The supply and marketing constraints to trade span the range of stages, including formulating appropriate export strategies (including choice of products and markets),providing incentives,training, credit and technology assistance to enterprises,product design and production techniques,and marketing, as well as the government's role in providing general health, housing and education facilities to citizens so that there would be skilled labour. The supply capacity problem has not been a significant area of concern in the WTO, and it may be more appropriate for other international institutions to deal with it. It must however be recognized that dealing with this basic issue is a vital task of the global trading system.

Ongoing Decline in Commodity Prices and Terms of Trade for Most Developing Countries

A long-standing problem for developing countries has been the instability of demand for and declining prices for their export commodities. In recent years the decline in commodity prices in relation to manufactures has worsened. For a majority of developing countries,problems related to commodities remain their single most important international trade concern, making it highly regrettable that international cooperation in this area has not succeeded. The commodities and terms-of-trade issue has also not been a concern at the WTO.

The effects of falling commodity prices have been devastating for many countries. According to UN data, the terms of trade of non-fuel commodities vis á vis manufactures fell by 52 per cent from 147 in 1980 to 71 in 1992, with catastrophic effects. For Sub-Saharan Africa, a 28 per cent fall in the terms of trade between 1980 and 1989 led to an income loss of $l6 billion in 1989 alone. In the four years 1986-89, Sub-Saharan Africa suffered a $56 billion income loss, or 15-l6 per cent of GDP in 1987-89. For 15 middle-income highly indebted countries, there was a combined terms-of-trade decline of 28 per cent between 1980 and 1989, causing an average of $45 billion loss per year in the 1986-89 period, or 5-6 per cent of GDP (Khor 1993).

In the 1990s, the general level of commodity prices fell even more in relation to manufactures, and many commodity-dependent developing countries have continued to suffer deteriorating terms of trade. According to UNCTAD's *Trade and Development Report,1999*, oil and non-oil primary commodity prices fell by 16.4 and 33.8 per cent respectively from the end of

1996 to February 1999, resulting in a cumulative terms-of-trade loss of more than 4.5 per cent of income during 1997-98 for developing countries. 'Income losses were greater in the 1990s than in the 1980s not only because of larger terms-of-trade losses, but also because of the increased share of trade in GDP' (UNCTAD 1999c: 85). Moreover, prices of some key manufactured products exported by developing countries have also declined. For example, the Republic of Korea experienced a 25 per cent fall in the terms of trade of its manufactured exports between 1995 and 1997 due to a glut in the world market (ibid.: 87).

A major reason why the world trading system has not been working beneficially for many developing countries is because their main way of participating in the system has been to export commodities, whose prices have been declining, and thus their terms of trade have been deteriorating. Thus the problem for these countries is not that they are not participating in the trade system, but that their participation in terms of their particular place in world trade (i.e., in exporting commodities) has been on an unequal basis, at least in relation to their terms of trade.

Problems for Developing Countries in Implementing Their WTO Obligations

The most important set of problems facing developing countries in general since the establishment of the WTO arises from implementing their obligations in the WTO agreements. Many of these countries did not fully understand the implications when they signed on to the many Uruguay Round agreements. Now that the obligations have to be implemented, the possible and real negative effects are becoming more evident.

A major problem is that while the previous GATT rules dealt with policies 'at the border' (tariffs and other trade barriers), the mandate of the trading system expanded enormously through the Uruguay Round to go beyond simply trade or 'border' issues, and the WTO framework includes obligations on members that impact on domestic issues, including economic and social policies and structures. For example, while many developing countries had been providing subsidies to their domestic industrial or agriculture sectors as a method of facilitating their growth,many subsidies are now forbidden or severely curbed under the WTO rules.Developing countries had also attempted to boost local sectors and obtain domestic economic spin-offs from industrialization through investment measures such as requiring that a minimum amount of components used in specific industries or projects be obtained from local sources.Measures such as these that discriminate against imports are now prohibited under the TRIMS Agreement.

Also, the TRIPS Agreement obliges developing countries to establish domestic IPR laws with high standards equivalent to those of developed countries. This will hinder technology transfer as local firms will be prevented from practising reverse engineering and other measures for imitative innovation.TRIPS will also raise the cost for developing countries of buying or paying for technology, and increase the prices of protected products, such as patented medicines. Moreover, the services agreement includes obligations to liberalize not only trade but also foreign investment in the services sectors in developing countries.Thus, for the first time, the trading system is applying pressure on developing countries to liberalize not only trade but also investment. This has effects on the domestic structure and policies in the services sector.

WTO obligations can threaten the viability and position of some domestic enterprises and farms in many developing countries. The loss of competitiveness of the local sectors can arise from reductions in tariffs, rules prohibiting or constraining government subsidies or other measures that support local firms and farms, and the liberalization of foreign investment in services.

Those local firms and farms that are unable to withstand the competition may lose their market shares or even close down, thus adding to unemployment. Since export capacity and opportunities are limited for many developing countries,they may be unable to relocate the retrenched workers or farmers to new production facilities, and thus there would be a net increase in unemployment or a net loss of livelihoods in these countries.

In the preparations for the WTO's third Ministerial Conference in Seattle in 1999, many developing countries submitted papers to the WTO pointing out problems they face in implementing various agreements, and put forward proposals to redress these problems. A summary of these proposals was placed in a draft Ministerial Text prepared by the WTO General Council Chairman dated 19 October 1999 (WTO 1999). They have been placed in a section entitled 'Implementation Concerns' in two paragraphs: para 21 listing down proposals for 'immediate action' (i.e. proposed for adoption by a Ministerial Declaration at the Seattle meeting itself); and para 22 listing down issues and proposals to be reviewed within one year of the date of the Declaration.

Despite the strong advocacy by many developing countries, the response of the developed countries to these proposals before and at the Seattle meeting was not encouraging. With the subsequent breakdown of the talks at Seattle, there was no Declaration and no possibility of these proposals being adopted. However, paragraphs 21 and 22 of the draft Ministerial Text have remained an important reference set of issues signifying the problems developing countries face and their proposals for redressing these problems. Since the Seattle meeting, developing countries have continued to press for resolution of their demands on 'implementation issues.' At the WTO, a decision was made to address them at a series of special General Council meetings to deal with implementation issues. Although several meetings have been held, and developing country representatives have repeated their positions,they have been frustrated by the lack of response from developed countries (see Aboulnaga 2000; Khor 2000a). An expression of their disappointment in the lack of progress in this regard was at the informal meeting of the WTO General Council on 30-31 July 2001 which conducted a 'stocktaking' of preparations for the WTO's Ministerial Conference of November 2001.

Developed countries seem to be taking a 'legalistic' and narrow contractual approach to the implementation problems faced by developing countries. WTO agreements are seen as contractual and binding, and if developing countries want changes to address their problems,they have to offer new concessions (such as further market opening, or the expansion of the WTO mandate into new areas) in order that their requests be considered. This suggests an acceptance of imbalances in the system, as attempts to correct existing imbalances are conditioned on acceptance of new obligations which themselves lead to new imbalances. A rejection of attempts to correct imbalances would be contrary to the spirit of a fair and balanced multilateral trading system that is of benefit to all members. Moreover, should developing countries give in to the demands to offer more concessions and to allow new issues into the WTO, this would tilt the multilateral trading system further against the developing countries, thus making the situation far worse.

Following are some of the problems facing developing countries from implementing their obligations under WTO agreements on agriculture, TRIPS, TRIMS and services.

The Agreement on Agriculture

For many developing countries, food import liberalization began with IMF-World Bank structural adjustment programmes in the 1980s and early 1990s that reduced agricultural protection.

The WTO Agreement on Agriculture accelerated this process, as developing countries (including LDCs) have to remove non-tariff controls on agricultural products and convert these to tariffs. Developing countries are then required to progressively reduce these tariffs, while LDCs are exempt from this requirement. The affected developing countries are required to reduce the tariffs by 24 per cent within a 10-year period. This process has brought greater global competition into the domestic farm sector, and in many developing countries it has threatened the viability of small farms that are unable to compete with cheaper imports. Many millions of small farmers could be affected. The process has also increased fears of greater food insecurity, in that the developing countries will become less self-sufficient in food. For many, food imports may not be an option due to shortage of foreign exchange.

Developing countries have also been constrained in regard to domestic subsidies for local farmers. The overall amount of the relevant subsidies was recorded for 1995 as a ceiling, and developing countries (except LDCs) are required to reduce this amount by 13.3 per cent over the period of 10 years. There is a small general *de minimis* exclusion from the subsidy discipline for developing countries of 10 per cent of the value of production (for product-specific subsidies) and 10 per cent of the value of total agricultural production (for non-product-specific subsidies); and also exemptions for limited purposes (such as investment subsidies and input subsidies for poor farmers). These exclusions apart, developing countries are now constrained from increasing the level of domestic support to their farmers and instead have to reduce it. Developed countries, which in general have offered very high levels of domestic support, have committed themselves to only slightly reducing these. Most developing countries have previously maintained low levels of subsidy and are unable to increase them beyond the exemptions. And even in areas where domestic support is allowed, most developing countries cannot avail themselves of the facility because of the lack of financial resources. Developing countries (except LDCs) also have to reduce their export subsidies, in terms of budgetary outlays and total quantity of exports covered by the subsidies.

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The concessions to developing countries are that the rates of reduction (of tariffs, domestic support and export subsidies) are two-thirds those for the developed countries, and that there is a longer implementation period (10 years compared to six years for developed countries). LDCs are exempt from reductions. These concessions are minor, especially in view of the fact that developed countries are allowed to continue to maintain very high levels of import protection and agricultural subsidies. Meanwhile, serious problems of implementation have emerged in developing countries.

Surges in food imports and displacement of the local farm sectors. One of the most comprehensive studies of the effects of the WTO Agriculture Agreement was conducted by the Food and Agriculture Organization (FAO), which surveyed the experience of 14 developing countries in implementing the agreement. The two-volume study (FAO 2001, 2000) made several interesting findings, including the following (FAO 2001: 3-26):

- Import liberalization had a significant effect. The average annual value of food imports in 1995-98 exceeded the 1990-94 level in all 14 countries, ranging from 30 per cent in Senegal to 168 per cent in India. The food import bill more than doubled for two countries (India and Brazil) and increased by 50-100 per cent for another five (Bangladesh, Morocco, Pakistan, Peru and Thailand).
- Increases in food imports were generally significantly greater than increases in agricultural exports. In only two countries was export growth higher while in most other countries

import growth far outstripped export growth. The study also measured the ratio of food imports to agricultural exports and found it was higher in 1995-98 than in 1990-94 for 11 of the 14 countries. An increased ratio indicates a negative experience, as it shows food import bills growing faster than agricultural export earnings. The worst experiences were those of Senegal (86% increase), Bangladesh (80%) and India (49%) (ibid.: 22-24). As the FAO's Senior Economist concluded:

> A majority of the studies showed that no improvement in agricultural exports had taken place during the reform period…. Food imports were reported to be rising rapidly in most of the countries, and import surges, particularly of skim milk powder and poultry, were common. While trade liberalization led to an almost immediate surge in food imports, these countries were not able to raise agricultural exports due to weak supply response, market barriers and competition from subsidized exports' (FAO 2000: 30).

- Although bound tariffs (i.e., levels of import duties that members are committed not to exceed)were generally high, the applied tariffs were on average much lower for countries surveyed. Most countries had already reformulated domestic policies under structural adjustment programmes. The simple average of the applied rates for 12 of the 14 countries was 22 per cent whereas the bound rate was 90 per cent. Some countries were obliged to set applied rates well below their WTO bound rates due to loan conditionality. While bound tariffs were high on average, there were several exceptions: Egypt's rates (28% average) were low; India's tariff binding was zero for 11 commodities (including sensitive items such as rice and some coarse grains), and all of Sri Lanka's agricultural tariffs were bound at 50 per cent with applied rates capped at 35 per cent for 1999.
- Several case studies reported import surges in particular products,notably dairy products (mainly milk powder) and meat. In some regions,especially the Caribbean,import-competing industries faced considerable difficulties. In Guyana,there were import surges for many main foodstuffs that had been produced domestically in the 1980s under a protective regime:

> In several instances the surge in imports has undermined domestic production. For example, fruit juices imported from as far away as France and Thailand have now displaced much of domestic production. Producers and traders of beans indicated that increasing imports have led to a decline in the production of *minca peas,* developed and spread throughout Guyana in the 1980s. The same applied to local cabbage and carrot. The fear was expressed that without adequate market protection,accompanied by development programmes,many more domestic products would be displaced or undermined sharply, leading to a transformation of domestic diets and to increased dependence on imported foods (FAO 2001: 21).

In Sri Lanka, policy reforms and associated increases in food imports have put pressure on some domestic sectors, affecting rural employment:

> There is clear evidence of an unfavourable impact of imports on domestic output of vegetables,notably onions and potatoes. The resulting decline in the cultivated area of these crops has affected approximately 300,000 persons involved in their production and marketing. The immediate possibilities for affected farmers to turn to other crops are limited. Consequently, the economic effects of import liberalization in this sector have been significant (ibid.: 325-26).

- There was 'a general trend towards the consolidation of farms as competitive pressures began to build up following trade liberalization' and this has led to 'the displacement and marginalization of farm labourers,creating hardship that involved typically small farmers and food-insecure population groups, and this in a situation where there are few safety nets' (ibid.).The study noted especially the case of Brazil, where consolidation taking place in the dairy, maize and soybean sectors has affected traditional cooperatives and marginalized small farmers.

Lack of implementation of commitments to net food-importing developing countries and LDCs. Net food-importing developing countries (NFIDCs), together with the LDCs, are expected to face a special problem due to the anticipated global liberalization of agriculture. As subsidies for food production are expected to be progressively reduced in the developed countries, the prices of their food exports may increase and NFIDCs may thus face rising food import bills. This problem was recognized during the Uruguay Round, resulting in a Marrakesh Ministerial Decision on measures concerning the possible negative effects of the agricultural reform programme on LDCs and NFIDCs. The decision committed WTO members to, among other things, 'establish a level of food aid commitments sufficient to meet the legitimate needs of developing countries during the [agricultural] reform programme' and to 'give full consideration in their aid programmes to the need of LDCs and NFIDCs for technical assistance to improve their agricultural productivity.' It also called on the international financial institutions to give special consideration to financial difficulties that LDCs and NFIDCs may face in financing imports and hence their eligibility to draw on the institutions' resources.

Despite this decision, and despite demands by the countries concerned in various WTO meetings, little has been done to implement the donor countries' commitment. Instead,food aid has declined significantly, while the ability of the LDCs and NFIDCs to finance their increasing food import bills has deteriorated. Data in a 1998 UNCTAD study show that in the immediate post-Uruguay Round period, food aid deliveries to LDCs and NFIDCs fell sharply. Between 1994 and 1997, deliveries to LDCs fell from 4,871,094 to 3,089,340 tonnes in grain equivalent for cereals, and from 525,590 to 301,280 tonnes in product weight for non-cereals. Deliveries to NFIDCs fell from 1,627,819 to 574,795 tonnes for cereals, and from 170,470 to 109,107 tonnes for non-cereals.

According to Miho Shirotori, many LDCs and NFIDCs had depended for a large portion of their food imports on subsidized exports (as much as 26% of their cereal import bills for LDCs and 46% for NFIDCs in 1994-95), but the implementation of the export subsidy commitment made these shares drop to virtually nil since 1995-96:

> Together with the decline in the relative contribution of food aid to cereal imports, the burden of food import bills to those countries has been increasing since the start of the implementation of the [Agreement on Agriculture] commitments. The ability of LDCs and NFIDCs to finance normal commercial imports of such basic foodstuffs, which depends crucially on their overall export earnings growth and changes in the terms of trade, has been declining in the last two decades. (Shirotori 2000:145)

The TRIPS Agreement

Many developing countries had tried to resist the entrance of IPRs as a subject in the Uruguay Round, and then tried to limit what they saw as the more damaging aspects of the proposals coming from developed countries. But at the end of the Round, the developed countries suc-

ceeded in getting most of what they had hoped in the TRIPS Agreement. TRIPS has instituted what is basically a 'one-size-fits-all' (or rather a minimum-but-large-size-for-all) system of IPRs, where high minimum standards are set for countries at differing levels of development. It is in the developing countries where the effects of many of the provisions are most acutely felt.

