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ANALYSIS OF THE DOHA NEGOTIATIONS AND THE FUNCTIONING OF THE WORLD TRADE ORGANIZATION

Martin Khor



RESEARCH PAPERS

30

**ANALYSIS OF THE
DOHA NEGOTIATIONS
AND THE FUNCTIONING OF THE
WORLD TRADE ORGANIZATION**

Martin Khor

SOUTH CENTRE

MAY 2010

THE SOUTH CENTRE

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ACRONYMS

ACP	African, Caribbean and Pacific Group of States
AMS	Aggregate Measure of Support
AoA	Agreement on Agriculture
CAP	Common Agricultural Policy
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
HS	Harmonised Chapter
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
LDCs	Least Developed Countries
LTFR	Less than full reciprocity for developing countries principle
MFN	Most favoured nation principle
NAMA	Non-Agricultural Market Access
NGOs	Non-governmental Organisations
NTBs	Non-tariff Barriers
OECD	Organisation for Economic Co-operation and Development
OTDS	Overall Trade-Distorting Domestic Support
PPMs	Processes and Production Methods
PPP	Purchasing Power Parity
R and D	Research and Development
SDT	Special and Differential Treatment

SPs	Special Products
SSM	Special Safeguard Mechanism
TDS	Trade-Distorting Domestic Support
TRIMS	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

I. PRINCIPLES AND SCOPE OF ACTIVITIES OF THE WORLD TRADE ORGANIZATION

The World Trade Organization (WTO) was established through the Marrakesh Agreement Establishing the WTO, adopted by Trade Ministers in April 1994, together with the Final Act of the Uruguay Round. Since then the WTO has been widely taken to be the embodiment of the multilateral trading system. In fact the WTO is only a part (though of course a very significant part) of the global trade architecture. There are also other institutions (especially the United Nations Conference on Trade and Development - UNCTAD) and other agreements (in particular the regional and bilateral trade agreements) that are part of the trade architecture. Although the WTO covers many trade issues, it does not cover some crucial trade areas such as the issue of commodities and their related problems such as the instability of prices and demand, an issue that is covered by UNCTAD. Moreover the mandate of the WTO also covers non-trade subjects such as intellectual property rights and the investment component of services. Thus, it is interesting to note that the WTO is less than the multilateral trade system, and also more than it.

The parts of the international trade architecture that come under the WTO are covered by the organisation's principles and legally binding rules, as well as a strong enforcement mechanism through its dispute settlement system.

The preamble to the Marrakesh Agreement Establishing the WTO does contain the objective that "trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a growing volume of real income, in accordance with the objective of sustainable development". It also recognizes the need for positive efforts to ensure developing countries secure a share in the growth of international trade commensurate with the needs of economic development. The preamble also states the desire of "contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international trade relations".

It can be argued that the main stated objectives of the WTO are raising living standards, full employment and growth of real income as well as ensuring that developing countries secure a fair share in global trade growth, whilst reduction of tariffs and non-tariff barriers and elimination of discriminatory treatment are the means or instruments. However, in practice, in their proposals and positions in the WTO, the developed Members of the WTO have placed much more stress on the obligations of developing countries to reduce their tariffs and to counter "discriminatory treatment".

The scope of the WTO covers three main areas: trade in goods, services, and intellectual property. Rules for these are established respectively in the General Agreement on Tariffs and Trade (GATT) 1994, the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The GATT and TRIPS agreements contain the two general principles of "non-discrimination", i.e. most-favoured nation (MFN) and "national treatment" (that imported goods must not be

accorded treatment less favourable than that accorded to like domestic products), whilst GATS has the MFN as a general principle.

The tariff reduction imperative and the national treatment principle have been operationalized within the system in a way that pressurizes the developing countries to reduce their tariffs and non-tariff barriers, and to increasingly give up the policy options of giving preferences, subsidies and other forms of promoting local products, services and producers. This is often against the interests of development, which may require levels of tariff or non-tariff protection, and the provision of promotional measures for local producers. Although growth, employment and development may appear as the main objectives of the WTO, the driving forces in practice have been tariff reduction and trade liberalization, and the implementation of national treatment, to the extent that these have in effect become ends in themselves rather than the means.

Das (2003, pp. 186-188) has also pointed out a structural defect, in that “reciprocity” as the basis for exchange of concessions is inappropriate in a multilateral system which has a large membership at widely differing levels of development. Reciprocity implies that trading partners receive the same concessions as they give.

Das concludes that the fundamentals of the current GATT/WTO system are improper and inappropriate, and that the workings of the system since its inception in 1995 have given rise to ever-increasing discontent among developing countries. In goods and services, the entire structure of the rules, disciplines and procedures is built around liberalization. This goal is incompatible with the basic objective of benefit-sharing as the direct beneficiaries of liberalization are those countries that possess a developed supply capacity, while developing countries lack supply capacity and will not reap much benefit. “The system has naturally resulted in gross imbalance and this trend is continuing.” (Das, 2003)

II. THE WORLD TRADE ORGANIZATION'S RULES AND THE PROBLEMS FACED BY DEVELOPING COUNTRIES

In relation to the rules of the WTO, as embodied in its many agreements, the WTO and its predecessor, GATT, have contributed to the global trade system through the provision of a framework of rules within which Member Countries conduct trade and other commercial relations among themselves. This has contributed to a measure of stability and predictability as contrasted to an alternative scenario in which arrangements are dominated by unilateral policies and bilateral arrangements.

However, over the years, the developing countries have found several problems with the rules, many of which they find to be imbalanced against their interests. Many developing countries have complained that the benefits they anticipated have not materialized, mainly because the developed countries have not fulfilled their liberalization commitments, particularly in agriculture, where high levels of subsidies and tariffs have continued, thus blocking the developing countries' market access.

Moreover, the developing countries have faced multiple problems when they implement their own obligations under the rules. In many areas, the rules impinge upon the developing countries' policy space, narrowing the options they can have to adopt certain policy measures which have become incompatible with certain rules of the WTO.

Also, the developing countries have come under tremendous pressure to accept proposals from developed countries to negotiate the introduction of new agreements or rules in the WTO, firstly on labour standards and secondly on the "Singapore issues". The latter is a set of issues (investment, competition policy, transparency in government procurement and trade facilitation) that the developed countries introduced at the WTO's first Ministerial meeting held in Singapore in 1996. If accepted as the subject of new rules, these issues would have greatly expanded the mandate of the WTO. Since 1996, there has been a zig-zag course of these issues through the WTO's negotiating process.

Finally, the decision-making process at the WTO has not been a transparent one, nor does it allow the full participation of developing countries generally. This was especially so in the earlier years of the WTO during which the major developed countries were able to make the main decisions, and the developing countries complained strongly at the manipulative methods employed, especially during Ministerial conferences where the most important decisions are made. In the most recent few years, the developing countries have made greater inroads through the formation and operation of various groupings. However, it is generally still the case that the decision-making process is dominated by major developed countries, with only a few developing countries (particularly India, Brazil and China) being admitted into the innermost circle.