Since TRIPS was established, there has been increasing evidence of social and economic problems caused by the introduction of stricter IPR laws as a result of implementation of TRIPS. This has led to a growing public perception that under the influence of TRIPS, the present IPR system is heavily tilted in favour of IPR holders vis-à-vis consumers and the users of technology. Their privileges and rights have been overly protected while their obligations in relation to the social and economic welfare of the public, and to technology transfer, have been under-fulfilled or unfulfilled. There are also asymmetries between North and South in the balance of benefits and costs (Correa 2000). Developing countries are overwhelmingly dependent on innovations made in the North; patent applicants from developing countries constituted less than 2 per cent of all U.S. applicants between 1977 and 1996; and the developed countries dominate the trade in medium- and high-tech goods. Thus, the worldwide establishment of strict IPR standards under TRIPS will result in benefits accruing overwhelmingly to the developed countries, paid for by the increased costs accruing to the developing countries.

Among the problems faced in implementing the TRIPS Agreement are:

- The increase in prices of consumer products (including some essential items such as medicines) charged by companies owning IPRs, which reduces consumers' access and affects their welfare, health and lives;
- The high cost to firms in developing countries which have to pay royalties for use of technology, or are unable to get permission from IPR holders to use modern technologies, thus affecting the countries' ability to modernize; and
- The phenomenon of 'biopiracy' in which corporations (mainly of the North) have been able to patent biological resources and knowledge of their use (most of which originate in the South).

Effects on consumer access to essential and other products. By preventing competition, intellectual property rights protection enables higher prices and reduces consumer access. In the pre-TRIPS period, countries were able to set their own IPR regime and many developing countries exempted some items, such as pharmaceutical drugs and biological materials, from patentability. Under TRIPS, options for exclusion are explicitly stated. Drugs and food products are not explicitly mentioned as products that can be excluded; some biological materials and processes appear to be included as items that must be allowed for patenting; and plant varieties must also be protected.

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The case of pharmaceutical drugs provides an example of problems arising from TRIPS. Over 50 countries (including developed countries) did not confer patent protection on pharmaceuticals prior to the negotiation of the TRIPS Agreement (UNCTAD 1996). Many developing countries regarded the absence of protection as necessary to promote access to drugs at competitive prices. Implementation of TRIPS may lead to high drug prices, lower access and a weakening of national pharmaceutical industries.

The well-publicized case of medicines for HIV/AIDS has recently highlighted this issue. Patent-protected brands of medicines usually sell more expensively than generic non-protected versions. A year's supply to a patient of a combination of three patent-protected HIV/AIDS medicines costs US$10,000 to US$15,000 in the United States. The price for a similar combina-

tion offered by an Indian generic drug producer is around US$350-600. An Oxfam study shows that the AIDS drug fluconazole is marketed by generic companies in Thailand at US$0.29 and in India at US$0.64. This compares with market prices for brand-name drugs of US$10.50 in Kenya, US$27 in Guatemala and (until recently) US$8.25 in South Africa (Oxfam 2001).

Public outrage over the high prices of AIDS medicines has resulted in multinational firms offering their patented drugs at discounted prices to some developing countries. A multinational drug company announced it would supply a combination of two AIDS drugs at US$600 per patient per year to some developing countries, a price at which, it said, it would not make a profit. There was thus an implicit admission that the regular sale price of US$10,000 or more (in developed countries) was much higher than the cost.

Ownership of a patent enables a company to price its protected drug much higher than if there were competition, for example, from generic or non-patented versions. When the Brazilian government began producing generic AIDS drugs, the prices of equivalent branded products dropped by 79 per cent. Competition from generic alternatives can thus increase access to medicines significantly. The production of AIDS drugs locally has enabled the Brazilian government to offer universal free treatment, making its AIDS programme one of the most successful (Médecins Sans Frontieres 2001).

Besides the specific case of HIV/AIDS medicines, developing countries face the problem of lack of affordable medicines in general. A study conducted by Health Action International (Bala et al.1998) provides examples of how prices of drugs can be higher when sold in developing countries. A comparative study showed that retail prices of 10 out of 13 commonly used drugs were higher in Tanzania (which has a per capita GNP of US$120) than in Canada (per capita GNP of US$19,380). The average retail prices of 20 commonly used drugs in 10 developing countries of Central and South America were all higher than the average retail prices of the same drugs in 12 OECD countries. The average prices of drugs surveyed in South Africa were higher than in any of the eight Western European countries for which data is presented.(South African prices are on average four times more than those in Zimbabwe.)

TRIPS does allow members to take compulsory licensing and parallel import measures to enable third parties to produce or import alternative versions of products that are patented. However, developing countries have generally not made as much use of such provisions as they might have liked to, due to pressures put on some of them as well as their own uncertainties about the conditions under which these measures are legitimate. Developing countries have put forward their views on the need for affirmation that TRIPS does not prevent members from taking public health measures, and for affirming the conditions and procedures for taking such measures as compulsory licensing and parallel imports (*Third World Economics,* 16-30 June 2001).

In the case of another product, computer software, prices are also usually far above cost level. If they have to purchase software products at the high market prices, many consumers in developing countries would be unable to afford them, and this would shut them out of an important part of the 'knowledge society' and contribute to the global digital divide. As IPR enforcement becomes more effective, the would-be users of software (individual consumers as well as companies and educational institutions) will find their access significantly reduced.

Adverse effects on industries and technology upgrading in developing countries. Historically, technology transfer has played a key role in industrialization, and a large part of this transfer took place through firms learning, adapting and modifying (through reverse engi-

neering) the technologies used by others. Producers in developing countries will find it difficult or impossible to make use of this process with regard to technology which is IPR-protected, with the entry into force of TRIPS and associated national legislation.

TRIPS prohibits or severely restricts reverse engineering and other forms of imitative innovation, and also places the burden of proof on a person or firm claiming to use an alternative to the IPR protected process to produce a product to show that the process is actually a different and alternative process.Domestic firms that wish to make use of the technology would have to obtain permission from the patent holder (which may or may not grant the permission, even if the applicant intends to pay the commercial rate), and pay expensive royalties. Many firms may not be able to afford the fees; and those that can would find that the high cost reduces their ability to be competitive. The TRIPS regime thus places high obstacles to developing countries' efforts to upgrade technology levels, to modernize and industrialize.

Many of the present-day developed countries did not adopt IPR legislation, or strict IPR standards, when they were going through the stages of development that the developing countries of today are attempting to go through. In Switzerland a century ago, as a rule, Swiss industrial inventions could be patented abroad where patent legislation was in effect, but as Switzerland itself had no patent laws, Swiss industries were free to copy foreign inventions without restrictions (Gerster 1999). When most of the now-developed countries established their patent and other IPR laws in the 19th century, all of these IPR regimes were highly 'deficient' by the standards of today (Chang 2000). Few of them allowed patents on chemical and pharmaceutical substances until the last decades of the 20th century. Pharmaceutical products were patented only in 1967 in West Germany and France, in 1979 in Italy and in 1992 in Spain. Chemical substances were patented only in 1967 in West Germany, in 1968 in Nordic countries, 1976 in Japan, 1978 in Switzerland and 1992 in Spain (ibid.). Yet the developing countries of today are asked to adhere to IPR standards that would effectively prevent them from taking the same technological path as the developed countries. As Carlos Correa concluded:

> The strengthening and expansion of IPRs are likely to adversely affect the conditions for access to and use of technology, and thereby the prospects for industrial and technological development in developing countries…. Under the TRIPS Agreement, reverse engineering and other methods of imitative innovation—that industrialized countries extensively used during their own processes of industrialization—shall be increasingly restricted, thereby making technological catching-up more difficult than before (Correa 2000: 18-19).

An example of difficulties facing local firms in developing countries is that of Indian industry attempting to adjust to India's implementation of its obligations under the Montreal Protocol, in which members have agreed to phase out their use of chlorofluorocarbons (CFCs) and other ozone-damaging substances by given target dates. Indian-owned firms,which have been producing CFCs that are used in the manufacture of refrigerators and air-conditioners in India, wanted to produce an environmentally sound substitute, HFC 134a, instead.However, a few companies in developed countries control the patents to HFC 134a. An Indian company seeking access to the technology of producing HFC 134a was quoted a very high price (US$25 million) by a transnational company holding the patent. The supplier proposed to the Indian firm two alternatives to the sale, that it be allowed a majority share in a joint venture with the Indian firm; or that the Indian firm agree to restrict its exports of HFC 134a produced in India.

Both options were unacceptable to the Indian firm, and the quoted price was also far too high as it was estimated that the fee should at most have been US$2 to $8 million (Watal 2000).

This case shows the difficulty not only for a developing-country firm and industry to modernize its technology, but also for a developing country to meet its commitments under a multilateral environment agreement (MEA). Even if a local firm is willing to pay the market rate to obtain permission to use patented technology, the patent holder can quote an unreasonably high price, or impose unacceptable conditions, or even refuse permission outright. Moreover, although some MEAs may have financial-assistance, technology-transfer and technology-assisting clauses to benefit developing countries, in practice developing countries are finding that the developed countries may not adequately fulfil their obligations on assistance, and developing countries find difficulties and disadvantages in fulfilling their environmental obligations.

IPRs, biological materials and biopiracy. Another major problem is the way TRIPS has facilitated the patenting of life-forms as well as 'biopiracy,' or the exploitative appropriation by transnational companies of the biological resources and traditional knowledge of local communities based mainly in developing countries. Before TRIPS, most countries had excluded patenting of life-forms,biological resources and knowledge on their use. This changed with TRIPS. Article 27.3b of TRIPS allows patent exclusion only for plants and animals (but not micro-organisms) and for essentially biological processes for production of plants and animals (but not for non-biological and microbiological processes). Thus it appears that WTO members have to allow patents for certain types of life-forms and living processes; and it is being debated whether this also applies to naturally occurring life-forms and processes. If it applies, then the basic foundation on which the patent system rests is undermined, for patents must then be given for what are at best discoveries and not inventions.In any case, there is no scientific basis for allowing exclusions for certain organisms and not for others, and for certain living processes and not for others. This contradiction sticks out like a sore thumb.

Several scientists also argue that there is no scientific basis for the patenting of life-forms even if they are genetically modified. The patent system is an inappropriate method for rewarding innovations in the field of biological sciences or in relation to biological materials and processes (Shiva 1995; Tewolde 1999; Ho and Traavik 1999). A fundamental critique of life patenting has been made by B.G.E. Tewolde, the African scientist who is general manager of the Ethiopia Environment Authority and chairperson of the Africa Group in the Convention on Biological Diversity (CBD). Tewolde points out that the patent system was drawn up to reward innovation in relation to mechanical processes and is inappropriate when applied to biological processes; unlike mechanical things and processes, living things are not invented and they also reproduce themselves. This is also true of genetically modified organisms. Discoveries relating to life-forms and living processes should also be rewarded, but not through the patent system.

> Distorting the meaning of patenting in order to make it applicable to life only serves to attract the rejection of the whole system. Who ever worried about the legitimacy of patenting before the 1990s, before it became known that the USA was allowing the patenting of living things? But now, opposition is growing all the time, opposition not only to the legitimacy, but also to the legality of patenting. (Tewolde 1999:11-12)

Article 27.3b also requires members to grant IPRs for plant varieties, either through patents or through a *sui generis* system. Previously, few developing countries granted IPR protection for plant breeding and plant varieties. TRIPS opens the road either for patenting or for a system of plant breeders' rights that may restrict the right of farmers to save, exchange and use seed.

Meanwhile, TRIPS has opened the floodgates to the corporate patenting of life, and to biopiracy. The London-based *Guardian*'s special report on 'The Ethics of Genetics' (15 November 2000) found that as of November 2000, patents are pending or have been granted by 40 patent authorities worldwide on over 500,000 genes and partial gene sequences in living organisms. Of these, there are over 9,000 patents pending or granted involving 161,195 whole or partial human genes.

Patents have been given on genes or natural compounds from plants that are traditionally grown in developing countries (including rice, cocoa, cassava) and on genes in staple food crops originating in developing countries (including maize, potato, soybean, wheat). Patents have also been granted on plants used for medicinal and other purposes (e.g., as an insecticide) by people in developing countries. Examples include a U.S. patent for the use of turmeric for healing wounds (this was successfully challenged by the Indian government on the ground that it has been traditionally used by Indian people for this purpose), and the patenting by American scientists of a protein from Thai bitter gourd after Thai scientists found its compounds could be used against the HIV/AIDS virus.

The thousands of cases of life patents and the increasing evidence of biopiracy have caused concern among a wide range of people and institutions,including governments of the South and their delegations at the CBD and WTO; organizations of farmers and indigenous peoples worldwide, particularly the South; development NGOs in the South and North; the environment community; and also the human rights community.

Questionable claims and unkept promises. Disenchantment with TRIPS has also arisen because some of the claims made on behalf of a strict IPR regime have not been borne out, while some promises of benefits have not been fulfilled. It has been claimed that a strict IPR regime is needed in order to promote innovation and research by providing incentives. For example, Keith Maskus (1998, 1997) shows a positive link between patents and research and development. However, a counter-argument has been made to the effect that IPRs can also discourage or help to prevent scientific research,especially in developing countries. Most patents are held by foreigners in developing countries, and local R&D can be stifled, as the monopoly rights conferred by patents restrict research by local researchers (Oh 2000b). Dr. Gahuur Alam (1999) points out that the IPR policy changes in developing countries raise concerns that a strong IPR system will be 'extremely detrimental to local research' in the area of new plant varieties and genetically engineered plants. Researchers and librarians in the North are also concerned that current IPR practices and trends in information technology will constrain the flow and use of information.

TRIPS has many provisions that deal with technology transfer. Article 7 on objectives states that IPRs should promote innovation and technology transfer. Article 66.2 on LDCs states that developed countries shall provide incentives to their enterprises and institutions to promote technology transfer to LDCs. However, little or nothing has been done by developed countries either to provide concessions or to give incentives to their enterprises to transfer technology to developing countries. Confidence that developed countries will fulfil their technology transfer obligations has consequently eroded.

The TRIMS Agreement

The TRIMS Agreement is causing some developing countries difficulties in their industrialization process as governments are now constrained from assisting local industry through the poli-

Little or nothing has been done by developed countries either to provide concessions or to give incentives to their enterprises to transfer technology to developing countries. Confidence that developed countries will fulfil their technology transfer obligations has consequently eroded.

cy of encouraging the use of local materials. The local-content requirement is one of the investment measures prohibited by the agreement.

During the Uruguay Round, a number of developed countries had in fact wanted a broader investment agreement, to include the establishment of investment rules per se, that would have provided foreign investors with rights of establishment, national treatment and allowed much greater freedom from obligations, including investment measures and other performance requirements.However, developing countries were able to limit the agreement to 'trade-related investment measures' that are inconsistent with GATT. Several developing countries argued that certain investment measures or performance requirements are necessary to channel foreign investment towards national development policy objectives.They also noted the need for such measures to address restrictive business practices and other practices of transnational corporations that themselves restrict or distort trade. While some developing countries acknowledged that some investment measures may have potential trade effects, they stressed their need to regulate foreign investment to promote development goals and the resulting need for differential and more favourable treatment (Puri and Brusick 1989: 209).

In the end, it was agreed that investment measures that are in violation of the obligations under Article III (on national treatment on internal taxation and regulation) and Article XI (on general elimination of quantitative restrictions) of GATT 1994 would be prohibited under the TRIMS Agreement. Among the prohibited measures placed in an 'illustrative list' in the Agreement are two that have been used by developing countries: (i) local-content requirement (obliging firms to use at least a specified minimal amount of local inputs) and (ii) foreign exchange balancing (limiting the import of inputs by firms to a certain percentage of their exports).

While the prohibition arises from the provisions of Articles III and XI of GATT 1994, the practices were being adopted by some developing countries as policy instruments in their development strategies. Now these policies have been definitively stopped by the TRIMS Agreement. Developing countries in general would prefer that the prohibited measures be confined to those in the present 'illustrative list'.However, it is expected that some developed countries will propose extending the list so as to prohibit more investment measures.