III. IMBALANCES IN THE EXISTING WORLD TRADE ORGANIZATION RULES

The old GATT system dealt with trade in goods. There were already some imbalances even in the GATT system. For example, sectors of export interest to developing countries remained highly protected, particularly agriculture and textiles. In effect, developing countries had made major concessions to the developed countries which had asked for time to adjust. The expansion of the GATT system under the Uruguay Round of negotiations which established the WTO, through the introduction of the then new issues (services, intellectual property, investment measures), made the system even more imbalanced, as well as intrusive (as the system moved from its traditional concern with trade barriers at the border, to issues involving domestic economic and development structures and policies).

The imbalances relate to two aspects. Firstly, there is the **non-realization of anticipated benefits for the developing countries**. The developing countries had expected to benefit significantly from the Uruguay Round through increased access to the markets of developed countries for products. This was especially in the agriculture and textiles sectors for which developing countries have a comparative advantage, and in which there had been high barriers.

However, in agriculture, tariffs on many agricultural items of interest to developing countries are prohibitively high (some are over 200 per cent and over 300 per cent). Domestic subsidies in the Organisation for Economic Co-operation and Development (OECD) countries have risen from US\$275 billion (annual average for base period 1986-88) to US\$326 billion in 1999, according to OECD data (OECD, 2000), instead of declining as expected, as the increase in permitted subsidies more than offset the decrease in subsidy categories that are under discipline in the WTO Agriculture Agreement. Thus, there has been little expansion of access to developed-country markets.

In textiles, developing countries had for decades made a major concession in agreeing that their textiles and clothing exports to developed countries be curtailed through a quota system. In the Uruguay Round, the developed countries agreed to progressively phase out their quotas over 10 years to January 2005, but they in fact retained most of their quotas up to very near the end of the implementation period. Thus, much of the expected benefits did not materialize for the first ten years after the adoption of the Uruguay Round outcome.

Two other factors that result in non-realisation of benefits for developing countries are the continuation of tariff peaks and tariff escalation in developed countries on other industrial products in which developing countries have manufacturing export capacity; and the use of non-tariff barriers in developed countries such as anti-dumping measures and the application of food safety and environmental standards.

Secondly, the developing countries have found many **problems when they implement their own Uruguay Round obligations**. Their policy space to implement development-oriented measures such as promotion of local industries or adoption of new technologies has been narrowed by several WTO agreements. For example, the Uruguay

Round removed or severely curtailed the developing countries' space or ability to provide subsidies for local industries (as a result of the WTO's subsidy agreement) and to maintain some investment measures such as local-content requirement (due to the Trade Related Investment Measures Agreement). This has made it difficult for governments to promote local industries and implement industrialization programmes.

In the WTO's subsidies agreement, there is an imbalance in that the subsidies mostly used by developed countries (e.g. for R and 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, and countervailing duties could be imposed on the products enjoying such subsidies. This encroaches on the policy space needed by developing countries for their industrial development.

The Trade-Related Investment Measures (TRIMs) Agreement prohibits developing countries from making use of 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). This prevents developing countries from taking policy measures which promote domestic industrial development, and which had been used by the present industrial countries and by several developing countries previously.

The Agreement on Trade Related Intellectual Property Rights (TRIPS) for the first time set minimal standards for the whole range of intellectual property. Developing countries, which had previously enjoyed the ability to set their own intellectual property rights (IPR) policies are now constrained by having to adhere to IPR standards that are high compared not only to what they previously had, but also what the developed countries had when they were at their initial stages of industrialisation. Prior to the TRIPS agreement, several developing countries had exempted pharmaceutical drugs and food from patentability. However, this policy of exemption can no longer be maintained, as the agreement prohibits exemptions on the basis of sectors. The implementation of the TRIPS agreement has hindered local firms in developing countries from using production processes or from producing products that are patented. This has caused obstacles to the production of local generic medicines that are far cheaper than the prices of the original products, usually of transnational companies. The TRIPS Agreement also facilitates "biopiracy" or the misappropriation of biological resources and traditional knowledge over the use of natural resources that mainly originate from developing countries.

The services agreement has also increased pressures on developing countries to open up their services sectors to foreign participation, which could result in local service providers losing their market share, since many of them will be unable to compete with giant multinational service providers (in sectors such as banking, insurance and retail trade), should liberalization proceed too fast.

In the traditional area of goods, several developing countries have also faced problems from over-rapid tariff decreases. In agriculture, many countries have complained about

“import surges”, caused by cheaper imports taking over part of the markets of local farmers. In some cases the imported products (for example, rice and poultry) are from developed countries which give large subsidies to their farm sectors, so that the export prices often are below the production cost. In the industrial sector, many African countries, and some Latin American countries, have experienced “deindustrialization”, in which cheaper imported products have displaced local industrial producers due to the lowering of tariffs. In many low-income countries, the lowering of tariffs has been more due to conditions placed on loans provided by international financial institutions, which have led to the borrowing countries to reduce their agricultural and industrial tariffs far below the levels at which the tariffs are bound at the WTO. The lowering of the applied tariffs are also due to free trade agreements, especially those between developed and developing countries, since these are reciprocal in nature and developing countries are being asked to eliminate their tariffs on “substantially all trade”, which is often taken to be at least 80 per cent of tariff lines. However, the WTO will also very significantly be the cause of the loss of policy space in the use of tariffs, since the dominant proposals in the Doha Round, if accepted and implemented, will cut the “water” or space between bound and applied tariffs and for some developing countries the cuts in the bound rates will be steep and will bring down the current MFN applied rates to below the current bound rates.

IV. THE “SINGAPORE ISSUES”

Even as the developing countries were trying to digest the Uruguay Round outcome and the implications for their national policies, the developed countries immediately launched an initiative to further expand the remit of the WTO or what was now called “multilateral trade system”, by attempting to introduce new treaties on four issues into the WTO. The four issues – investment rules, trade and competition policy, transparency in government procurement and trade facilitation -- were brought into and dominated the negotiations in the first WTO Ministerial Conference in Singapore in 1996. Thus the issues became known as the Singapore Issues.

The developing countries were opposed to even discussing these issues at the Ministerial, but despite the lack of consensus the issues became the main subjects of a “Green Room” meeting of about 30 Members, that was dominated by the major developed countries. After several days of intense discussion, a compromise was struck, in which the four issues would be the subjects of an “educational process”, rather than negotiations towards binding rules.

Another attempt by the developed countries, especially the European Union, to have these issues become the subjects of negotiations towards new treaties failed despite the equally manipulative processes at the Seattle Ministerial meeting of the WTO in 1999, which ended disastrously without any outcome.

The next attempt to boost these issues was at the Doha Ministerial meeting in 2001, in which the major developed countries, again led by the European Union, succeeded through manipulative methods (including convening an all-night “Green Room” meeting of some 30 Ministers one day after the scheduled end of the conference) to push for the four issues to be negotiated in new working groups with a view to launching negotiations for new treaties at the next ministerial meeting in 2003. This was the most important decision of the meeting which launched the Doha Work Programme.

This was followed by two years of often acrimonious discussions in the four working groups on the Singapore issues, during which it became increasingly clear that the developing countries were generally against the launch of negotiations or the creation of the new treaties inside the WTO. Considerable opposition had also built up among civil society, with development groups combining with trade unions and environment groups to urge governments to abandon these issues from the WTO agenda. At the Cancun Ministerial meeting in October 2003, many developing countries such as India and Malaysia and developing-country groupings (notably the African, Caribbean and Pacific Group of States (ACP), African and Least Developed Countries (LDC) groups) opposed the launching of negotiations. Eventually the Cancun meeting collapsed on the last day without any outcome.

In December 2003, several leading developing countries proposed to the WTO General Council that three of the Singapore issues (with the exception of trade facilitation) be dropped from the Doha Work Programme's agenda. In the mini-Ministerial meeting (of about 30 Ministers in a "Green Room") of July 2004, it was finally decided that the three issues of investment, competition and government procurement would be dropped from the Doha agenda, while negotiations for a trade facilitation agreement were approved. This was endorsed by the WTO General Council on 1 August 2004.

Thus ended, for the time being, the developed countries' attempt to greatly expand the WTO by introducing three new major areas of liberalization. However, the three Singapore issues are still being aggressively pursued through the bilateral and regional free trade agreements that the United States of America and EU are signing and negotiating with developing countries.

The resistance of the developing countries prevented the objective of the developed countries to make use of the WTO and its dispute settlement system to formulate and enforce new rules that would open up markets in developing countries in new ways for their companies. The Singapore issues of investment rules, competition policy and government procurement have a similar theme -- to expand the 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 place governments under greater pressure to grant the right of establishment to foreign investors, to liberalize foreign investments (defined broadly) and to bind the level of liberalization; prohibit or otherwise discipline "performance requirements" imposed on investors (such as limits to foreign equity participation, obligations on technology transfer, geographical location of the investment, etc.); allow free inflows and outflows of funds; and protect investors' rights, for example through strict standards on compensation for "expropriation". The rules would also grant "national treatment" to foreign firms, thus extending this GATT principle (which applies to goods) to the whole new domain of investment.

The proposed rules on competition would require Members to establish national 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". Thus, policies and practices that give an advantage to local firms and products could be prohibited or otherwise disciplined.

Developed countries have also been advocating for government procurement policies (presently exempt from the WTO's multilateral disciplines) to be brought under the system, whereby the 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 a two-step process was proposed in the WTO by the developed

countries. Firstly, an agreement confined to transparency in government procurement would be established. Secondly, attempts would then be made to extend it to the market-access dimension, whereby national treatment would have to be given to foreign firms and products. Local producers would lose their preference.

Many developing countries (especially those in the Like Minded Group that operated from 1999 to 2004) objected to these new issues. Their concerns include that: (i) the 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 have a serious lack of understanding of the issues and of resources to negotiate on them.

Although the three issues are now off the table in the Doha agenda, there is a strong likelihood that another attempt will be made by the developed countries to re-introduce them as negotiating topics in a future Round, should this be launched. Meanwhile the developed countries hope that by making the three issues a central part of the bilateral free trade agreements, it would be easier to have them also accepted in future as subjects of negotiations in the multilateral setting of the WTO.

V. LABOUR AND ENVIRONMENTAL STANDARDS

The developed countries also attempted, before the 1996 WTO Ministerial in Singapore, to bring two related new issues – labour standards and environmental standards – into the WTO. This attempt has also been strongly resisted by developing countries, which fear they are likely to be used as protectionist devices against their products.

The argument of some proponents of these standards is that countries that have low social and environmental standards (or that do not adhere to some minimum standards) are practising “social dumping” or “eco-dumping”. Their production costs are said to be artificially low because, unlike others, they are not recognizing labour standards or adhering to minimum wages, and not spending on environmentally sound technology. There is a possibility that a next step in the argument is that countervailing duty can be placed on the products of these countries as an action against such “dumping.” The developing countries fear that they would not be able to meet the standards that could be set, due to their lack of financial and technical resources, and would thus be punished. They have therefore opposed a linkage between trade rules and these standards.

These issues figured prominently in 1995-1996, in the early years of the WTO. The issue of labour standards became very prominent during the Singapore Ministerial, where it became the subject of intense negotiations in the “Green Room” meeting. The developing countries succeeded in rejecting the proposals of major developed countries that all WTO Members have to adhere to minimum labour standards, such as are contained in certain conventions in the International Labour Organization. Before the Seattle Ministerial of 1999, the United States in particular tried to revive the issue and even expand its scope to include minimum wages, social security and occupational safety, but this attempt also failed with the collapse of the Seattle conference.

The issue of environmental standards had been rather prominent in the mid-1990s. One of the key issues was whether countries could take trade measures (such as imposing higher import duties) on environmental grounds, by taking account of “processes and production methods” (PPMs), or the way in which a product is made, when making decisions on the level of duties. Developing countries argued that this would be against the rules of GATT, and would also be to their disadvantage as the trade measures would discriminate against their products, since they lack the technology and finance to have more environmentally friendly production processes. Although this issue has lain dormant for several years, it has recently re-emerged, as developed country Members of the WTO like the US and EU are contemplating the use of tariffs or “border tax adjustment” measures as part of their domestic policies to fight climate change.

VI. THE “DEVELOPMENT ISSUES”: IMPLEMENTATION PROBLEMS AND SPECIAL AND DIFFERENTIAL TREATMENT

Almost immediately after the establishment of the WTO, the developing countries found many imbalances in various rules and agreements of the WTO, and had many problems with the implementation of these agreements. The implementation problems were of three kinds: firstly, the lack of benefits to developing countries due to the way the developed countries were implementing their obligations; and secondly, the problems encountered by developing countries in having to implement their own obligations, due to the imbalances of these agreements; thirdly, the special and differential treatment provisions in various agreements were non-operational and non-binding in nature, and thus was proving to be of little practical use.¹

The developing countries first formally raised the implementation issue in the Singapore Ministerial of 1996, which contained a brief reference to it. At the 1997 Geneva Ministerial, a lengthier reference was made in its Declaration, to the need for evaluating the implementation of individual agreements and the realization of their objectives. Such evaluation would cover the problems encountered in implementation and the consequent impact on the trade and development prospects of Members. Paragraph 9 of the Declaration, on the preparations of the next Ministerial, lists various elements of the General Council’s future work programme, and the implementation issue was the first item on the list.