Under the TRIMS Agreement, members had to notify the WTO of investment measures that are inconsistent with GATT 1994 within 90 days of the entry into force of the WTO agreements, that is, 1 January 1995. The notified measures are to be eliminated within two years (for developed countries),five years (for developing countries) and seven years (for LDCs). The longer transition period by a few years is the only 'special treatment' afforded to developing and least-developed countries.

The implementation of the agreement can be expected to cause difficulties for developing countries. Even if certain TRIMS are 'trade-distorting' in that they favour local products vis-à-vis imported products, they are nevertheless required by developing countries for meeting development objectives. Such measures had been introduced (or may be useful to introduce) to protect the country's balance of payments, promote local firms and enable more linkages to the local economy. The prohibition of these investment measures will make the attainment of development goals much more difficult and cause developing countries to lose some important policy options to pursue their industrialization.

Several developing countries have already faced problems of implementation. First, many countries faced difficulties in identifying the relevant TRIMS that were prohibited, or in meeting the notification deadline. Failure to meet the 90-day deadline may mean the inability to

make use of the transition period. Among the 38 notifications submitted by 26 countries,20 submissions were made after the deadline (Tang 2000: 3).

The second problem developing countries face is the potential threat of a complaint or case being brought against them. Several cases involving the agreement have already been brought to the WTO dispute settlement process against developing countries. These include complaints brought by developed countries (mainly the United States, the European Union/EU and Japan) against Indonesia, the Philippines, India and Brazil (all in relation to their automobile sector). There have also been cases against the Philippines regarding pork and poultry and against Canada regarding the automobile industry.

In the Indonesian case, the government believed that its national car programme (which included local-content requirements) did not constitute a prohibited investment measure and therefore withdrew a notification it had earlier submitted (after the deadline). The panel hearing the case concluded that the sales tax and customs duty benefits obtained under the car programme for meeting local-content requirements violated the TRIMS Agreement. The panel also concluded that the Indonesian tariff and luxury sales tax exemptions provided as incentives under the national car programme violated the Agreement on Subsidies and Countervailing Measures (Mashayekhi 2000b: 241-42).

The cases pursued so far against developing countries have serious policy implications for many developing countries and their implementation of the TRIMS Agreement. 'For example, the completed case against Indonesia on the automobile sector has made many developing countries consider [that] the Agreement is against their interests,disregards the obvious structural inequalities among the countries and aims at maintaining the industrialization gap between them and developed countries' (Tang 2000: 3).

A third problem developing countries face is that the transition period is too short to allow them to adjust their policies. Related to this is a fourth problem, that when they request an extension of the transition period (such a request is a right under Article 5.3 of the agreement), they can be subjected to scrutiny and pressure.

The five-year transition period for developing countries expired on 1 January 2000. As a manifestation of the difficulties resulting from the inadequate length of the transition period, nine countries (Argentina, Chile, Colombia,Malaysia,Mexico, Pakistan, the Philippines, Romania and Thailand) requested an extension of the transition period for one or more of their existing investment measures, under Article 5.3 of the agreement. The majority of these requests relate to local-content policies, and mainly in the automotive industry (Argentina, Chile, Malaysia,Mexico, the Philippines, Romania, Thailand) but also for other sectors such as agriculture (Colombia), milk and dairy products (Thailand) and shipbuilding (Romania).

In the case of Pakistan, extension by a minimum of seven years was requested in order to maintain the indigenization/deletion policy which provides incentives to promote the establishment and development of domestic industries. The programme's incentives fall under the TRIMS Agreement's illustrative list. Industrial enterprises that opted for the programme are entitled to import raw materials, components and parts to assemble or manufacture specific items at concessionary tariff rates. Sectors included are general engineering, electrical goods, agricultural equipment and automobiles. According to Pakistan's request, the large, medium and small enterprises that opted for the programme have benefited significantly. The industries are at various stages of implementation of the programme, and consequently its abolition would be detrimental not only to these industries but also to the many enterprises having forward and

backward linkages with these industries. The request added that such a measure would have a negative impact on the balance-of-payments situation, and would impede the process of technology transfer that is presently under way. It also noted that the measure would inevitably have an adverse effect on the social situation due to displacement of labour and unemployment, and so would undermine the development efforts of the country (Pakistan 2000).

Countries requesting an extension have asked that their cases be treated together rather than on a case-by-case basis, and that an extension be given generally to developing countries. In order to justify why their applications should be granted, these countries have had to reply to a long series of questions from developed countries.There have been reports among trade diplomats that some developed countries had insisted on bilateral discussions (rather than having a multilateral decision or solution to the cases) because this type of bilateral consultation,ostensibly to enable those seeking extension to demonstrate their 'particular difficulties', was being used to extract other trade concessions from the requesting countries (Raghavan 2000c).

The more obvious grievances that developing countries have about the agreement are that the one-time notification requirement and the 90-day period for notification are unreasonable conditions for qualification for TRIMS transition periods and that the transition periods themselves are too short to allow them to make the needed adjustments. A more fundamental critique that is emerging is that the measures prohibited in the agreement are themselves useful and necessary instruments for developing countries'industrialization and development. Therefore, some developing countries are of the view that even if the investment measures are trade-restrictive, developing countries should be allowed to make use of them, as part of their rights for special and differential treatment.

The General Agreement on Trade in Services

Before the Uruguay Round was launched,many developing countries had tried to resist the inclusion of the then 'new issue' of trade in services.They believed that bringing services into the GATT system would be against their interests as they would not have the capacity to gain from increased exports, while they would be pressured to liberalize their own services markets,which could result in their local companies losing ground to bigger foreign service providers. Despite this reluctance, services became a part of the round on the understanding that developing countries would gain in other areas (especially through more market access in agriculture, textiles and clothing).However, developing countries did not get the expected benefits from other areas.

In the meanwhile, there are many problems and potential problems associated with GATS, including the lack of data and proper assessment, imbalances in the agreement, the unequal outcome of benefits and costs, continual pressures (through successive rounds of negotiations) for developing countries to liberalize, and the narrowing of options for governments in regulating services or in operating public services. The problems may become even more complex should some of the proposals being put forward in the ongoing round of services negotiations take effect. Some of the issues are examined below.

Lack of data, making assessment of GATS effects difficult. The Uruguay Round negotiations on market access within the services sector were conducted without the aid of data that could enable participants to understand the full implications and make some judgements of the costs and benefits of what was being negotiated. The area of services has lacked even the kind of

rough data comparable to that on directions of trade in goods, which are used to make a rough assessment of the value of concessions given and exchanged in negotiations in the goods sector. For most developing countries, therefore, when it comes to the services negotiations, it has been like a case of 'a blindfolded person in a dark room chasing a black cat' (Raghavan 2000f).

The current data on services trade, based on the IMF's balance-of-payments statistics, are not only highly aggregated and thus not meaningful, but are also on the basis of international transactions between residents and non-residents, and do not reflect the WTO definition of trade in services and the four modes of service delivery listed in GATS.

The issue of lack of data came up several times in the Uruguay Round negotiations,and UNCTAD and the UN statistical system began to try to figure out how to collect meaningful data.However, these attempts were not maintained. The data issue is now being pursued by various institutions. However, at the current rate of progress, an agreement for national data classification and collection, and comparable international data and analysis, is unlikely to be available even by the beginning of the next decade. Despite recognition of the lack of data, the major countries have continued the push for further negotiations and binding commitments without countries being able to make a proper assessment of the costs and benefits of entering into further commitments and obligations.Thus,there is a danger of developing countries being asked to make further market openings without being sufficiently able to assess the implications.

The lack of data is also hindering the ability to carry out a meaningful assessment on the effects of the services agreement on developing countries generally as well as on individual countries. In the guidelines for the ongoing services negotiations, a coalition of developing countries has managed to include a provision that the Council for Trade in Services 'shall' continue to carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of GATS and Article IV in particular (on increasing the participation of developing countries in services trade and improving their access to distribution channels and information networks). This is to be an 'ongoing' activity, and the 'negotiations shall be adjusted in the light of the results of the assessment.' The Council 'shall also' conduct an evaluation,before completion of the negotiations, of the results attained in terms of the objectives of Article IV.

Developing countries, however, are still not clear on how the assessment could be done and on what basis. Unfortunately, developing countries do not have the capacity, individually or collectively, even to undertake national-level assessments. Thus, until the problems of lack of data and the need for proper assessments at both the international and national levels are resolved, there is little basis for demanding further liberalization commitments from developing countries, since there is no evidence that the previous round of liberalization has benefited them, nor that further liberalization will benefit them, whereas there is clear evidence of the imbalances.

Imbalances in services outcome, with little or no reciprocal benefits to South. As described in Part III, the services agreement contains inherent imbalances. It favours major services-exporting countries that can take advantage of liberalization, while disadvantaging developing countries that lack the capacity to benefit from exports. Also, it specifically includes obligations to liberalize the movement of capital (e.g., Arts.XI and XVI.1fn.) but the same special treatment has not been given to the movement of labour, which is of interest to developing countries.

In terms of sectoral commitments,various countries undertook obligations to liberalize the import of services (via the four modes of supply) in a particular sector by easing the market

entry conditions and by providing national treatment (treatment no less favourable than that accorded to the similar domestic service provider). The major benefit went to enterprises of the industrialized world, in terms of their market entry through the mode of 'commercial presence'. The opportunities have opened up mainly for the service providers of developed countries as the developing countries undertake the liberalization of services imports.

The result has been that the developing countries have given concessions without effectively getting any in return. Within the services trade, there are imbalances in the distribution of benefits between industrialized and developing countries. The commitments undertaken in GATS do not reflect the interests of developing countries in terms of commercially meaningful sectoral and modal coverage. Moreover, developing countries have not derived benefits through scheduled commitments from their industrialized-country partners in terms of Article IV (increasing developing countries' participation) and Article XIX (providing flexibility for developing countries) of GATS (Mashayekhi 2000a).

The services agreement favours major services-exporting countries that can take advantage of liberalization, while disadvantaging developing countries that lack the capacity to benefit from exports.

In addition, it is now generally accepted that the opening of the capital account in developing countries and premature liberalization of their financial sectors has been a major factor behind the financial crises that hit them from time to time, and that they should be wary of both opening the capital account under the IMF Articles of Agreement and financial services liberalization in GATS (Oh 2000a).

It has been argued that GATS is beneficial as services liberalization helps developing countries by increasing efficiency and providing required inputs. Even if this were so, developing countries can choose to liberalize selectively and autonomously, without making binding commitments at the WTO;thus, if the liberalization turns out to have negative effects, they can reverse course without having to pay any compensation.

Since the Uruguay Round, follow-up negotiations, instead of moving to reduce the imbalances in GATS, have aggravated the inequity. New agreements were finalized on a priority basis in sectors such as financial services and telecommunications services,which are primarily important to developed countries. Developing countries have been pressured to make high levels of commitments in these sectors. In fact, the United States had decided not to join the first agreement on financial services mainly because it thought that some developing countries had not made adequate commitments on liberalization. These two sectoral agreements have tilted the balance further in favour of the developed countries, as they are the major providers of services in these sectors, and developing countries have hardly any supply or export capacity in these sectors (Das 1998b).

When the financial services negotiations were concluded in December 1997, the WTO secretariat, and the U.S. and EC delegations were effusive in their praise for the accord. However, many developing countries were of the view that there had been no reciprocal benefit for their enterprises in a trade dominated by the suppliers of the developed countries. The Egyptian Ambassador expressed the view that the negotiations and the accord were a 'one-way affair' that concentrated benefits in the hands of the developed countries' firms which could now enter and compete in the South, whereas the South's banks and firms were unlikely to penetrate Northern markets (Raghavan 1997b: 2-4).

Supply constraints and barriers to services exports of developing countries. In the implementation of the GATS Agreement,developing countries face structural problems that hinder their ability to export services, as a recent UNCTAD study points out: 'The efforts of developing countries to develop services as a major export item and contributor to development

and to penetrate the world market for services have faced considerable barriers. These include barriers to market access and national treatment, as defined in Article XVI and XVII of GATS, as well as difficulties in market entry caused by anti-competitive practices, subsidies and so forth' (UNCTAD 1999a: 9).

Among the major ***supply constraints*** that prevent developing countries from building a competitive service sector are: lack of human resources and technology to ensure professional and quality standards; weak telecommunications infrastructure; lack of a national strategy for export of services; lack of government support to help service firms,especially small and medium enterprises; weak financial capacity of firms;lack of a presence in major markets; and an inability to offer a package of services (ibid.: 5).

Among the ***barriers to market access*** discouraging exports from developing countries from entering the developed countries are:lack of commitments on movement of labour (resulting in limits to access to intra-corporate transferees,strict and discretionary visa and licensing requirements,lack of recognition of qualifications);prohibition of foreign access to service markets reserved for domestic suppliers; price-based measures (discriminatory airline landing fees and port taxes, licensing fees); subsidies granted in developed countries that have an adverse impact on developing-country exports; technical standards and licensing with restrictive effect;discriminatory access to information channels and distribution networks; and practices of mega firms (ibid.: 7).

Anti-competitive structures and practices also affect developing-country exports. Many markets for services are dominated by a few large firms from developed countries and a number of small players. As a result, in most service sectors, the larger operators face little effective competition as the size of the next tier of competitors is so small. For example, 80 per cent of the market in tourism belongs to Thomson, Airtours, First Choice and Thomas Cook. Service providers from developing countries are mainly small- and medium-sized, and they face competition from large service multinationals with massive financial strength, access to the latest technology, worldwide networks and a sophisticated information technology infrastructure.The trend in mergers and acquisitions and strategic alliances has exacerbated this concentration. UNCTAD studies on health, tourism, air transport and construction have highlighted the possible anti-competitive impact of these new business techniques. For example, vertical integration between tour operators and travel agents creates considerable market power that puts competitors at a disadvantage. The structure of distribution channels and information networks in several service sectors has also shut out competition. For example, in tourism and air transport, strategic global alliances and global distribution systems have restricted competition and present major barriers to market entry by developing countries (ibid.: 1999a:6-8).

Limits to the benefits from GATS architecture and challenges arising from attempts to change it. It is often claimed that the architecture of GATS is more friendly to developing countries (compared to other agreements such as TRIPS), as commitments apply only in sectors offered by the country (the 'positive-list' approach) and to the chosen extent of liberalization as entered in each country's schedules. Thus in theory, it allows each country to liberalize at its chosen pace and in the various sectors that it believes to be appropriate. It includes a principle of 'progressive liberalization' rather than a minimum standard of liberalization, and Article XIX prescribes 'appropriate flexibility' for individual developing-country members to open fewer sectors and liberalize fewer types of transactions.Even so, developing countries face many problems and challenges:

- Even if a commitment to liberalize is made on the basis of a 'voluntary offer,' once such a

commitment is made, it cannot be withdrawn or modified, without giving adequate compensation. Thus, if a country were to later find it has made a mistake in making some of its commitments, or it later decides it would like to develop the capacity of local firms in particular sectors in which it has made commitments, it would face serious difficulties in attempting to modify the relevant commitments. In other words, the commitments in GATS are constraints to policy options in the future. The principle of 'progressive liberalization' also implies that a member is obliged to increase its liberalization commitments. The process of progressive liberalization 'shall be advanced' through successive rounds of negotiations 'directed towards increasing the general level of specific commitments' (Article XIX). Thus,countries are under pressure through new rounds of negotiations to 'roll forward' their liberalization commitments,which are binding, but they are unable to 'roll back' these commitments,except through a willingness to offer adequate compensation.