In October 1998 to October 1999, developing countries spoke up at the WTO and tabled papers on the implementation problems, and a group of them prepared a list of implementation issues that they wanted resolved. This list was included in the draft Ministerial Declaration prepared by the Chair of the General Council, Ambassador Ali Mchumo of Tanzania. With the failure of the Seattle Ministerial in 1999, no declaration was agreed to. The developing countries then actively pursued the issue in the process of preparing for the next Ministerial in Doha in 2001. A draft decision was prepared on implementation-related issues. Also, a compilation of over a hundred outstanding implementation issues and proposals for their resolution (that had been made by Members) was issued (document number JOB(01)/152/Rev.1).

The developing countries in fact made the negotiations on resolving implementation issues their top priority, between the failed Seattle Conference to the Doha Conference. They asked for the prior solution to these concerns, and wanted to defer proposals of the developed countries for introducing yet more new areas (the Singapore issues) into the WTO mandate. However, the developed countries made it clear they were not interested in discussing the implementation issues, which to them was the result of previous negotiations (the Uruguay Round) whose outcome had already been agreed on. They wanted to push ahead instead with injecting new issues into the WTO.

¹ Raghavan (2003), p. 7

At the Doha Ministerial meeting, the developing countries succeeded in placing implementation-related concerns in four areas of the Ministerial Declaration that launched the Doha Work Programme:

Firstly, a separate Doha Ministerial decision on implementation-related issues and concerns (WT/MIN(01)/17) was adopted, which addressed several of the problems faced by Members. However the more important and difficult issues remained unresolved, and as pointed out by Narayanan (2008), although this document is supposed to contain decisions to resolve problems, in fact many of them are merely decisions to refer the particular matter to some WTO body or other for further discussion.

Secondly, a full section, Paragraph 12 of the Doha Declaration, dealt with implementation issues. It mentioned that negotiations on outstanding implementation issues shall be part of the Work Programme. The outstanding implementation issues and their negotiations are part of the “single undertaking”, which means that an outcome on these issues is to be an integral part of the whole set of agreements on the various issues of the Doha Work Programme.² There was also a deadline set for reporting back on the progress of the implementation negotiations by the end of 2002. The location of paragraph 12 (as the first item of the work programme) and the early deadline (before the conclusion of the negotiations on other issues such as agriculture or the Singapore issues) showed that there was an intention to give priority treatment to the implementation issues in the Doha Work Programme.

Thirdly, a list of outstanding implementation issues was referred to, in a footnote, as the subject of negotiations. This list (in document JOB (01)/152./Rev.1) contains more than a hundred issues proposed by various developing countries and their groupings.

Fourthly, there is a related issue, special and differential treatment (SDT) for developing countries, that was also a part of the Doha Ministerial Declaration. In Paragraph 44 on this topic, the Ministers agreed that all SDT provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. It also endorsed the work programme on SDT set out in the Decision on Implementation Issues.

Despite the prominence given to the implementation and SDT issues in the Doha Declaration, they were given less and less attention after the Doha Ministerial Conference until they have now been marginalized.

After the failed Ministerial Conference in Cancun in October 2003, implementation issues were put on the back-burner as the focus of attention was mainly on agriculture, including cotton, non-agricultural market access and the Singapore Issues. No serious discussion took place either on implementation or SDT issues. After the July 2004 “mini-Ministerial” in Geneva, the General Council adopted a text on 1 August that reaffirmed paragraph 12 of Doha Declaration but which also changed the hierarchy of the implementation issue (it had been placed as the first element in the Geneva and Doha

² This point is argued by Narayanan (2008) and Raghavan (2003), who stated that it was also the understanding of many developing country diplomats in the WTO.

Ministerial declarations, but lost that status in the 1 August 2004 decision). It also diluted the Doha mandate on implementation as it merely requested the Director General to continue with his consultations on this issue; the Doha mandate did not envisage such consultations but required full negotiations.³ The “July 2004 package” of decisions did not result in concrete results in resolving the “development issues” of implementation issues and special and differential treatment. The meeting merely agreed on a new time-table for further discussions on these issues..

During the Hong Kong Ministerial Conference in December 2005, the implementation issues were again pushed into the background. The Hong Kong Declaration took note of the consultations held by the Director General on Implementation Issues and specifically referred to the issue of protecting, through geographical indications, products other than wines and spirits as well as the question of relationship between TRIPS Agreement and the Convention on Biological Diversity. It also requested the Director General to intensify consultations on all outstanding implementation issues. Besides this exhortation to continue the Director General’s consultations rather than intensifying negotiations among Members, the time-table for concluding the negotiations on the range of Doha issues had been inverted. Where the declarations of previous Ministerials (Geneva, Doha) had scheduled that the negotiations on implementation issues be concluded first, the Hong Kong declaration decided that the deadlines for completing modalities on agriculture and non-agricultural market access would come before the completion of negotiations on implementation issues and SDT.

According to S. Narayanan, who was the Indian Ambassador to the WTO and who played an active role in promoting the implementation issues from the Singapore Ministerial to Doha: “It appears that the efforts of the US and some other Members during the post Doha process has been to undermine the mandate of Para 12 of Doha Declaration...The implication of their stand is that developing countries cannot find solutions to their implementation issues and concerns either as self-standing issues or as negotiating issues. Developing countries were told for more than four years that they have to “negotiate” their implementation issues and concerns and two years after developing countries agreed to negotiate these issues, they are told that these issues cannot be negotiated either.” (Narayanan, 2008)

The list of 99 outstanding implementation issues (JOB(01)/152/Rev.1 dated 27 October, 2001) shows the high significance of the implementation issues and proposals for the developing countries and their proposals and attempts to reform the rules of the WTO in order to offset the imbalances and resolve some of the major problems arising from the Uruguay Round.

Among these are the following proposals:

- A complete review of GATT 1994 Article XVIII (on government assistance to economic development) to ensure it subserves the objective of facilitating the

³ See Narayanan (2008) for an analysis of the implementation issue that has been downgraded through various phases of the Doha negotiations.

progressive development of developing countries and allow them to implement development policies to raise the standard of living.

- Developing countries shall be exempted from the discipline in the TRIMS agreement prohibiting domestic content policies.

- Provisions shall be included in the TRIMS Agreement to provide developing countries with flexibility for development policies to reduce disparities they face vis-à-vis developed countries.

- Countervailing measures shall not be imposed on imports from developing countries where the total volume of imports is negligible (e.g. 7 per cent of total imports).

- Subsidies required for development, diversification and upgrading infant industries in developing countries shall be treated as non-actionable subsidy.

- Under the TRIPS Agreement, patents inconsistent with Article 15 of the Convention on Biological Diversity shall not be granted.

- The transition period for LDCs in the TRIPS Agreement shall be extended so long as they retain the status of an LDC.

- The review of Article 27.3b of the TRIPS Agreement should clarify that all living organisms (including gene sequences) and biological and other natural processes for the production of plants, animals and their parts, shall not be granted patents.