- Although in principle, developing countries should be able to liberalize their services according to their own pace and sectors, in practice, they generally and individually often face pressures to open up. For example, during the financial services negotiations,major developed countries applied pressure on developing countries to offer higher levels of commitments. At the concluding stage of the negotiations, hours after the deadline had passed, the United States was still pressuring Malaysia to increase its offer that in the insurance sector foreign firms will be allowed to own up to 51 per cent of the equity in insurance ventures (Raghavan 1997b: 2-4).
- In the ongoing new round of services negotiations,which started in 2000, developed countries have made it clear that they intend to push for ambitious levels of liberalization,including by developing countries. For example, the U.S. proposal of 13 July 2000 for the 'Framework for Negotiation' states:'Our challenge is to accomplish significant removal of these restrictions (on trade in services) across all services sectors, addressing measures currently subject to GATS disciplines and potentially measures not currently subject to GATS disciplines, and covering all ways of delivering services' (United States 2000). The United States has also advocated 'meaningful liberalization,'which appears to be in contrast to the concept of 'progressive liberalization.'
- Although countries may now choose within each sector whether and how to liberalize, new approaches have been proposed that would in effect widen or accelerate the liberalization process.The proposed changes (e.g., a 'horizontal modalities approach,' a 'formula approach,' a 'cluster approach' or even a 'negative list approach') would, if accepted, affect the present architecture of the GATS. Countries thus have to carefully assess attempts to change the present system.

Development or extension of rules. Effects on development may also arise from the process of developing rules in GATS negotiations. One important example is the exercise to develop rules on ***domestic regulation.*** Under GATS (Article VI:4), the WTO is mandated to develop 'necessary disciplines' to ensure that 'measures relating to qualification requirements and procedures,technical standards and licensing requirements do not constitute unnecessary barriers to trade.' This issue is being discussed in the Working Party on Domestic Regulation. Targeted for disciplining are government regulatory measures that can fall under the broad categories of qualification requirements, technical standards and licensing requirements,which affect any service sectors, not only those in

which countries have made commitments. Under the proposed new disciplines, governments may be required to show that the regulations are necessary to achieve an objective that is held to be 'legitimate' by the WTO (a 'necessity test'); and that it was not possible to adopt a less commercially restrictive alternative measure. The proposed disciplines, if adopted, can be expected to significantly constrain governments from exercising their authority to regulate some aspects of services. A regulation could be struck down if the regulating government fails to demonstrate that it is not more burdensome than necessary to meet a WTO-sanctioned legitimate objective (Sinclair 2000: 75-81).

The development of new rules in three other areas—-safeguards, subsidies and government procurement—-is also mandated in GATS. Many developing countries have been advocating that GATS should also have a ***safeguards*** provision (which GATT has) to enable temporary protection during situations when there is serious injury to domestic producers. However, there are some complex issues to consider with regard to whether an effective safeguards mechanism can be set up in the area of services. These include the lack of data on services (needed to make the case for injury and to show that the cause is increased imports); and how safeguards can be applied in respect to foreign service providers in the country.

The WTO is also mandated to negotiate disciplines to avoid distortive effects that ***subsidies*** may have on trade in services. Negotiations on this issue are bound to raise many difficult and complex issues, as for example, how sensitive areas such as government subsidies in health, education and social welfare will be treated, and whether and how the national-treatment principle will apply to subsidies in relation to resident and non-resident service providers, and subsidies embedded in services consumed locally and abroad (Sinclair 2000: 85-89).

According to Article XIII, the market access and non-discrimination obligations of GATS shall not apply to ***government procurement*** of services; however, further negotiations are required. Some developed countries have asked for consideration for specific rules and commitments on government procurement under GATS (e.g., United States 2000). The possible inclusion of government procurement (for goods and possibly services) to cover transparency, at least initially, is also being discussed in a WTO working group on transparency in government procurement. The possible development of new disciplines in this area seems designed to widen the scope of commitments by developing countries.

Public concerns that provision of and access to social services will be affected. Citizen groups are concerned that GATS is creating conditions that may ultimately affect the public's access to social services, such as health care, education, water supply and social welfare, that traditionally have been provided by the public sector. Among the concerns is that governments would come under pressure to change the conditions under which public services are provided, for example, to privatize such services, to allow competition from the private sector and from foreign firms, and to privatize natural resource-based items, such as water, and also sell them to foreign countries.

Many 'public services' have traditionally been provided by government, at federal, state or municipal levels, or by agencies linked to the government. There have been assurances by the WTO secretariat that under GATS countries are not 'compelled' to liberalize and that they are bound by GATS disciplines only in sectors and sub-sectors they have agreed to liberalize. 'The WTO is not after your water,' states a WTO document responding to NGO concerns, adding that public services maintained or supplied by a government need not be opened to foreign competition (WTO 2001a).

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There is some degree of ambiguity as to the extent to which government services are exempted from the coverage of GATS. According to Article I of GATS, the definition of 'services' covered in the agreement gives an exception to 'services supplied in the exercise of governmental authority,' and that term in turn means 'any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.' Thus, government services provided on a commercial basis are subject to GATS provisions, as are government services supplied in competition with any other suppliers. In many countries,there are many aspects of education, health care, housing and other social services in which the government as well as the private sector provide services, and it could be argued that in these aspects the government service is in competition with other suppliers, and thus falls under the GATS purview.

On the issue of whether governments are pressured to privatize or open up public services activities to foreigners, the situation is also more complex in the case of developing countries. It is also necessary to consider the way in which the IMF and the World Bank have operated through structural adjustment conditionality to get governments to privatize several formerly government-supplied services and infrastructural projects and schemes and also to pry open developing-country markets for foreign service suppliers (including participation in the privatization schemes). Many developing countries have been required to privatize water supply, sanitation and other services and to charge 'user fees' to bring in revenue, as well as open up the field for private entities to provide the service, whether in competition with or as a complement to the public service (Raghavan 2001c).

Once the public service is privatized, it ceases to be an exempted government service. Even in a case where privatization is partial, or where the government still maintains its service but allows private entities to also participate in supplying that service, in terms of Article I.3(c) of GATS, such a service may no longer qualify as a service 'supplied in the exercise of governmental authority' and thus could be brought under GATS.

Thus, the IMF and World Bank on the one hand, and the WTO on the other hand, can play complementary roles in generating a process by which public services are either commercialized,privatized, opened up for competition from private entities, or opened up to foreign service suppliers. While the initial prompting for privatization,commercialization, competition and liberalization might begin with IMF-World Bank conditionality, pressures could then build for the countries involved to bind these decisions or policies under GATS.

In conclusion, since many 'governmental services' can and do fall under the purview of GATS, there are grounds for concern that countries could come under pressure to accept requests that they open up public services to foreign competition, and that, moreover, these services come under the purview of the cross-cutting rules of GATS. Also, for many developing countries that are under structural adjustment programmes, there are elements external to the WTO that generate pressures for public services to be commercialized, privatized and liberalized, which would then make these services ineligible for classification as exempted government services, and thus subject to GATS rules and processes.

Trade, Environment and Sustainable Development

Before and since the establishment of the WTO, there has been considerable concern about both the environmental effects of trade liberalization, and the need to prevent the environmental issue from being used as a new instrument for protection against products of developing countries.On the one hand, there is evidence that current patterns of trade have had and are having negative effects on the environment (e.g., by increasing resource depletion or the spread of harmful technolo-

gies); and in some ways,there can also be a positive effect (e.g.,through trade in environmentally friendly technology). On the other hand, the need for measures to improve environmental protection and standards should not be used for protectionist objectives that would act against the interests of developing countries. Discussions should be framed not in the context of 'trade and environment,' but rather in the broader and more appropriate context of 'trade, environment and sustainable development.' The concept of sustainable development, as it has evolved through the UN Conference on Environment and Development (UNCED) process,involves a combination of concerns for environmental protection,equity between and within countries, and the need for development and fulfilment of human needs for present and future generations (Khor 1996, 1998).

'Trade and environment' is already an issue within the WTO, due to a Ministerial decision at Marrakesh in 1994. Issues linking trade and environment are being discussed at the WTO's Committee on Trade and Environment. However, there is no specific agreement in the WTO that deals with the environment.

That there are links between trade and environment cannot and should not be denied. Trade can contribute to environmentally harmful activities. Ecological damage, by making production unsustainable, can also have negative effects on long-term production and trade prospects. In some circumstances,trade (e.g., trade in environmentally sound technology products) can assist in environmental protection. What is of concern in looking at the trade-and-environment relationship is the advocacy of the use of trade measures and sanctions on environmental grounds. Some environment groups and animal rights groups believe that national governments should be given the right to unilaterally impose import bans on products on the grounds that the process of production thereof is destructive to natural resources and animal life, and that WTO rules should be amended to enable these unilateral actions.

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Some groups, and some developed-country members of the WTO, have also advocated a set of concepts linking trade measures in the WTO to the environment. These include processes and production methods (PPMs), internalization of environmental costs, and eco-dumping. The three concepts are inter-related. When discussed in the WTO context, the implication is that if a country has lower environmental standards in an industry or sector, the environmental cost of that country's product is not internalized and the price of the product is thus too low (being unfairly subsidized by the low standards), amounting to 'eco-dumping.' As a result, an importing country would have the right to impose trade penalties, such as levying countervailing duties, on the goods concerned.

This set of ideas poses complex conceptual and practical questions,particularly as they relate to the international setting and to the WTO. Developing countries are likely to find themselves at a great disadvantage within the WTO negotiating context should the issue become the subject of negotiations.

One of the main issues is whether all countries should be expected to adhere to the same standard, or whether standards should be allowed to correspond to different levels of development.The use of a single standard would be inequitable, as poorer countries that can ill afford high standards would find their products uncompetitive. The global burden of adjustment to a more ecologically sound world would be skewed towards the developing countries. This is counter to the 1992 UNCED principle of 'common but differentiated responsibility,'which recognizes that developed countries bear greater responsibility for the causes of the ecological crisis and also have greater resources to counter it, and should therefore bear a higher share of the global costs of adjustment.

Given the unequal bargaining strengths of North and South in the WTO, the complex

issues relating to processes and production methods (PPMs), cost internalization and trade-related environment measures should not be negotiated within the WTO. If these are discussed at all, the venue should be the United Nations (e.g., in the framework of the Commission on Sustainable Development), where the broader perspective of environment and development and the UNCED principles can be brought to bear.

Unilateral trade measures taken by an importing country against a product on grounds of environmentally harmful production methods or processes also run the risk of protectionism, by which developing countries would be penalized.However tempting unilateral import bans may be for the environmental cause, they are inappropriate, as they could lead to adverse consequences such as industry closings and job losses and eventually even be counter-productive. Policies and measures to resolve environmental problems (and there are many such problems, many of them urgent) should be negotiated in international environmental fora and agreements. These measures can include (and have included) trade measures.

The relationship between the WTO and its rules and the multilateral environment agreements is also the subject of debate in the WTO. On the one hand, there is the fear (on the part of developing countries) that a system of blanket and automatic WTO approval of trade measures adopted under an MEA (e.g., by an amendment to Article XX of GATT to enable *ex-ante* approval of MEA measures) could lead to abuse and protectionism. One of the sticking points is what constitutes a 'multilateral environment agreement,' as this term may include not only truly international agreements, convened, for example, by the UN, open to all members and enjoying near-universal consensus, but also agreements drafted by a few countries which then invite others to join (and could then also enjoy exemption under the proposed amended WTO rules). The fear of protectionist abuse explains the reluctance of developing countries to amend Article XX, which they regard as flexible enough to accommodate environmental objectives.

On the other hand, there is the genuine fear on the part of environmental groups (and some WTO members) that negotiations in new MEAs can be (and are being) undermined by the proposition put forward by some countries that WTO rules prohibit trade measures for environmental purposes, or that WTO 'free-trade principles' must take precedence over environmental objectives. Such arguments were used by a few countries during negotiations for an international Biosafety Protocol under the Convention on Biological Diversity. Such arguments may not be correct, as the WTO allows for trade measures agreed to in MEAs through the present Article XX (although not in the *ex-ante* manner proposed by some countries). The invocation of WTO principles or rules by a few delegations to counter proposals by those that want to establish checks on trade in products that are (or may be) environmentally harmful has led to the impression that commercial interests are placed before global ecological and safety concerns and are part of the reason for the erosion of public confidence in 'free trade' and the WTO system.

For many NGOs (especially in the South) as well as developing countries, an important 'trade and environment' issue is the effect of the TRIPS Agreement in hindering access to environmentally sound technologies and products. Another concern is that Article 27.3b of TRIPS makes it mandatory to patent some categories of life-forms, and to provide for the intellectual rights protection of plant varieties. As noted in the section above on TRIPS, both of these issues may have adverse consequences for biodiversity, the knowledge for its sustainable use, and community rights relating to biological resources and traditional knowledge.

Expansion of the WTO into New Areas

A major area of debate in the WTO is the desirability or otherwise of expanding its mandate to cover new areas. One of the main points of contention is that many of the new areas being proposed are not directly trade issues, whereas the WTO is a trade organization. Proposals have been made, mainly by developed countries, to introduce such issues as investment rules, competition policy, transparency in government procurement, trade facilitation,electronic commerce, labour standards, and environment standards. Many of these formed part of the proposals for new negotiations put forward mainly by developed countries as part of a proposed comprehensive new round of multilateral trade negotiations to be launched at the Seattle Ministerial meeting of 1999. Since that meeting failed to produce a Declaration,developed countries have renewed attempts to introduce these new issues as subjects for negotiations through a new round.

Before and after Seattle, a large group of developing countries were either opposed or not prepared to accept the introduction of these new issues as subjects for negotiating new agreements. There are at least three main reasons for this (see Khor 2000b, 2001b):

- The WTO should focus in the next few years on reviewing problems of implementing existing agreements and making the necessary changes to them. These are enormous tasks, which will not be properly carried out if there is a proliferation of new issues in a new round of negotiations. Due to extremely limited human, technical and financial resources,developing countries have been unable to adequately study the proposals and their potential effects, and they lack the capacity to undertake protracted negotiations on these issues. Moreover, should negotiations begin, the focus of their diplomats and policymakers would be diverted away from the review process to defending their interests in negotiations on new issues, with potentially very serious effects. The limited time of the WTO would also be mainly devoted to the new issues.
- The proposed new issues would also have serious implications for the development options and prospects of developing countries.There is a belief that placing such issues as investment rules, competition policy and government procurement within the WTO is sought by developed countries to take advantage of the WTO's enforcement capability (the dispute settlement system) and impose disciplines on developing countries to open their economies to the goods, services and companies of developed countries. As regards labour and environment standards, developing countries have argued that they should not enter the WTO as they could be used as protectionist devices against the products and services of developing countries.
- Accepting the proposed new issues would expand the WTO mandate to incorporate even more non-trade areas. (The non-trade issue of IPRs is already in the WTO through TRIPS.) Issues such as investment rules,competition policy and government procurement are strictly not trade issues and it has been argued that they do not belong in the WTO, particularly as subjects of new agreements. Applying GATT/WTO principles (that were drawn up for trade) to non-trade issues may lead to distortions in how the issue is dealt with, as well as of the trading system. Moreover, taking on the new issues (and the additional obligations they entail) would overload the multilateral trading system and add to its tensions. The WTO would be even more split on North-South lines, threatening the good will, functioning and even survival of the system.

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Multilateral Investment Rules

Developed countries would like a new WTO agreement for multilateral rules on investment that give new and expanded rights to foreign investors by making it easier for them to enter countries and operate freely as well as having provisions to strengthen the protection of their rights. Attempts to establish a high-standards Multilateral Agreement on Investment (MAI) have failed so far at the OECD. The efforts of the proponents have now shifted to pursuing an agreement at the WTO. Under such rules,pressures would be mounted on WTO member states to liberalize investment flows and grant national treatment to foreign investors and firms, and bind these commitments so that there cannot be reversals.Governments would lose a large part of their present rights to regulate the operations of foreign investors. Restrictions on the free flow of capital into and out of the country could be prohibited or constrained. Moreover, the performance requirements that host governments now place on foreign companies (such as limitations on equity, obligations on technology transfer and on the use of local professionals) would come under pressure.There could also be a proposal to prohibit or discipline the use of investment incentives to attract foreign investments.

The critical issue in the discussion is not whether countries value or welcome foreign investment, for almost all countries are presently seeking to attract such investment. Rather, the real issue is the extent to which governments have the need and the right to regulate investments,including foreign investment, and the extent to which foreign corporations should be granted rights of entry, establishment,national treatment and freedom from obligations and regulations by the host state. While proponents advocate enlarging and guaranteeing foreign investors' rights, opponents or sceptics emphasize that states need to regulate investments,especially foreign investment, in order to maximize benefits and minimize costs to the host country and in line with national goals, and are concerned that the proposed investment agreement would curb the rights and ability of the host countries to regulate.

Implicitly acknowledging that an MAI replica would not be politically acceptable to many developing countries nor to civil society worldwide, some developed countries have proposed a modified investment agreement, in which countries could select the degree of liberalization and national treatment to offer in a 'positive list' on a sector-by-sector basis, and covering only direct foreign investment. However, this can be seen as a tactical move, since once such a watered-down version enters the WTO, there will likely be increasing pressures for developing countries to liberalize rapidly and to offer greater market access. Moreover, other developed countries would like the agreement to cover more than FDI.

The entrance in principle of investment policy per se would greatly expand the mandate of the WTO, and further narrow the development policy options of developing countries in a crucial area. Developing countries would find it increasingly difficult to defend the viability of (or to give preferences to) local investors,firms or farmers, all of which constitute much smaller units than the transnational companies and will thus find it difficult to withstand competition from the latter. Domestic enterprises would face the possibility of their products being wiped out by competition from bigger foreign firms, or of being taken over by them.

Trade and Competition

Another agreement being sought in a new round would cover multilateral rules on competition. The EU has advocated an approach to competition in the WTO that would discourage domestic laws or practices in developing countries that favour local firms, on the ground that they restrict free competition from foreign products and firms. The EU argues that what it considers to be the core

principles of the WTO (transparency, MFN treatment and national treatment) should be applied to competition policy through the proposed WTO agreement. One of the major aims is to provide foreign firms 'effective equality of opportunity' in the host countries' markets (European Communities 1999; Khor 1999b).

The agreement would oblige developing countries to establish domestic competition policies and laws that would prohibit or discourage distinctions between local and foreign firms. The competition laws themselves would not be able to make such a distinction. Policies that give importing or distribution rights (or more favourable rights) to local firms (including government agencies or enterprises), or practices among local firms that enable them to have better marketing channels, could be challenged and it is possible that disciplines may be developed on them. It would be argued that policies or practices that give an advantage to local firms create a barrier to foreign products or firms,which should be allowed to compete on equal terms as locals in the local market under the principle of free competition. Such pro-local practices and policies are likely to be targeted for phase-out or elimination in negotiations for a competition agreement.

At present,many developing countries would argue that giving favourable treatment to locals in fact favours competition, in that the smaller local firms are given some advantages to withstand the might of foreign giants, which otherwise would monopolize the local market. Providing the giant international firms equal rights would overwhelm the local enterprises,which are small and medium-sized in global terms.However, this will be contested by the counter-argument that foreign firms should be provided a 'level playing field' to compete 'equally' with smaller local firms and that this interpretation of 'competition' should be codified in an agreement.

In discussions within the WTO Competition Working Group, developing countries have raised issues of concern to them, including the restrictive practices of transnational companies and the abuse of anti-dumping measures by the United States and other developed countries (which prevents the competitive exports of developing countries from having access to their markets). However, the inclusion of such issues under the topic of 'competition' has been less welcome. Given the relatively weak negotiating position of developing countries, it is likely that the interpretation of developed countries will prevail.

Government Procurement

At present, government procurement is excluded from the MFN-treatment and national-treatment obligations of GATT 1994 and it is thus outside the scope of the WTO's multilateral rules. (Members may, however, voluntarily join the plurilateral agreement on government procurement, although very few developing countries have done so.) Thus, governments are now able to have their own rules on procurement practices, and many developing countries give preferences to local firms, suppliers and contractors.

The aim of the developed countries (as revealed in their earlier proposals on the subject in the WTO) is to bring government procurement policies, practices and procedures under WTO disciplines, and apply the national-treatment principle whereby foreign firms would have at least equal rights as locals to the procurement business, and governments would lose the ability to give preference to the latter. Foreign firms that are not satisfied with the decisions on awards would be able to request their own governments to take a case to the WTO. The objective of developed countries is to enable their firms to have access to the extremely lucrative procurement market in the developing world.

As most developing countries would object to having their public-sector spending policies

and practices changed so drastically, developed countries designed a two-stage plan for bringing this issue under WTO rules: an initial agreement limited to achieving greater 'transparency' in government procurement, then a broader agreement to cover liberalization,market access for foreign firms, and the national-treatment principle. The first phase would inject the procurement issue into the WTO multilateral system and the second would seek to 'fully integrate' government procurement into the WTO. This strategy was revealed in U.S. and EC presentations and papers during preparations for the 1996 Singapore Ministerial meeting. At that meeting it was decided to form a working group to study transparency in government procurement and to propose elements for an appropriate agreement.

Many developing countries have insisted that a transparency agreement, if there is one, should not be a step towards further negotiations aimed at liberalization and national treatment in the procurement business. However, it can be expected that if a multilateral agreement on transparency in government procurement is established, it would be followed by intense pressures to extend it to market access and national treatment issues (Khor 2000b). At stake for developing countries is the right of governments to reserve some of their business for local firms. A full procurement agreement would prevent or hinder developing countries from being able to use an important instrument for assisting local firms, and for national development, macroeconomic and socio-economic objectives.

In recent years, many African and Latin American countries have suffered from 'de-industrialization,' in which local industries and enterprises have been closed or taken over as they are made uncompetitive by imported products.

A New Round of Industrial Tariff Cuts

Another economic issue proposed for incorporation in a new round is 'industrial tariffs,'which would entail reduction of tariffs on manufactured products. If the proposed negotiations were focused on the elimination of tariff peaks and tariff escalation in the sectors of developed countries that are of export interest to developing countries, this issue could benefit developing countries. In fact the prospect of this has been used as an argument to draw developing countries into agreeing to negotiate this issue. However, the record of the developed countries on this (see Part II) raises the question of whether these countries are really prepared to remove or substantially reduce their protection in areas where developing countries can meaningfully make inroads.

On the other hand, since the tariffs in industrial products are generally lower in developed countries, it can be expected that a new round of industrial tariff cuts would mainly entail new commitments by the developing countries, most of which have already significantly reduced their industrial tariffs in recent years. Many did this under the IMF-World Bank structural adjustment programmes. In recent years,many African and Latin American countries have suffered from 'de-industrialization,' in which local industries and enterprises have been closed or taken over as they are made uncompetitive by imported products.

Disturbing evidence of post-1980 liberalization episodes in the African region has been described by Buffie (2001: 190-91). For example, Senegal experienced large job losses following liberalization in the late 1980s; by the early 1990s, one-third of all manufacturing jobs had been eliminated. In Côte d'Ivoire, the chemical,textile, shoe and automobile assembly industries virtually collapsed after tariffs were abruptly lowered by 40 per cent in 1986. Similar problems have plagued liberalization attempts in Nigeria, while in Sierra Leone, Zambia, Zaire, Uganda, Tanzania, and the Sudan,liberalization in the 1980s 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,

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' (ibid.). Adjustment in the 1990s has also been difficult for much of the manufacturing sector in Mozambique, Cameroon, Tanzania, Malawi and Zambia, where import competition precipitated sharp contractions in output and employment in the short run, with many firms closing down operations entirely.

Similar problems have been experienced in other regions. In Latin America, for example: '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' (Buffie 2001: 190). The regional record suggests that the typical outcome is a sharp deterioration in income distribution, with no clear evidence that this is temporary.

A further round of cuts in industrial tariffs, if it involves binding industrial tariffs at lower levels in developing countries where local industries do not have the capacity to withstand competition from cheaper imported products,may well result in further difficulties for the domestic manufacturing sector in those countries.

Transparency and Participation in the WTO

Although in theory, the WTO consists of members that are equal in terms of formal decision-making rights, in reality, many developing countries have been unable to realize their participation rights. Some do not even have a Mission in Geneva, where the WTO is headquartered; others are understaffed and unable to adequately follow the discussions and negotiations.The few officials on staff also cover meetings in the United Nations agencies and are often unable to be present at meetings taking place simultaneously in the WTO. Even if they are present,many officials from developing countries are unable to adequately keep up with the often complex negotiating issues involved and thus are unable to make an impact. Unequal capacity thus leads to unequal degrees of participation.

This problem of unequal capacity to participate is made more acute by the relative lack of transparency in some key aspects of WTO operations, which in turn has an adverse effect on the participation problem. The WTO has been and remains one of the most non-transparent of international organizations. The main reason for this is its working methods and system of decision-making.

In terms of formal arrangements, decisions are made on the basis of 'one country, one vote' and by consensus, thus giving the WTO the appearance of an organization in which decision-making is democratic.Decisions are taken by the General Council (comprising diplomats of member states based in Geneva), or representatives in subsidiary bodies (such as the TRIPS Council or the Agriculture Committee). Major decisions are also made or endorsed by the members' Trade Ministers meeting at the Ministerial Conference, which normally takes place once in two years.

In practice, GATT and the WTO have been dominated by a few major industrial countries. Often, these countries negotiate and decide among themselves, and embark on an exercise of winning over (sometimes through intense pressure) a selected number of more important or influential developing countries, in 'informal meetings.' Most WTO members may not be invited to these informal meetings and may not even know that they take place, or what happens there. When agreement is reached among a relatively small group, the decisions are rather

easier to pass through. The meeting of a limited number of countries to work out an agreement among themselves is referred to in WTO jargon as 'the Green Room process,' so named after the colour of the room of the GATT Director-General in which many such meetings took place during the Uruguay Round. In the WTO era, this Green Room process has taken place especially in the intense negotiation period prior to and at Ministerial Conferences, including the first Ministerial in Singapore and the third Ministerial in Seattle.

The system of decision-making by 'consensus' is also implemented in an odd way. On issues where a majority of developing countries, which form the vast majority of WTO members,may agree, it is said that 'there is no consensus' should even a few developed countries disagree with the majority, and the issue concerned is effectively killed or has no chance of being successfully dealt with. However, should the major powers (especially the United States,the EU, Japan) agree on a particular issue, while a sizeable number of developing countries disagree and a large number remain silent, the major powers are likely to embark on a process they call 'building a consensus'. In reality, this means a process (sometimes prolonged) of wearing down the resistance of the outspoken developing countries until only a few remain 'outside the consensus.' It is then relatively easy to pressure these few remaining countries to also agree to 'join the consensus.'

In 1996, developed countries lobbied very hard to get three topics (investment,competition, government procurement) introduced as new issues for study (and eventual negotiation for agreements) in the WTO. They wanted the Ministerial Conference in Singapore in December 1996 to endorse this. During the preparatory process, a significant number of developing countries vocally objected. Thus there was clearly no consensus. Nevertheless, the issues became the main topic at the Ministerial through the device of the Director-General writing a letter to the Chairman of the Ministerial requesting the latter to consider taking up the three issues, and the establishment of a small 'informal group' of 30 countries to negotiate the final text of the Ministerial Declaration. Who selected the countries, on what basis, and what they were discussing, was not known to Conference delegates as a whole. Only on the night before the Conference ended were all the delegations summoned,given the final draft that had been thrashed out in secret by the small group, and asked to endorse it without change.Although several Ministers protested at the non-transparent and undemocratic process, the draft was eventually adopted unchanged. In it were decisions to establish new working groups on investment,competition and government procurement,which had only a few days earlier been objected to by many developing countries.

In 1999, in the few months before the Seattle Ministerial Conference, the Green Room process was put into effect by the WTO Director-General. Several small negotiating groups were set up to discuss various issues of contention, but most developing countries were not invited to be in these. At Seattle itself, small negotiating groups were set up, with each group having its own topic. Many developing countries were not invited to be in any of the groups. Even within the small groups,developing countries' representatives were unhappy with the way the meetings were conducted, and how conclusions were sought. Eventually, many developing countries (especially members of the Africa Group and the Caribbean countries) made clear in statements on the eve of the conference's closure that they would not join in the consensus if a draft Declaration was put forward on the final day. This was a major contributing factor to the failure of the Seattle meeting.

PART V: Proposals for Improving the Global Trading System

Some proposals for improving the current system of global trade are presented according to the following broad categories:

- Improving the basic structure of the WTO system;
- Problems of implementation of the WTO agreements;
- The dispute settlement system;
- Trade and environment;
- The treatment of some proposed new issues and a new round;
- Transparency and participation in the WTO;
- Trade issues and problems that are outside the purview of the WTO;
- Regional trade arrangements among developing countries.

Proposals for Improving the Basic Structure

Given the inadequacy of the structure based on reciprocity, structural improvements are needed to redress the problem of overall imbalance as well as to compensate for developing country handicaps in the WTO system (Das 2001b). Differential and more favourable treatment for developing countries should not be considered as a concession, but rather as a way of redressing imbalances inherent in the system. Thus, while developing countries may formulate specific proposals on this subject, they should not be treated as seekers of favours, nor called upon to make special concessions in order to get differential and more favourable treatment in any area. Such treatment should not be seen as a burden by developed countries, but as a way to expand their opportunities in developing countries.

It should be formally accepted that developing countries will undertake comparatively lesser levels of obligations than developed countries. Differential and more favourable treatment to developing countries should extend to levels of obligation, rather than be limited to a longer time frame for implementation, as is usually the case at present. It is vital to undertake an overall review of how to enhance and strengthen the provisions on special and differential treatment in the various agreements, and to create provisions where they are needed but absent. Regarding obligations of developed countries to provide benefits to developing countries, these should as far as possible be made into binding commitments, rather than remaining 'best-endeavour' clauses.

Developing countries should not be called upon to give up or refrain from adopting policies and measures to support technological development and upgrading as well as diversification of their production and exports. There should be a formal and enforceable waiver in this regard rather than merely a 'best-endeavour' provision.

Developed countries should establish specific and concrete arrangements for encouraging imports of products of developing countries. Towards this end, they should: a) earmark a specified portion of purchases for government use to be obtained from developing countries, and b) build up an incentive system for the purchase of developing country products by their firms. Incentives may be fiscal or other types of measures.

To pursue effective development strategies, developing countries have to modulate and fine-tune their trade policy instruments so as to support and encourage the growth of specific sectors, the choice of which will vary with time depending on the need. As part of this dynamic process, developing countries need flexibility in the matter of raising and reducing tariffs.

As discussed above, industries in developed countries put intense pressure on their governments for protection when they are unable to compete with products from developing countries.There should be a systemic arrangement for reducing the incidence of such pressures. One way is to prescribe that a developed country will take positive structural adjustment measures in sectors where it has repeatedly taken actions under safeguard, countervailing duty and anti-dumping provisions.

Proposals Relating to Specific Issues

As described in Parts III and IV, there are imbalances in several WTO agreements as well as problems arising from their implementation. There are also problems in the way some trade measures and concepts (such as tariffs and national treatment) have been applied. The following proposals address some of these imbalances and problems.

Tariffs

To pursue effective development strategies,developing countries have to modulate and fine-tune their trade policy instruments so as to support and encourage the growth of specific sectors, the choice of which will vary with time depending on the need. As part of this dynamic process,developing countries need flexibility in the matter of raising and reducing tariffs.The current procedure of raising tariffs beyond the bound level is very cumbersome and should be made smoother and easier.

As part of the development process, industries need to be set up, and need protection, not perpetually, but for a limited initial period. A country may currently be exporting raw commodities or raw materials, and the duties it applies on the imports of processed products (particularly luxury goods) are essentially for revenue-raising purposes. When it wants to diversify and encourage investments for that purpose, to bring about further processing and exporting of value-added, it has to raise tariffs to give some initial protection. At present, in terms of GATT (Art. XVIII: C), those wanting to take this route have to 'negotiate' and 'compensate.' This is not only cumbersome, but could be economically costly. Developing countries that see far enough ahead, keep high bound tariffs, and apply tariffs at a much lower level, so that they can increase them as needed at a future point. If there were systemic assurance that countries could raise tariffs (under appropriate multilateral surveillance) for a limited period to promote infant industries to get established and become operational, it would be to the benefit of all.