According to Narayanan (2008): “No tangible progress has been achieved in respect of any issue being dealt with in terms of paragraph 12b of the Doha Declaration (on outstanding implementation issues). In brief it can be said that there has been no meaningful resolution of even a single implementation issue.”

On the related issue of strengthening special and differential treatment provisions, there has similarly also been little progress.⁴ At the Doha Ministerial, the decision on SDT (contained in paragraph 44 of the Doha Ministerial declaration, paragraph 12 of the declaration and paragraph 12.1 of the Decision on implementation-related issues) was that the work on SDT (as part of the Doha Work Programme) should:

- (1) Make clear recommendations on converting SDT into mandatory provisions (so that they can be legally enforced);

- (2) Make clear recommendations on how developing countries, especially LDCs, can be assisted in making the best use of SDT provisions; and

- (3) Consider how SDT may be incorporated into the architecture of WTO rules. The Declaration notes the proposal of a group of developing countries for a Framework Agreement on SDT.

Developing countries prepared and submitted several proposals on these three matters. By April 2003, the Chair of the General Council proposed an approach to SDT in which he compiled 88 agreement-specific proposals, which he divided into three categories: (I) 38

⁴ A good account of the progress (or lack of it) in the negotiations on special and differential treatment and other “development issues” in the Doha Work Programme is in Bonapas Onguglo (2005).

proposals that are basically agreeable to Members; (II) 38 proposals that fall within an existing negotiating mandate or within the ongoing work of existing bodies, and which were thus referred back to the bodies concerned; (III) 12 proposals on which there was a wide divergence of views.

At the Cancun Ministerial in October 2003, a list of 28 proposals was compiled for approval, but many developing countries maintained that all 88 proposals should be treated as a package. Due to the collapse of the Cancun meeting, this set of 28 proposals was also not adopted.

The August 2004 decision of the General Council asked that the review of all outstanding agreement-specific proposals be completed by the Committee on Trade and Development by July 2005, and that all other outstanding work (including on cross-cutting issues, a monitoring mechanism and the incorporation of SDT into the architecture of WTO rules) should be addressed and reported back to the General Council.

At the Hong Kong Ministerial in 2005, there was also little progress, except for a decision relating to duty free and quota free market access for LDC products. The marginalization of SDT issues can be seen in how the scheduling and prioritizing of the “development issues” vis-à-vis the market access issues has been reversed. The Ministerial Declaration set a deadline for reaching conclusion on the SDT issues at December 2006, whereas the deadline for concluding negotiations on modalities for agriculture and NAMA was set at April 2006. This marks the shift in priorities and emphasis of issues away from SDT and implementation issues and towards the market access issues.

As Bonapas Onguglo (2005) commented, the development issues have been the most difficult to address in the Doha negotiations. The missed deadlines in addressing them has disturbed the balance of interests attained in the Doha Declaration, in which developing countries agreed to launch a new round as long as their development issues were addressed on a priority basis before entering new market access commitments or negotiations on new rules. While developing countries have made proposals on SDT and implementation issues, “very limited progress forward in terms of concrete, substantive outcomes have been achieved” (Onguglo, 2005, p. 59). In the meanwhile, as the negotiations proceed, the developing countries have been faced with new and more concerns relating to development, in the negotiations on market access in agriculture, NAMA and services.

VII. MARKET ACCESS NEGOTIATIONS IN THE DOHA AGENDA

As the previous section has explained, the Doha negotiations that started with the promise to “place the needs and interests of developing countries at the heart of the Work Programme”⁵, have seen the progressive diminution and marginalisation of the “development issues” of implementation and SDT.

As the importance of the development aspects have dwindled, the market access elements of the Doha agenda have progressively claimed centre stage. A blow to the proponents of an extreme market access agenda came with the withdrawal of the three main Singapore issues after the Cancun fiasco in late 2003. However, the developed countries have made up for that loss by aggressively pushing an extreme market access approach in the negotiations on agriculture, NAMA (non-agricultural market access) and services. They have mainly succeeded putting their proposals in the forefront of the negotiations, which if accepted will further open the markets of the developing countries in all three areas, and especially in NAMA and agriculture. At the same time there are doubts that the developed countries would have to undertake commitments that significantly open up their markets to developing countries or to really reduce their agricultural subsidies. And meanwhile, in the context of the global recession, the developed countries are increasing the subsidies that they provide for their failed banks, insurance companies, and motor vehicle industry. The developing countries are unable to match the trillions of dollars of subsidies, and thus are placed in a disadvantageous position.

An assessment of the market access elements of the Doha negotiations, and the major proposals on the table, would show that there is little development content.⁶ On the contrary, there would be few benefits for most developing countries, and the danger of costs, some of which involve serious losses, including the loss of policy space.

1. Non-Agricultural Market Access (NAMA)

The negotiations and the major proposals on the table have been least development-friendly to developing countries in the area of NAMA. The agreed August 2004 Framework on NAMA (in Annex B), supplemented by the Hong Kong Declaration, is very tilted against the developing countries. This has been worsened by the successive drafts (by the Chair of the NAMA negotiating group) on modalities of the NAMA negotiations. The latest of these drafts was issued in December 2008.

⁵ As stated in Paragraph 2 of the Doha Ministerial declaration.

⁶ See for example, Das (2005), Das (2008), Khor (2006), Khor (2009) and Onguglo (2005).

In the Doha negotiations, a new system is being created that will remove or reduce the present development flexibilities in the General Agreement on Tariffs and Trade (GATT). If the new NAMA system is adopted, it could well result in the worsening of the deindustrialisation process in many developing countries. There are several features in the new NAMA system.

First, Members are asked to bind all their industrial (or non-agricultural) tariffs. At present, each country can choose how many of their tariff lines they want to bind. This flexibility will be removed as the August 2004 Framework requires all Members to bind 100 per cent of their lines, or at least 95 per cent.

Secondly, unbound tariffs will have to be bound at low levels. This is because the August 2004 Framework proposes that the applied rates of unbound tariff lines will be multiplied by two and then a formula will be used to reduce the tariff rates to the new bound levels. In many cases the new bound rates will be significantly below the applied rates, which are already low because of structural adjustment. In contrast, up to now, each country is allowed to choose at which level to bind their previously unbound tariffs. The removal of this flexibility would have serious implications. These implications would be grave, as for the first time ever in the GATT/WTO system the applied rates would be used in calculating the newly bound rates, and the formula linking the two is so strict that the new bound rates will likely be close to or below (in many cases significantly below) the applied rates.

Thirdly, for the first time, developing countries will be subjected to a formula to reduce tariffs. Moreover, a Swiss formula is being used, as this was agreed to in the Hong Kong Ministerial (2005). This formula cuts higher tariffs more deeply than lower tariffs. Since most developing countries have quite high industrial tariffs, their tariffs will be cut more steeply than the tariffs of developed countries (unless the developing countries are allowed to have vastly different coefficients in the formula than the developed countries). If developing countries have to cut their tariffs more than developed countries, this also goes against the principle of “less than full reciprocity” that is mandated in the Doha Declaration.