Moreover, there should be a change in the current method of balancing gains and losses in such tariff negotiations. The offer from the developing-country side should not be evaluated merely in terms of current trade; rather, it should be evaluated mainly in terms of future potential and prospects for developed countries, when the developing country would have grown and its market would have enlarged.

National Treatment, TRIMS

With the input of fast-developing technology and strategic mergers and acquisitions, the production and supply of goods and services in developed countries has increasingly been gaining strength. The goods and services of developing countries are being further handicapped through competition in the domestic market. This may have dangerous implications in future. Developing countries should not make themselves more and more dependent on foreign supply of goods and services. The classical concept that a country should focus its economic efforts

only on sectors and activities in which it has an advantage may not be realistic as a large number of developing countries may really not have substantial and practical advantage in any area,at least in the short term.Therefore, there is a need for developing countries to adopt policies and measures to support and encourage the domestic production of goods and services (ibid.).

The rule relating to national treatment in GATS does accommodate this concern. It is important that it is not diluted or ignored in operation.

The relevant rules in GATT, for example, provisions relating to national treatment and TRIMS, need to be suitably modified to enable developing countries to support domestic production and supply. In particular, developing countries should be allowed to apply the domestic-content requirement to their industries. (See section on TRIMS below.)

Subsidies

Subsidies in developing countries, in both industry and agriculture, should be recognized as an instrument of development, rather than as measures distorting trade. The rules should clearly say this; and they should contain enabling provisions for developing countries to use subsidies for technological development, upgrading of production and diversification of production and trade. Such subsidies should be exempt from imposition of countervailing duty and other types of counter-action.

Standards

On the issue of standards, both in industry and in agriculture, there is the basic problem of the evolution of new standards adversely affecting the market access of developing countries.There is a need to ensure that developing countries fully participate in the formulation of standards.One way is to assist them in their participation. Simultaneously, there is also a need to ensure that new standards are not formulated without the participation of developing countries. The relevant rules should clearly say that new standards in the areas of industry and agriculture will be set only if a minimum number of developing countries have been able to participate in the process.

Balance-of-Payments Provisions

The discussion in Part III indicated the need for improvement in the rules concerning balance of payments. Rules should specify that the existence of a BOP problem will be determined on the basis of reserves and flows,excluding those that may be temporary and unstable. Further, a developing country's foreign-exchange-reserve requirement should be assessed on the basis of future development programmes, rather than on the basis of past trends.

There is also a need for a systemic improvement. Rules should explicitly lay down that the existence of a BOP problem in a developing country will be determined by the General Council after taking into account the recommendation of the BOP Committee. The analysis and observation in the report of the IMF should be used as an input in this process, and not as a determining factor.

Current rules are designed for relief during a temporary problem in balance of payments. However, for most developing countries, the problem in this area is structural, making it desirable to supplement current rules to provide relief in case of a structural problem.

Proposals on Implementation of Commitments by Developed Countries

As discussed in Parts III and IV, developed countries have failed to fully implement their commitments or obligations with regard to improving market access for developing country prod-

ucts. Inequities and imbalances in agriculture and textiles are especially pronounced, requiring special attention. Tariff peaks and escalation in industrial products and the protectionist use of non-tariff measures should also be addressed.

Agriculture

The high subsidies and protection prevailing in agriculture in developed countries should be effectively reduced. The tariff peaks in agriculture in developed countries should be brought down substantially. Domestic subsidies in these countries should also be drastically reduced, including categories not covered by the AMS. Similarly, export subsidies in developed countries should be rapidly reduced and eliminated. At the same time, as discussed in more detail below, developing countries should be allowed greater flexibility than at present.

Textiles

The suggestion for positive structural adjustment mentioned above is especially applicable to the textiles sector, which has been under protection and pressures for protection in developed countries for more than three decades. The rules should provide for concrete positive structural adjustment measures in developed countries, and implementation should be monitored by an appropriate body of the WTO.

Regarding more effective implementation of liberalization commitments, the ITCB has made concrete proposals. At least 50 per cent of imports of products that were under specific quota limits should be liberalized by the start of the next stage of implementation on 1 January 2002, by which time 70 per cent of the transitional period of the Agreement on Textiles and Clothing would have elapsed. Also, the provisions of growth-on-growth should be applied so as to contribute to meaningful increases in access possibilities in developing countries (Hong Kong, China 2000: 3). The ATC should be fully implemented progressively in spirit and fact, and not merely in law.

Assurances in deed as well as in word should be given by developed countries that they intend to honour their commitments at the end of the phasing-out period. Technically, this period is to end on midnight of 31 December 2004. Any quota restrictions after that date will be illegal.But given the way in which the United States and EuropeanUnion are undertaking the phasing-out, there are legitimate grounds for fears that most of the restrictions will remain until that date, and that rather than suddenly disappearing at that time, there is likely to instead be an attempt by the major countries to find a way to depart from the WTO obligations. One possibility is that the major countries would use the argument of lower environmental and labour standards in the textiles industry of developing countries as grounds for further protection. Any such move by developed countries would result in greater disillusionment by developing countries in the multilateral trade system, and therefore should not be attempted.

Tariff Peaks and Escalation in Industrial Products

The tariff peaks and escalation in the industrial sector in developed countries in products that are of export interest to developing countries should also be brought down, to enable developing countries to expand their manufactured exports and to contribute to the upgrading of developing countries'efforts to make better use of their raw materials and natural resources through processing and manufacturing. Developing countries should not be pressured to reduce their industrial tariffs in exchange.

Non-tariff Protectionist Measures

The various types of unjustified restrictive trade measures in developed countries, and the increasing resort to them, should be regularly monitored.Measures should be taken to curb the use of non-tariff measures for protectionist purposes,including amendments to current agreements. For example, regarding anti-dumping, a provision could be adopted that once an investigation has been completed for a product, a new investigation into the same product should not be initiated until a suitable period has elapsed.

Proposals on Implementation Problems Faced by Developing Countries

As discussed in Parts III and IV, there are imbalances in several specific WTO agreements and many developing countries face problems in implementing their obligations under these agreements. The following proposals address some of these issues.

General Review of Developing Countries' Implementation Problems

While many developing countries did not adequately understand the implications when they signed on to the Uruguay Round agreements, their understanding has since grown as they face the problems of implementation. It was not the intention, when the WTO was set up, to have a multilateral trading system that negatively impacts the majority of its members. Thus, it is necessary to undertake a review of the WTO rules and their implementation so that changes can be made as needed to prevent negative consequences.

In an exercise to 'rebalance' the WTO system, a good starting point would be those proposals put forward by developing countries in paragraphs 21 and 22 of the draft Seattle Ministerial Text of 19 October 1999. These cover changes to the rules on anti-dumping, subsidies,safeguards, sanitary and phytosanitary measures,technical barriers to trade, textiles,TRIMS, TRIPS, Article VII of GATT 1994, rules of origin, BOP provision of GATT 1994, agriculture, services and special and differential treatment. One of the most important of the general proposals made is that all provisions on special and differential treatment (for developing countries) be converted into concrete commitments,especially to address supply-side constraints faced by developing countries. Preferential treatment by developed countries in favour of developing countries shall be implemented in a generalized, non-discriminatory and non-reciprocal manner.

Useful reference can also be made to proposals put forward from the development perspective on trade by experts such as Bhagirath Lal Das in his books, *Some Suggestions for Improvements in the WTO Agreements* (1999) and *The WTO Agreements:Deficiencies,Imbalances and Required Changes* (1998a), and in the UNCTAD publication, *Positive Agenda and Future Trade Negotiations* (2000a).

The Agriculture Agreement

Many developing countries have made proposals that the Agriculture Agreement should be amended to allow greater flexibility to take into account their problems on implementation, especially the effects on rural livelihoods, food security and incomes of the poor. In line with these concerns, the following measures could be taken:

- A decision that food production in developing countries for domestic consumption, as well as products of small farmers and household farmers in developing countries, will be excluded from the disciplines of the Agriculture Agreement on market access and domestic subsidy. Negotiations should take place to determine the method of implementing the decision.

- A decision that the special safeguard mechanism can be utilized by developing countries, whether or not they have taken to tariffication.
- An agreement to effectively and directly assist net food-importing developing countries. The mechanisms and method should be finalized.

Services and GATS

Despite a lack of data and assessment with regard to trade in services, qualitative analysis shows there is a relative lack of benefits to developing countries and potential problems if they are to liberalize further in this area. In the present round of services negotiations, the imbalances in benefits and costs should be addressed as matters of first priority.

Before developing countries undertake any more commitments, the issue of the lack of data needs to be addressed and agreement reached for data collection and collation at national and international levels in all four modes of supply. In the meanwhile, developing countries need to undertake some national data estimations on services, for example by using options theory (Raghavan 2000f). While this is being done, they should not be expected to undertake further obligations for liberalization in services.

Before developing countries undertake any more commitments, the issue of the lack of data needs to be addressed.... While this is being done, they should not be expected to undertake further obligations for liberalization in services.

Developing countries should also select the services sectors and transactions that are of export interest to them. Negotiations should aim at liberalization in these sectors/transactions by developed countries.

Articles IV and XIX.2 of GATS have special provisions for developing countries, but these have not been put into practice. Instead of being given special consideration,developing countries have in fact been targeted for obtaining more concessions, as in financial services. There is need for serious and sincere implementation of the special provisions. To this end, GATS should have a specific provision for monitoring the implementation of these commitments (Das 1998b).

Developed countries should take concrete steps to encourage the import of services from developing countries. Examples of such steps are: providing incentives to their domestic firms for importing services from the developing countries, and reserving a portion of their import of services for government use for imports from developing countries.

Concrete measures and time frames should be agreed for liberalizing the movement of labour from developing countries to developed countries. At present, even the limited commitments on supply of services through 'movement of natural persons'have been practically nullified in industrialized countries due to immigration and visa restrictions and laws, 'needs' tests and the like. This imbalance should be addressed,perhaps by providing for the possibility of an outside adjudication process over such visa restrictions (except in cases involving 'national security',where decision-making authority should be vested with high-level government authorities) on the temporary movement of persons for the delivery of services.

The drawing up of a temporary-safeguards provision in GATS is important and useful to enable developing countries to take measures to safeguard against negative effects of liberalization on domestic firms. However, an effective and beneficial provision requires that the issue of the lack of data be resolved; a country seeking recourse to safeguards would likely require appropriate data, as it may be asked to demonstrate that injury to its domestic sector is in fact caused by increased imports or access granted to foreign suppliers. Also, the issue of the types of safeguard measures that can be practically taken should be considered. There is a need for technical studies on these issues.

The architecture and provisions of GATS that enable flexibility for developing countries in the pace of liberalization and the choice of sectors and modes to liberalize should be preserved. Approaches,measures or rules should not be introduced that would reduce their choices and options, or that would put pressure on them to liberalize more rapidly than they are prepared to.

In the discussions on rule-making and the development of new rules,including those on domestic regulation and government procurement, great care must be taken to ensure that the flexibility and options for governments to make their own domestic regulations and policies are not adversely affected. Proposals must be assessed especially on their potential social, economic and developmental effects on developing countries.

Public concerns that the GATS rules and framework cover basic services (such as water, health,education and social welfare) and may involve some types of activities that are provided by the government and public sector, should be addressed. The nature and scope of exception for services provided by the government should be clarified and an assessment made on the implications of whether (and to what extent) countries can have adequate flexibility in making national policies for basic services. The effects of this on social development (including access of the public, especially for poor people, to basic services) should be taken fully into account in decisions on changes to and future directions relating to GATS.

Intellectual Property and the TRIPS Agreement

As the imbalances and problems generated by TRIPS become more obvious, there have been increased requests from developing countries in the WTO to address the implementation problems, and mounting public demand worldwide for a reassessment of the nature and effects of TRIPS on the public interest in several areas as well as overall.

Since many developing countries are facing difficulties in implementing the TRIPS agreement at the national level, the transition period for developing countries should be extended until a review of the agreement (which is mandated**)** is carried out and appropriate changes are made to the agreement.

In implementing TRIPS through national legislation, developing countries should be allowed to fully make use of the flexibility to choose among different options, without being subject to undue and inappropriate influence. The various options should be explained to developing countries, along with the advantages and disadvantages of each. Within the scope and space enabled by the provisions of TRIPS, developing countries should build the capacity for choosing the options that in their informed opinion are least damaging and that best protect national and public interests (TWN 1998; Correa 1998).

Pressures should not be applied on developing countries to give up the use of options available to them under TRIPS. For example, pressure had been applied on some countries not to exercise their right to resort to compulsory licensing or parallel imports in the case of medicines to treat AIDS patients. Moreover, undue influence should not be applied on developing countries either through bilateral means or regional arrangements or through the process of accession to the WTO, to get them to agree to implement IPR standards even higher than those in TRIPS.

The mandated review of Article 27.3b of TRIPS should resolve the artificial distinctions made between certain organisms and biological processes which are allowed exclusion from patentability and other organisms and processes which are not allowed exclusion. This may be resolved through following the proposal of the Africa Group in the WTO, that the review

should clarify that all living organisms and their parts, and all living processes, cannot be patentable. This clarification can be done through a suitable amendment to Article 27.3b.

Since plant varieties are part of living organisms, the exclusion from patentability should also apply to them. Countries can however devise a suitable system of reward or incentive for plant breeders, if they so desire, but this should not be compulsory and should be left to each country to decide;such a system should however not compromise the rights and practices of local communities. Countries may also be encouraged to institute policies and legislation that protect and promote traditional knowledge and the rights of local communities to their resources and their knowledge.

The transition period for implementing Article 27.3b should be extended to five years after the review is completed.

There should be a Ministerial Declaration that nothing in the TRIPS Agreement prevents members from taking public health measures, including making medicines accessible and affordable to the public, especially the poor. The Declaration should also spell out how developing countries can enjoy full flexibility in adopting compulsory licensing and parallel import measures as a means to enabling access to vitally needed medicines.

In relation to medicines needed for serious and life-threatening ailments, countries should be allowed the flexibility to exclude these from patentability. Further, consideration should be given to a broader provision enabling countries to exempt pharmaceutical drugs in general and the drug industrial sector from process and product patents.

Consideration should also be given for exemption or relaxation of the terms of patent protection for environmentally sound technology.

The transfer-of-technology provisions and objectives of TRIPS (including Articles 7, 8 and 66.2) should be made legally obligatory and operationalized. Developed countries and their enterprises should be obliged to put into effect the process of transfer and dissemination of technology to developing countries.

Developing countries should also be given flexibility to exempt (or have a longer transition period for) certain products and sectors from IPR protection, on grounds of public welfare and the need to meet development objectives.

Finally, WTO members should consider the issue, now being raised by some leading trade economists, of the appropriate location of the TRIPS Agreement and, in that context, review whether the WTO is the appropriate institution. Intellectual property is not a trade issue. Moreover, high IPR standards constitute a form of protection that prevents or constrains the international transfer of technology, and through conferring monopoly privileges,they restrain competition and promote anti-competitive behaviour. It is thus an aberration that TRIPS is located in an organization that is supposed to promote trade liberalization and conditions of market competition. In a letter to the *Financial Times* (20 February 2001), trade economist Jagdish Bhagwati argued that intellectual property protection does not belong in the WTO, and declared support for an NGO statement 'asking for the IP leg of the WTO to be sawn off.' Arguing that the WTO must be about mutually gainful trade, whereas intellectual property protection is a tax on poor countries' use of knowledge, constituting an unrequited transfer to the rich producing countries, he remarked: 'We were turning the WTO, thanks to powerful lobbies, into a royalty-collection agency, by pretending, through continuous propaganda that our media bought into, that somehow the question was "trade-related."'

The TRIMS Agreement

Due consideration should be given to countries that have difficulties in implementing the TRIMS Agreement. The problems of developing countries should be addressed together, and not on a case-by-case basis, so that a systemic solution can be implemented. The transition period for developing countries should be extended for a period that is in consonance with their development needs. Developing countries should also have another opportunity to notify existing TRIMS, which they can then maintain till the end of the new transition period.