The depth of cuts depends firstly on the formula and secondly on the coefficient agreed to. On the first, the Swiss formula’s characteristic is that higher tariffs are slashed at higher rates. On the second, the developed countries agree that there can be two coefficients: one for developed countries and one for developing countries. However they also insist that there not be much difference between the two coefficients, with the coefficients 10 (for developed countries) and 15 (for developing countries) being mentioned. The lower the coefficient, the more drastic the rates of reduction. The coefficient also denotes the maximum level of tariff after the reduction exercise. Thus a coefficient of 15 for developing countries implies that their industrial tariffs will be brought down to less than 15 per cent.

Fourthly, the cuts are to be done on a line-by-line basis. This means that every product will be cut by this drastic formula. In the Uruguay Round, the developing countries had to cut their tariffs by an overall target of 30 per cent, but they could choose at which rate to cut which product’s tariffs, so long as the overall average came to 30 per cent. This flexibility is to be removed.

Finally, there is a “sectoral approach” in which tariffs will be eliminated in products belonging to certain selected sectors. Developing countries want this approach to be on a voluntary basis. But increasing pressures have been put on them to participate. In particular, big developing countries such as China, India and Brazil have been pressured to eliminate almost all tariffs in particular sectors that have been named by the developed countries.

There are non-tariff barriers (NTBs) which hinder the access of developing countries’ products to developed countries’ markets. NTBs are supposed to be an integral part of the negotiations in NAMA. However this issue has been given low-priority treatment and it is unlikely that there will be any significant outcome in this area which is of high export interest to developing countries.

Some flexibilities are provided in the August 2004 Framework to developing countries, but they are very few and very limited. The flexibility is that they can EITHER (1) apply less than formula cuts to up to [10] per cent of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] per cent of the total value of a Member's imports; OR (2) keep as an exception, tariff lines unbound, or not applying formula cuts for up to [5] per cent of tariff lines provided they do not exceed [5] per cent of the total value of a Member's imports.

The latest negotiating draft, the December 2008 proposal by the Chair of the NAMA group, fixes a coefficient of 8 for developed countries, which would mean that the average bound tariff of the three major developed countries would be reduced by about 28 per cent (i.e. EU by 33 per cent, US by 29 per cent, Japan by 22 per cent).

The text fixes coefficients 20, 22 and 25 for developing countries (with flexibilities for 14 per cent, 10 per cent and zero in numbers of lines respectively); the countries are asked to choose one of the options. A choice of the middle coefficient 22 would reduce the average tariff of developing countries like India, Brazil, Indonesia, and Venezuela by about 60 per cent. Thus, the developing countries that are affected by this formula⁷ are being asked to cut their industrial tariffs on average by a far larger percentage than the developed countries.

There is a very small flexibility for developing countries. The flexibility linked to coefficient 22 is that 10 per cent of their NAMA lines can have tariff cuts that are half the rates of the formula cuts, or else 5% per cent of lines is to be exempted from any cut. This flexibility is further restricted by the condition that the lines enjoying the flexibility must not exceed 10 per cent of the value of NAMA imports (for flexibility of half the formula cut) or 5 per cent of the value of imports (for flexibility of exemption).

The sets of flexibilities for the options of coefficient 20 (14 per cent of lines limited by 16 per cent of value for tariff cuts at half the formula cut) and for coefficient 25 (zero flexibility) are also meagre and extremely insufficient to enable developing countries to undertake industrial development successfully.

⁷ LDCs are exempted from any NAMA tariff cut, while small and vulnerable economies are provided with a different method (not the Swiss formula) for cutting their tariffs.

The drastic effect on developing countries' industrial tariffs is seen in an estimate by trade officials that following the application of the Chair's coefficients and flexibilities, the majority of NAMA tariff lines for developing countries having to apply the formula would be less than 12-14 per cent (depending on the coefficient and flexibilities used).

For these countries, bound tariffs would be at an average of 11-12 per cent, and only a small number of tariff lines would have levels above 15 per cent. The lowness of tariffs across a broad range of industrial products would not be able to support future development of local industries.

This paper is extremely imbalanced and does not fulfill the "less than full reciprocity for developing countries" (LTFR) principle, which is taken to mean, at a minimal, that the tariff cuts for developing countries would be lower than those for developed countries.

Instead, the Chair's draft requires the developing countries to undertake tariff reductions more than developed countries. It also cuts the developing countries' bound tariffs very deeply, thus reducing many applied tariffs, and seriously reducing policy space to make use of tariffs for industrial development in general and the development of future industries in particular.

For a balanced NAMA outcome, the less than full reciprocity principle should be respected and reflected in the coefficients. Thus if coefficient 8 is chosen for developed countries, the tariff reduction rates for developing countries should at most be two thirds of the reduction rates of the developed countries. This should be reflected in the coefficients for developing countries. The fact that this is not provided for in the Chair's text is a violation of the mandate in the 2001 Doha Ministerial Declaration that launched the Doha agenda. Its absence, and instead the presence of its opposite, shows the extreme imbalance in the NAMA paper.

Besides the imbalances in the rates in tariff cuts, the Chair's draft is asking developing countries to accept two more restrictions. It has an "anti-concentration clause" which is designed to prevent developing countries from excluding an entire sector, or close to an entire sector, from full formula tariff cuts. This clause made its first appearance very late in the negotiations, when it was proposed by some developed countries. Yet, incredibly, it was included in the former NAMA Chair's 10 July draft (as a general concept) and legitimised by the Chair's December 2008 draft incorporating the clause in paragraph 7(d), stating that "full formula tariff reductions shall apply to a minimum of either 20 per cent of national tariff lines or 9 per cent of the value of imports of the Member in each HS (Harmonised System) Chapter."

There is also what is now a controversial "sectoral approach". It had been clearly understood that participation of any Member in a "sectoral approach" (in which participants agree to lower their tariffs in selected sectors to zero or very low levels) would be voluntary.

However some developed countries, especially the US, have insisted that some developing countries (China, India, Brazil) must take part in at least one or two sectoral initiatives from among sectors these developed countries have chosen, including chemicals, industrial machinery and electronics. This has been resisted by the developing countries. The Chair's draft refrains from giving any text, choosing instead to highlight sectorals as a major problem.

The NAMA negotiations have been obscured by formulae and coefficients that are not easy for the general public to comprehend. Far easier to understand would be negotiations based on percentage cuts, as happens in the agriculture negotiations, and as has happened in previous GATT negotiations. There is ground for concern that many developing countries that are affected by the formula are finding it more difficult to follow the negotiations. This may remain so unless it is made transparently clear to them what percentage reductions are involved with each coefficient and formula.

The danger is that with the confusion engendered by discussions focusing on coefficients, developing countries will be put under greater pressure to give in to the demands of the developed countries to accept a low coefficient, which would require their tariffs to be slashed by very high percentages.

As a result, the local industries in many sectors and many countries would not be able to withstand competition from imports that suddenly become much cheaper. Governments would also lose a significant part of their revenue, as tariffs are brought down sharply and suddenly. The prospects of future industrialisation of the affected developing countries would also be adversely affected.

The implications of the NAMA proposals are serious as their adoption is likely to exacerbate the deindustrialisation that has already taken place because of rapid liberalisation, mainly under the structural adjustment programmes of the International Monetary Fund (IMF) and World Bank. For example, the domestic industries of many African countries have closed or have been seriously damaged in the 1980s and 1990s.

There is a myth that developed countries and successful developing countries industrialised because they had low or zero tariffs, and that the lower the tariff the higher the industrial growth. In fact, developed countries made use of high tariffs to protect their industries during their industrialisation phase. Also, the successful East Asian economies of Taiwan, South Korea and Japan resorted to tariff measures to pursue their industrial development. The US had 44 per cent tariff in 1913 when its per capita income (at 1990 prices) was US\$5301, and 14 per cent tariff in 1950 when its per capita income was US\$9561. Germany had 26 per cent tariff in 1950 when its per capita income was US\$3881, and the United Kingdom's tariff in 1950 was 23 per cent (US\$6907 per capita income). In 2001, the average applied tariff was 13.6 per cent for LDCs (US\$898 per capita income), 8.1 per cent for developing countries (US\$3260 per capita income), 10.4 per cent for Brazil (US\$5508 per capita income), 12.3 per cent for China (US\$3728 per capita income) and 24.3 per cent for India (US\$1945 per capita income). (Per capita incomes are on a purchasing power parity (PPP) basis at 1990 prices.) (Akyuz, 2005, p. 14).

Asking developing countries to reduce their tariffs to very low or zero levels is akin to industrial countries, having reached the roof, kicking away the ladder which others are climbing.

The ability to use tariffs for industrialisation is all the more important since the use of other tools (which other countries had used during their industrialisation) has now been constrained by WTO rules, for instance on TRIMs and subsidies. Also, for many developing countries, customs revenues constitute 20 to 30 per cent or more of government revenue, while for developed countries this is less than 1 per cent. Cutbacks on government revenue could result in decreased social spending such as on health and education.

2. Agriculture

Agriculture had for many decades been left out of the rules of the GATT system, at the request of the developed countries, whose agriculture system could not take on the competition of the degree of liberalization called for in GATT. Thus in fact the developing countries had made a huge concession by allowing agriculture (in which they have a comparative advantage) to remain outside GATT. It was their expectation that bringing back agriculture into the trading system's rules through the Uruguay Round would bring them many benefits. However, in this, they were also to be disappointed.

The WTO's Agreement on Agriculture (AoA) comprises rules in three areas -- market access, domestic support and export subsidies. In all these areas, the developed countries were expected to reduce their protection. In reality, however, the developed countries have been able to continue to maintain high levels of protection. Many of them set very high tariffs on several products; thus, even after the required 36 per cent tariff reductions of the Uruguay Round, they remain prohibitively high. Domestic support has also remained very high; in fact, the total amount of domestic subsidies in OECD countries has in some years actually risen above the pre-WTO levels as there was an increase in permitted types of subsidies which more than offset the decrease in those subsidies that come under discipline. The export subsidies budget in developed countries is also to be reduced by only 36 per cent under the agreement.

In the export subsidy issue, there has been some progress, as the WTO's Hong Kong Ministerial conference in 2005 agreed that as part of the Doha deal, export subsidies of the developed countries would be eliminated by the end of 2013.

On the question of domestic subsidies, there has been the most controversial debate. The AoA has a loophole allowing developed countries to increase their total domestic support by shifting from one type of subsidy to other types of subsidy, while maintaining or even increasing the total amount of subsidies. Under the AoA are the following types of domestic support: (1) The Aggregate Measure of Support or AMS (widely termed the Amber Box), which is price-based and which is categorized as directly trade-distorting; (2) The *de minimis* support (certain amounts of domestic subsidy that are allowed, calculated as

a percentage of the value of agricultural production); (3) the Blue Box (grants to farmers to assist them in setting aside production; which are considered trade-distorting but to a lesser degree than the Amber Box); and the Green Box (direct payments to farmers, and grants to maintain the environment, and other “indirect” subsidies), which is not supposed to be trade-distorting, and there are no disciplines to limit the amounts that can be given to farms on this account. However, in reality, the Blue and Green Box subsidies also have significant effects on the market and trade, and are thus also trade-distorting. They allow the farm to obtain parts of its revenue from different and new sources, and to remain in business, which otherwise it might not. Since the conclusion of the Uruguay Round, there has been a significant shift of US domestic support from the Amber Box to the Green Box. It has hardly made use of the Blue Box. In a dispute settlement case on cotton, it was found that the US had been wrongly shielding some trade-distorting subsidies within the Green Box, and was asked to change its policies accordingly. The US has to remove these subsidies, or to shift them into one of the trade-distorting boxes. One option is to move the subsidies to the Blue Box (which it has previously not used), and the US is thus seeking to change the definition or criteria of this box, through the Doha negotiations, to enable the shifting to take place. The EU, which makes extensive use of the Blue Box, is reducing its “trade-distorting” subsidies, but significantly increasing its Green Box subsidies (decoupled payments) under its Common Agricultural Policy (CAP) reform. Understandably, many developing countries have expressed concern that what the major developed countries are doing is not so much to reduce their actual domestic subsidies, but merely shifting the subsidies from one box to other boxes.

The developed countries’ subsidies enable their farm products to be sold locally and also exported, often at levels below the production cost. Farmers in developing countries lose export opportunities and revenues from having their market access blocked in the developed countries that use subsidies and also in third countries. They also often lose part of their own domestic market to the artificially cheap imports. In recent years, many developing countries have experienced surges in imports of many agricultural products. Often, imports were artificially cheapened by domestic and/or export subsidies.

Thus, developing countries are facing serious implementation problems in agriculture. They have had to remove non-tariff controls and convert these to tariffs. With the exception of LDCs, they are expected to reduce their own bound tariff rates. They also have had low domestic subsidies (due to financial constraints) and are now not allowed to raise these subsidies beyond a certain level. Increased competition from imports has increased fears of food insecurity.

In the Doha negotiations, the basic framework for establishing the negotiating modalities was agreed to at a mini-Ministerial meeting in July 2004, and endorsed by the General Council. The negotiations since then have mainly been an elaboration of this framework. In the domestic subsidy aspect, a key concept that has emerged is the overall trade-distorting domestic support (OTDS), comprising the AMS or amber box, the blue box and the *de minimis* support (a minimum of domestic support that is provided). The Green Box subsidies are excluded from OTDS. Much of the Doha discussion since July 2004 has been on the maximum OTDS that the developed countries should be allowed.