In the review of the TRIMS Agreement, there should not be attempts to include more items on the illustrative list of prohibited investment measures, or to extend the mandate of the agreement to cover investment rules per se. Instead, provisions should be included in the agreement to provide developing countries the flexibility needed to implement development policies, thus recognizing their need to use investment measures to meet social, economic and development objectives. In line with this, the agreement could be amended to exempt developing countries from the disciplines on domestic-content requirement and on trade balancing (limiting the import of inputs to a certain percentage of the value of exports).

Proposals to Improve the Dispute Settlement System

The discussion in Part III pointed out that the structure and operation of the dispute settlement system hinder developing countries from benefitting fully from it. In addition, systemic deficiencies in the system have given rise to serious problems. There is thus a need for substantial improvement.

Since the ultimate means of enforcement is retaliation and a developing country may not find it a practical step, there should be a mechanism in the rules to provide for joint action by all the members against an erring developed country, if a developing country is the complainant and the situation has reached the point where retaliation against a developed country is to be applied.

As discussed above, the process of bringing an issue to the dispute settlement stage and then pursuing it in the panel and appeal processes is very costly. Even if a developing country obtains relief, it is only prospective; and the country would have already suffered a huge loss. It is necessary to provide rules for relief to developing countries for the cost incurred and loss suffered.Therefore, in cases where a developing country faces a developed country in a dispute, either as a complainant or as a defendant, and if its position has been held to be correct, the rule should provide for financial compensation for the cost involved in preparing for the dispute and pursuing it. Besides, if a developing country is a complainant and its complaint has been found to be correct and if the erring side is a developed country, the relief to be provided by the latter should be retrospective with effect from the time the action in dispute was initially taken.

Countries should be clearly and explicitly prohibited from having legislation that permits unilateral action in the area of trade covered by the WTO. Nor should countries be allowed to threaten such retaliation or publish a large list of products to be hit whose value is several times that of the actual trade damage claimed. Both these actions have been used to exert pressure on countries.

Part III also pointed out systemic problems relating to the structure and operational aspects of the dispute settlement system and the need for genuine independence of the panels and Appellate Body. To rectify these, the Dispute Settlement Understanding and the dispute settlement system need systemic changes. Following are some suggestions (Raghavan 2001h):

- Institutionally, organically and structurally, there should be a separation between the WTO secretariat and the work of servicing panels and the Appellate Body, which can be carried out by an independent bureaucracy separate from the WTO Secretariat.

- The WTO Secretariat, which services the negotiations in the trade body (and which in the process also often promotes particular outcomes), should not be allowed to maintain a behind-the-scenes role in providing briefs and notes to dispute panels that deal with the interpretation or assessment of nullification and impairments of rights and obligations. If it is to have a role, this should be played in the open, before the panel, in the presence of both parties to the dispute.
- Appellate Body members should get legal guidance from the pleadings and arguments of the parties about the law, not from the Secretariat. If the Appellate Body members require some help, each of them should be authorized to recruit a few legal interns for fixed,non-renewable terms to assist them in their work.
- The practice in the Appellate Body where members who have heard a case consult other members before finalizing their judgement, is not legal nor sanctioned by the Dispute Settlement Understanding, and such practice should not be allowed to recur or be maintained. That the 'judges' who did not hear a case can still influence its outcome violates all principles of judicial norms.
- Rulings should be binding on the parties by the present negative-consensus method, but cannot be made a precedent nor become an authoritative interpretation to be applied in future, unless the interpretation is adopted and approved in a separate process by the General Council through a positive consensus. This can prevent expansion of the WTO's remit as is now taking place. Otherwise, by providing authoritative interpretations and creating these precedents, the Appellate Body is really adding to the bundle of rights and obligations in an international treaty system, where this should in fact come about only by changes or interpretations negotiated and agreed to by the membership.

Besides these, the General Council should give an instruction that the panels and Appellate Body should not undertake substantive interpretations. In particular, when a conflict between two agreements is noticed, the panel/AB should refer the matter to the General Council for an authoritative interpretation rather than itself determining which provision is more binding.

Proposals on the Treatment of Trade and Environment Issues

Discussions within the WTO on the environmental effects of WTO rules can be beneficial, provided the environment is viewed within the context of sustainable development and the critical component of development is given adequate weight. The Committee on Trade and Environment should orientate its work to the more complex but appropriate concept and principles of sustainable development.

There should be no move to initiate an 'environmental agreement' in the WTO that involves linkages between environmental standards and trade measures or trade sanctions (e.g., through concepts such as processes and production methods and eco-dumping).

Environmental standards and environment issues should not be used by WTO members for protectionist purposes. On the other hand, countries should not make use of 'free trade' principles or invoke the name of 'WTO rules' to counter attempts by others to forge international agreements that deal with genuine environmental problems.

Discussions on the proper clarification of the relationship between multilateral environment agreements and the WTO should proceed on the basis that the WTO should not be an obstacle to measures in MEAs that are agreed to on genuinely environmental grounds. Environment issues should be negotiated in the context of MEAs.

Environmental standards and environment issues should not be used by WTO members for protectionist purposes. On the other hand, countries should not make use of 'free trade' principles or invoke the name of 'WTO rules' to counter attempts by others to forge international agreements that deal with genuine environmental problems.

Discussions should proceed in the WTO on a priority basis on the effects of the TRIPS Agreement on the environment, and appropriate measures taken to clarify or amend the agreement. The issue of how domestically prohibited goods should be treated in the WTO in order to satisfy environmental objectives should also be given high priority.

Proposed New Issues

As discussed in Part IV, it would not be appropriate, at least at this stage of the WTO's development, to launch a 'comprehensive round' that includes proposed new issues such as investment,competition, and government procurement. Developed countries should not pressure developing countries to accept these issues for negotiations. The WTO Secretariat should remain neutral and not take sides with members advocating new issues as there are many other members that are not prepared to accept them.

The WTO should focus its attention on the already full programme of resolving implementation problems facing developing countries, on the ongoing services and agriculture negotiations, and on the mandated reviews, as well as its other routine work in the committees, working groups, trade policy reviews, and dispute settlement system. If they were to start, then negotiations on new issues would occupy a large part of the time and resources of WTO members, thus taking away the time and resources required for the above-mentioned programme.

The next phase of the WTO's development should be focused on correcting the present imbalances, resolving problems of implementation facing developing countries, opening the markets of developed countries for products from developing countries and establishing democratic decision-making processes, in order to bring the multilateral trading system in line with the needs and interests of developing countries, which comprise the majority of the members. It would be unfair for developed countries to argue that the demands of developing countries can be met only through a new round in which they are asked to give even more and heavier concessions, as this would be asking the weak and poor to 'pay twice' without their having any confidence that they would get anything concrete in return.

Developing countries should build their capacity to understand and analyse the proposals for new issues and how these will affect their development.Organizations such as the Group of 77 (G77) and regional organizations of developing countries should give the highest priority to planning meetings, workshops and coordinating sessions where they can build the capacity of member countries to monitor and study the issues, exchange views and positions, and take an active part in the negotiating process individually, as regional groupings, and if possible, as a whole.

Transparency and Participation in the WTO

Financial assistance should be provided to countries that are unable to afford to maintain a mission in Geneva, so that they can adequately participate in the activities of the WTO. Developing countries also need assistance to increase their capacity, especially human resource capacity, in their capitals to deal with WTO and trade policy issues.

Developing countries need to develop more effective ways of sharing information among themselves, and to collaborate on analysis and formulating joint positions, wherever possible, in order to increase their negotiating capacity and strength. Financial assistance should be provided for organizations of developing countries to facilitate capacity- building in this respect.

Measures should be taken in the WTO itself to remove decision-making procedures

and practices that are non-transparent, non-inclusive and undemocratic, especially in the preparations for, and during, Ministerial Conferences. The so-called Green Room process of selective participation should not continue.The system and culture of decision-making in the WTO should also be reformed.The reform process should be conducted in a manner whereby all members can fully participate and should aim at a result whereby WTO meetings are run on the basis of full transparency and participation, where each member is given the right to be present and to make proposals. Even if some system of group representation is considered, all members should be allowed to be present at meetings and have participation rights.

The WTO secretariat should also be impartial and be seen to be impartial. In particular, it should not be seen to be taking sides with the more powerful countries at the expense of the interests of developing countries. The system should reflect the fact that the majority of members are now developing countries, which have as great (or greater) a stake in a fair and balanced multilateral system as do developed countries, and therefore provide developing countries with adequate means as well as procedures to enable them to voice their interests and exercise their rights.

Issues Currently Not Covered by the WTO

There are some crucial aspects of trade not covered by the WTO that nevertheless constitute vital components of the global trading system. The following proposals deal with some of these issues.

Lack of Supply Capacity in Most Developing Countries

Several international and regional agencies already have programmes to assist developing countries to improve their productive and trade capacity, including ITC, UNCTAD, the UN Industrial Development Organization (UNIDO) and the multilateral and regional development banks. However, given the continuing weaknesses and deficiencies of many developing countries, these efforts are insufficient. It would be useful for developing countries, perhaps through the G77, to identify and assess the impact of programmes being conducted by the various agencies. A study can also be done on the elements for a successful export strategy and export-supply capacity-building programme for developing countries, taking into account the recent experiences of developing countries; on the present weaknesses; and on how to overcome the obstacles.

Decline in Commodity Prices and Terms of Trade of Developing Countries

Falling commodity prices and other problems associated with commodity exports have been the major trade concern for many developing countries, especially the poorer among them, requiring the issue be revitalized. Institutions and groups of developing countries should give priority to advocating for it to be given serious attention, and enlist the help of UNCTAD and other agencies. The trend decline in commodity prices and in the South's terms of trade should be addressed through an international conference or convention, or other institutional mechanism. It is imperative that the huge income losses incurred by poor countries be stemmed.

The UN Secretariat should resume compiling and publishing data and analyses on an annual basis on the terms of trade between commodities and manufactures, and the effects

of movements in the terms of trade on the incomes of different categories and regions of developing countries, as well as the effects on the net international transfer of resources from and to developing countries.

UNCTAD and the Common Fund for Commodities should review the experience of commodity agreements and look into the possibility or desirability of reviving such agreements. One possibility is to initiate a new round of commodity agreements aimed at rationalizing the supply of raw materials (to take into account the need to reduce depletion of non-renewable natural resources) while ensuring fair and sufficiently high prices (to reflect ecological and social values of the resources).

Although international cooperation is the preferred method of improving the commodity situation, and attempts should be made to revive it, this may not be feasible at present. In the absence of joint producer-consumer cooperation, producers of export commodities could take their own initiative to rationalize their global supply so as to better match global demand.

UNCTAD, UNIDO and other agencies could be approached to assist commodity-producing developing countries to improve their capacity for increasing the value of their commodities by going up the value chain through processing and manufacturing as well as marketing. At the same time, developing countries should press developed countries to reduce tariff escalation and allow better market access for processed and commodity-based manufactured products, and thus help commodity producers reap better benefits from the trading system.

Regional Trade Arrangements Among Developing Countries

While this report has dealt with issues relating to the multilateral trade system, it should be recognized that regional trade arrangements are also a significant part of the system of international trade.

Developing countries have been making use of regional or South-South trade arrangements among themselves as a means of trade promotion. If designed well, these arrangements can play a useful complementary role to the multilateral system. When a developing country opens up for trade with other developing countries in a region, or to developing countries in other regions, it may find the arrangements more balanced and mutually beneficial, as these countries are relatively at the same stage of development (as compared to the developed countries).Therefore, if a developing country gives preferential concessions to other developing countries, it may determine that its domestic firms are in a better position to compete with the imports from those countries; and similarly its exports, when granted preferential concessions, may be in a better position to succeed in the other developing countries.

The pursuit of regional trade arrangements between developing countries could thus be beneficial as a complement to their participation in the multilateral trade system.

PART VI: Towards a Trading System for Human Development

As this report has demonstrated, the global system of trade has a number of systemic and structural problems that require change. The proposals here thus point to longer term directions of the system and its orientation.

Rethinking Trade Liberalization

Given the negative experiences of many developing countries, an important conclusion is that trade liberalization should not be pursued automatically, rapidly, or as an end in itself.

The many problems in world trade, in particular the inequities in the sharing of benefits and the perception by some countries and groups that they have incurred costs and losses, call for a rethinking of the dominant model of trade policy that has advocated across-the-board rapid liberalization for developing countries. Given the negative experiences of many developing countries, an important conclusion is that trade liberalization should not be pursued automatically, rapidly, as an end in itself or in a 'big-bang' manner. Rather, what is important is the quality, timing, sequencing and scope of liberalization (especially import liberalization), and how the process is accompanied (or preceded) by factors such as the strengthening of local enterprises and farms, human resource and technological development and the build-up of export capacity and markets.

A logical conclusion must be that if conditions for success do not currently exist in a country, a decision to proceed with import liberalization (or liberalization of services, including investments) can lead to specific negative results and even an overall situation of persistent recession. Therefore, developing countries need adequate policy space and freedom to be able to choose between different options in relation to their trade policies. They should have the scope and flexibility to make strategic choices in trade policies and related policies in finance, investment and technology, in order to make decisions on the appropriate extent and scope of liberalization, taking into consideration their need for local production units to remain viable and indeed to grow and thrive. The timing of liberalization may be planned in accordance with the improvement of capacity and standard of local firms; while the choice of products and services to be liberalized may partly depend on the stage of development of local enterprises in different sectors and their state of readiness to compete.

The need for this kind of flexibility should be reflected in the rules and operations of the WTO. Moreover, institutions such as the International Monetary Fund (IMF) and World Bank should review their loan conditionalities relating to trade policy.

While developing countries should be given more flexibility on import liberalization on account of their weaker capacities, developed countries should be required to implement liberalization more strictly in areas of export interest to developing countries, since the developed countries have strong enough capacities. Indeed, developed countries need to liberalize more rapidly in areas of export interest to developing countries, such as agriculture, textiles and clothing and industrial products protected by tariff peaks and tariff escalation. As pointed out in this report, the developed countries have not treated the developing countries fairly in the operation of the post-Second World War trading system, from the beginning of the GATT system up to the present. Developed countries have obtained exemption from integrating agriculture and tex-

tiles in the liberal trade regime, and these sectors remain highly protected even now. Unlike developing countries,which have overall structural weaknesses in their economies and lack capacity to compete, developed countries have much more capacity to restructure their economies and thus to absorb employment losses in sectors where they are inefficient and transfer labour to other sectors that are expanding.

Thus, the next phase of liberalization in the trade system should focus on developed countries. Moreover, if developed countries provide more meaningful market access to developing countries, the latter will have much more opportunities to expand their export earnings,thus laying the foundation for higher imports, and to transfer jobs and resources from less efficient industries to the higher-revenue export sectors that have opened up.

Reorienting the WTO: Development as the Main Priority

The preamble to the Marrakesh Agreement Establishing the WTO recognizes the objective of sustainable development and the need for positive efforts to ensure that 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.

Since liberalization is only a means, and its process has to be carried out with great care and caution, the objective of development should become the overriding principle that guides the work of the WTO, and the rules and operations of the organization should be designed to produce development as the outcome. As proposed by Helleiner (2000), the WTO should be reconceptualized as a development institution: 'In the future, the WTO should be assessed *primarily* on the basis of its achievements towards poverty reduction and sustainable global human development,' stated Helleiner, who also suggested that a thorough and independent review be carried out of the developmental consequences of the content and actual implementation of the Marrakesh Agreement,including the capacity of the WTO's current governance arrangements and staffing to promote global development in the future (Helleiner 2000: 19).

In line with this, the WTO approach to trade liberalization, including its operational principles, should be reviewed. Given the recent evidence that there is no direct or automatic link between import liberalization and growth, and in light of the export difficulties facing many developing countries, a more realistic approach should be adopted by WTO members.

It should be reaffirmed that the ultimate objectives of the multilateral trading system are increased living standards, full employment,economic growth, and sustainable development (as stated in the preamble to the Marrakesh Agreement) and that reduction of tariffs and other trade barriers is only a means.

Since developing countries form the majority of the WTO members, their development should be the first and foremost concern of the WTO. Since it is by no means certain that liberalization under all conditions will contribute to growth, income or development in each developing country, there should be sufficient flexibility in WTO rules to enable each developing country to determine the scope, rate and timing of liberalization according to its own plan, judgment and schedule.

The test of a rule, proposal or policy being considered in the WTO should not be whether it is 'trade-distorting' but whether it is 'development-distorting.' Since development is the ultimate objective, while reduction of trade barriers is only a means, the avoidance of development distor-

tions 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 major concern of the WTO. Its reorientation towards this perspective 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 'maximum liberalization.' There should be a relaxation of pressure on developing countries for further liberalization, whether in trade in goods, in services, or in investment, and this should apply in the WTO as well as other organizations such as the IMF and the World Bank.

WTO rules 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.

Rethinking the Scope of the WTO Mandate

It is misleading to equate the WTO with the 'multilateral trading system,' as is done in many discussions. In fact, the WTO is both 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, the problems in primary commodity markets (including low commodity prices), and the lack of productive capacity and supply constraints faced by many developing countries. On the other hand, the WTO has become deeply involved in domestic policy issues such as intellectual property laws, and domestic investment and subsidy policies. There are also proposals to bring in other non-trade issues including labour and environment standards. Helleiner makes the point that the WTO name does not accurately describe its actual sphere of activity, and that 'on the basis of current practice it might better be called the World Market Harmonization Organization' (Helleiner 2000: 16).

The WTO and its predecessor GATT have evolved trade principles (such as non-discrimination, MFN treatment 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, such as intellectual property, services,investment and competition policy, and also to social issues such as labour and environmental standards, would lead to positive outcomes. Indeed, the incorporation of non-trade issues into the WTO system could distort the work of both the WTO and the multilateral trading system.

Therefore, a fundamental rethinking of the mandate and scope of the WTO is required. First, 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 to assess proposed issues is dealt with satisfactorily in a systemic manner.

Second, a review should be made of the issues that are currently in the WTO to determine whether the WTO is indeed the appropriate venue for them. As pointed out in Part IV, prominent trade economists such as Jagdish Bhagwati and T. N. Srinivasan 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.

In the case of services, although there are trade aspects involved, GATS also contains important non-trade aspects, in particular, investment or commercial presence. Even in relation to the trade aspect, the characteristics of the services trade are not the same as those of trade in goods.Thus, the integration of services into an international organization whose principles, operations and dispute settlement system were designed for and originated from trade in goods, may not have been appropriate. Indeed, several developing countries had maintained in the period before the launching of the Uruguay Round, as well as during its initial period, that services should not be brought under the ambit of GATT and its successor organization. Given the imbalances in GATS, including the sharply differing levels of capacities in the services industries of developed and developing countries (resulting in non-reciprocal benefits to developed countries as an outcome of the implementation of GATS), and the fact that GATS intrudes to such a large extent into the realm of domestic policies, there is a good case to reopen the debate on the nature of services, and whether it has been inappropriate for a world trading organization to incorporate this issue. The issue of whether it is more appropriate, and more to the benefit of developing countries, for GATS to operate as a *sui generis* agreement with its own organization outside of the WTO should be considered.

Within the WTO's traditional ambit of trade in goods, there is also significant room for reform. As argued in various parts of this report, it is time to rethink the orthodox belief that trade liberalization is necessarily good for developing countries and that rapid liberalization is the best policy. A more realistic and sophisticated approach,informed by actual conditions and the empirical and historical record, is called for. And this should be reflected in the work of the secretariat, and in the attitudes and proposals of members.

The WTO should also reorient its primary operational objectives and principles towards development, as elaborated above. The imbalances in the agreements relating to goods should be ironed out, with the 'rebalancing' 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 design 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 should also reorient its primary operational objectives and principles towards development. The imbalances in the agreements relating to goods should be ironed out, with the 'rebalancing' designed to meet the development needs of developing countries and to be more in line with the realities of the liberalization and development processes.

The Role of Other Organizations

Reformed along the lines above, the WTO could then be seen as a key component of the international trading system, co-existing with, complementing and co-operating with other organizations 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 tasks should include: (i) assisting developing countries to build their capacity for production,marketing, distribution and trade; (ii) 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 prospects for smaller firms to engage in production and trade. These issues have previously been dealt with in UNCTAD, which still deals with them, but with less capacity to do so.

A number of economic issues also relate to the conditions needed for trade to serve development needs. These include the developing countries' need for stable or improving terms of trade, for avoiding BOP difficulties and reducing or eliminating their external debt overhang, for a more stable system of capital flows and exchange rates, and for securing financing for trade and development. These issues are being dealt with by the international financial institutions and by the United Nations and its agencies. The way these issues are dealt with (or not dealt with) has an impact on trade and the trading system, and on whether the developing countries will be able to enjoy a process of trade for development. Thus, there must also be complementary reforms in the global financial system, in which a major objective would be to orientate the financial system to support developing countries' capacity to participate in trade for their development process.

There are other issues that are not traditionally considered 'core' economic issues but which nevertheless have an impact on trade, and which are also impacted by trade. Such issues, which include environmental, social, cultural, workers' rights and human rights issues, should be dealt with in the appropriate forum established for each, such as the UN Environment Programme (UNEP), the World Health Organization (WHO), the International Labour Organization (ILO) and the UN Commission on Human Rights. These organizations should monitor and assess how the trade process impacts on their particular area, and be able to take or propose measures to deal with these issues where necessary.

While the WTO should identify, recognize and deal with the problems that may arise from the impacts of its rules (or their implementation) on other areas, social or environmental standards should not be linked to trade measures within the WTO. However, the WTO should incorporate social and environmental concerns and objectives into its operational principles, rules, assessment systems and negotiating processes.

Governance of the Trading System

In order for international trade to be reoriented towards human development, a conceptual and operational framework should be drawn up within which the roles of the various institutions involved in issues related to the international trade system could be clarified. The WTO (slimmed down appropriately, along the lines suggested above) and UNCTAD would still play the most critical roles in this system, but other organizations would also have significant functions. The coordination function could be carried out under the United Nations, in the context of the Economic and Social Council (ECOSOC) or one of its bodies, or a new body functioning under its direction. It is important that the system of governance of the trading system be open and transparent in its operations, as well as participatory and democratic, with the developing countries being able to fully participate in decisions. The deliberations should, in principle, also be open to non-governmental organizations. Citizen groups and the public in general must be able to follow what is going on, and have channels open to them to make their views and their voices heard.

POSTSCRIPT: The Doha Ministerial Conference and After

This report was prepared before the WTO's Fourth Ministerial Conference held in Doha, Qatar, 9-14 November 2001. Following is a brief update.

The Doha Conference produced three main documents: a Ministerial Declaration (WTO 2001c); a Declaration on the TRIPS Agreement and Public Health (WTO 2001d); and a decision on Implementation-Related Issues and Concerns (WTO 2001e). Regardless of their merits, the outcome documents were achieved through a non-transparent process in which the views of a large number of developing countries on some of the most important aspects (especially the new issues and elements of a new round) were not reflected in the various drafts of the Ministerial Declaration. This gave rise to perceptions of manipulation and bias in the system in favour of the major developed countries, and placed lack of transparency and democracy again in the forefront of concerns regarding the future of the WTO and the multilateral trading system.

The Ministerial Declaration has initiated a heavy work programme that places an onerous burden on developing countries, with which they will find it difficult to cope. Besides the already mandated negotiations on agriculture and services, and already mandated reviews of the TRIPS and TRIMS agreements, the post-Doha work programme 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 to be negotiated is the set of 'implementation issues and concerns' that developing countries had earlier put forward, and of which only a few items have so far been resolved. The work programme also includes more focused discussion on the four Singapore issues (investment,competition policy, transparency in government procurement and trade facilitation); examination (in two new working groups) of 'trade, debt and finance' and 'trade and technology transfer' issues; and discussion on electronic commerce and small economies.

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.' According to C. Raghavan (2001j), the work programme 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 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 it 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. 'Negotiations' imply a commitment to draw up a new agreement,whereas 'discussions' or a 'study process' do not. For three of these issues (all except trade facilitation), working groups had been established by the 1996 Singapore Ministerial Conference and in the opinion of these developing countries, the working groups should continue to discuss the issues while trade facilitation should continue to be discussed in the relevant WTO organs. These views were expressed by many countries at

the WTO meetings in Geneva to prepare for Doha, as well as in joint statements made by the ministers of the least developed countries (LDCs) at their meeting in Zanzibar in July; by African Trade Ministers at their meeting in Abuja in September; and by Ministers of the Africa, Caribbean and Pacific (ACP) group at their meeting in Brussels in November.

However, these positions were not reflected in a draft Ministerial Declaration (WTO 2001b) that was transmitted by the Chairman of the WTO General Council and the Director-General of the WTO Secretariat to the Doha Ministerial Conference. The draft committed the members to negotiations on all four issues, immediately for transparency in government procurement and trade facilitation, and in two years,after the Fifth Ministerial Conference, for investment and competition. Moreover, the least developed countries group and several non-LDC African countries had presented views that negotiations should not begin on industrial tariffs (or non-agriculture market access) but instead a study process be initiated to take account of their concerns that previous industrial tariff cuts had resulted in de-industrialization and closure of local firms. Nevertheless, the draft committed members to immediate negotiations.

Despite requests by many developing countries that the Geneva draft be amended or at least that their views be reflected in an annex or a cover letter, the same draft (that was 'clean' in that it did not reflect the differing views or options, as would have been normal for an international conference when there is no consensus in some parts) was transmitted to Doha (without an annex, or an explanation of the divergent views in the cover letter) to form the basis for the negotiations at the Conference.

At Doha many developing countries again stated (in 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 last morning of the Conference, 14 November, ministers agreed that negotiations would take place on all four issues 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 (WTO 2001c). 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 clarification 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 (Kamal 2001).

One of the more significant discussions that can be expected at the WTO in the wake of the Doha Conference is the status of the Singapore issues: does the Ministerial Declaration (with its commitment to negotiations after the Fifth Conference) or the Doha Conference chairman's understanding (that a decision by consensus is needed before negotiations can proceed) take precedence? 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 commmitments,exceptions, dispute settlement, and so on). Thus, there will be a serious and very heavy work programme already regarding the Singapore issues in the period up to the Fifth Ministerial, and if a decision is then taken to begin negotiations, the workload will be increased further. Needless to say, 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 developing countries deepen their understanding of the issues in the months ahead, whether they consider it in their interest to have these proposed new agreements in the WTO, and whether they can persuade developed countries to respect their position (or stand up to pressures from these countries) in the event they do not want these issues to be developed into WTO treaties.

With regard to the Declaration on TRIPS and public health, the key general statement is that 'the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health' and that the Agreement 'can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all' (WTO 2001d). The Declaration recognizes the agreement's flexibilities, including in relation to compulsory licensing and exhaustion of intellectual property rights. Some trade analysts have pointed out that the Declaration has not added value to the legal rights of developing countries seeking to improve their ability to take measures to cut the cost of (or obtain substitutes to) patented medicines; yet as a 'political declaration' asking Member governments to go ahead and exercise their rights, perhaps it has some value or provides some encouragement to developing countries. However, the reality and extent of this political value of the Declaration remains to be tested (Raghavan 2001i).

Regarding the 'implementation issues' raised by developing countries, the Doha Conference did not resolve most of them. The majority of the proposals have been listed as 'outstanding issues' on which no decisions have yet been taken; these shall be discussed by the 'relevant WTO bodies,'which shall report to the Trade Negotiations Committee by the end of 2002 for action. Within the Doha document, Decision on 'Implementation-Related Issues and Concerns' (WTO 2001e), most of the implementation issues (on which decisions have been taken) have been sent to subordinate WTO bodies for possible action, and seem to involve no more than a 'best-endeavour' attempt, rather than legally binding commitments. According to Raghavan (2001j), in one sense the time and energy spent by the developing world to raise the implementation issues have amounted to nothing more than an agreement to negotiate them under the new work programme. However, in reality, developing countries had not really expected anything beyond managing to put these up for renegotiation; if not for this, the major countries would have refused to even look into these issues.

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 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.

Although 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.

In Doha, six 'friends of the Chair' were appointed to conduct consultations on controversial issues; how they were appointed, what their specific powers were, and why they all came from a similar camp (that was known to advocate a new round),were not explained nor subjected to approval by the members. When a large number of developing countries were still opposed to negotiations on the Singapore issues on 13 November, the last scheduled day, the Conference was extended by another day. On the final night, a 'Green Room' meeting involving only 24 countries was convened, and it lasted until 5:00 or 6:00 in the morning. The selection of participating countries, what representative authority they had, what was discussed, who convened the meeting, and who prepared the texts and drafts (including the final Declaration text) were not made known to members or the public, let alone decided upon by consensus.

The biases in the process in favour of developed countries, and the disadvantage at which developing countries have been placed in negotiations, have caused exasperation and frustration among the delegations of several developing countries, as well as among many civil society organizations that witnessed the events and processes. As India's Commerce and Industry Minister, Mr. Murasoli Maran, himself a major player at Doha, remarked:

> Apart from not seriously reflecting the views of the developing members, the draft Declaration and the manner in which it was transmitted from Geneva to the Ministerial left a lot to be desired. Even at Doha, when the process reached nowhere on 13 November, the scene shifted to the so-called 'Green Room',where only a handful of WTO members were requested to participate. The remaining members virtually had no say. Even during discussions on the entire night of 13-14 November (the non-stop session lasting for 38 hours), texts were appearing by the hour for discussions without giving sufficient time to get them examined by the respective delegations. Who prepared the avalanche of Draft after Draft? Why? We do not know. In the eleventh hour, probably after 37 hours 45 minutes,they produced a Draft —like a magician producing a rabbit out of his hat — and said that it was the Final Draft. The tactics seemed to be to produce a draft at the wee hours and force others to accept that or come nearer to that. Has it happened in any other international Conference? Definitely not. Therefore with pain and anguish I would say that any system which in the last minute forces many developing countries to accept texts in areas of crucial importance to them cannot be a fair system. I would strongly suggest that the WTO Membership should have serious introspection about the fairness of the preparatory process for Ministerial Conferences. At a minimum, there should be a stipulation that during Ministerial Conferences, no new text on any issue will be put for adoption without the delegations getting sufficient time to study the text and to consult their polity. The last minute Draft, which often comes like a bolt from the blue, will not contribute to the strength of the multilateral trading system, since the decisions are likely to affect the lives of billions of people all over the world. (Maran 2001: 5-6)

Although promises have been made many times (notably at the Singapore Ministerial Conference and after the Seattle Ministerial Conference), by developed countries and by the management of the WTO Secretariat, to do away with non-transparent 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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List of Acronyms

AB	Appellate Body
AoA	Agreement on Agriculture
ASEAN	Association of South-East Asian Nations
ATC	Agreement on Textiles and Clothing
BOP	Balance of Payments
CCCN	Customs Cooperation Council Nomenclature
CVD	Convention on Biological Diversity
CPs	Contracting Parties
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EC	European Communities
ECOSOC	Economic and Social Council
EEC	European Economic Community
EU	European Union
FDI	Foreign Direct Investment
FOGS	Functioning of the GATT System
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GSP	Generalized System of Preferences
ILO	International Labour Organization
IMF	International Monetary Fund
IPRS	Intellectual Property Rights
ITC	International Trade Centre
ITCB	International Textiles and Clothing Board
LDCs	Least Developed Countries
MAI	Multilateral Agreement on Investment
MEA	Multilateral Environment Agreement
MFA	Multi-Fibre Arrangement
MFN	Most Favoured Nation
NFIDCs	Net-Food Importing Developing Countries
OECD	Organisation for Economic Cooperation and Development
PPMs	Process and Production Methods
PSE	Producer Subsidy Equivalence
R&D	Research and Development
SPS	Sanitary and Phytosanitary Measures
TNC	Trade Negotiating Committee
TRIMS	Trade Related Investment Measures
TRIPS	Trade Related Intellectual Property Rights
UNCED	UN Conference on Environment and Development
UNCTAD	UN Commission on Trade and Development
UNEP	UN Environment Programme
UNHCR	UN High Commission for Human Rights
UNIDO	UN Industrial Development Organization
WHO	World Health Organization
WTO	World Trade Organization