This framework gives the EU and US considerable leeway to (1) move trade-distorting subsidies from the Amber Box to the Blue Box and *de minimis* in order to make fuller use of their total allowed TDS; (2) make creative use of the Green Box which has no limits and has loose criteria at present, and thus enable some subsidies that are in effect trade-distorting to be counted as non-trade-distorting subsidies.

The level of the actual OTDS is presently far below the level of total allowed TDS for the US and the EU. Therefore the developed countries can afford to reduce the level of allowed TDS significantly, before the cut reaches the level where the present actual TDS is affected. In the informal language of WTO negotiations, this would mean the US and EU would only cut “water” (i.e. the difference between allowed and actual subsidies) and not their actual subsidies. This is the reason why the EU and US have been able to announce offers to cut their AMS and their total allowed TDS by a seemingly large degree, while in reality these offers do not necessitate real cuts in the present applied level (in the case of the US) or in the applied level that is already planned for (in the case of the EU, with reference to its CAP). This is one of the present stumbling blocks to the reaching of an agreement on agriculture modalities.

In October 2005, the US announced an offer which was estimated independently as meaning it would cap its total allowed TDS at US\$22.7 billion. This compares with the US\$19.7 billion of actual TDS in 2005 that was estimated in a simulation exercise by WTO Members, and to what is commonly believed to be a level of around US\$11 billion in 2007. In other words, the US offer would allow it to maintain a total TDS of US\$22.7 billion, which is US\$3 billion higher than its actual 2005 level and double its 2007 level. This offer was not acceptable to the other WTO Members. The G20 developing countries, for example, have asked for a bound OTDS of US\$12 billion. The Chair of the agriculture modalities, in his latest modalities paper in December 2008, proposed that the US would cut its allowed OTDS by 70 per cent, which implies a level of US\$14.5 billion.

In 2005, the European Union made its offer to cut its allowed OTDS by 70 per cent. This implies the present allowed OTDS of Euro110 billion would be reduced to Euro 33 billion. In the latest version of the modalities text prepared by the Chair of the agriculture negotiations in December 2008, the allowable OTDS for the EU is proposed to be cut by 80 per cent, which implies the allowed OTDS level would be Euro 22 billion. Some independent analysts have estimated that the EU would also not have to reduce its already planned level of actual domestic support with its proposal.

The conclusion from the above is that even when considering only the trade-distorting support, the US and EU offers are not sufficient to ensure real cuts in the actual or the already planned levels of domestic support. Moreover, the developed countries can continue to use the Green Box subsidies without limit as the August 2004 Framework and the Hong Kong Declaration do not put a cap on these.

As Das (2006) has pointed out: “The really significant escape route is the Green Box which amounts to US\$50 billion and Euro 22 billion in 2000 respectively in the US and EU

and the possibility of unlimited increase in future...Thus the Green Box, particularly its window of ‘decoupled income support’ (paragraph 6 of Annex 2 of the AoA) will continue to be the route to give farmers unlimited amounts as subsidies.”

On market access, it has been agreed that tariffs be cut according to a “tiered formula” in which there are four bands according to tariff ranges, with the band of highest tariffs to be cut by the highest percentage, and so on. The bands are different for developed and developing countries, and the latter would have lower tariff cuts (two thirds of the reduction rates of developed countries). In the latest draft modalities issued by the Chair of the agriculture negotiations in December 2008, the developed countries’ reduction rates are as follows: for tariffs in the tier of 0-20 per cent the tariff cut is 50 per cent; for the tier 20-50 per cent the cut is 57 per cent; for the tier 50-75 per cent the cut is 64 per cent; and for the tier of tariffs above 75 per cent, the cut is 70 per cent. Developed countries also have to undertake an overall minimum average cut of 54 per cent.

For developing countries, the tariff reductions are as follows: For tariffs within the tier of 0-30 per cent, the cut is 33 per cent; within the 30-80 per cent tier the cut is 37.6 per cent; within the 80-130 per cent tier the cut is 42.2 per cent and within the tier of tariffs above 130 per cent the cut is 46.2 per cent. The maximum overall average cut for developing countries is 36 per cent, and the cuts within the tiers can be adjusted if necessary so that the maximum of the average cut is 36 per cent. The least developed countries are exempted from any tariff reduction, while “small, vulnerable economies” do not have to cut their tariffs according to the tiered formula, but are to be subjected to more lenient treatment in tariff reduction.

The market access outcome is complicated by the introduction of a category of tariff lines known as “sensitive products” and “special products”, which are allowed to have treatment that is more lenient (i.e. result in lower tariff reductions) than if the cuts in the tiered formula are adhered to. In the December 2008 text of the Chair, developed countries can designate 4 per cent of their agricultural tariff lines as “sensitive products”, whose tariff reductions can deviate by one-third, or half or two-thirds from the tiered formula rates. However some “compensation” for this leniency has to be made through an expansion of tariff quotas for those products that are selected to be sensitive products. Developing countries can also make use of “sensitive products”; they can have one third more tariff lines than the developed countries to be designated as sensitive products.

Developing countries have also been fighting to establish two “special and differential treatment” elements in market access: “special products” (SPs) and a special safeguard mechanism (SSM). These elements are championed by the Group of 33 developing countries, which are especially concerned about how further import liberalisation would worsen the extent of import surges and displace the domestic farmers from the local market. These countries have proposed that developing countries can designate a certain percentage of their agricultural products as special products which would be subjected to either no tariff reduction or very low rates of tariff reduction. While the special products concept has been agreed to, there is still considerable debate on the number of SPs to be allowed, and the treatment of SPs (i.e. the tariff reduction for them). The Chair’s December draft proposed that 12 per cent of tariff lines can be designated as SPs, that 5 per cent of tariff lines can be

allowed zero tariff reduction, while on average the tariff cut for SPs would be up to 11 per cent. This has not been agreed to as yet either by the G33 members or by the rest of the WTO membership.

On SSM, the developing countries with defensive interests (led by the G33) have proposed that developing countries be allowed to defend their domestic farmers from being damaged by import competition, by establishing a special safeguard which does not need to follow the normal safeguard procedures (in the WTO's existing safeguard agreement). In the SSM, a developing country can take safeguard action without having before hand to show injury to small farmers and to relate this to imports as the cause. Under the SSM, action in the form of imposing an additional tariff can be triggered when either the price of the import goes below a certain threshold, or the volume of import increases above a certain threshold. The Uruguay Round did create a special agricultural safeguard along these lines, but only countries that carried out the "tariffication" exercise (to eliminate quantitative restrictions and instead convert these into tariffs) could avail themselves of this special safeguard. The majority of these eligible are developed countries. The developing countries have thus argued that they should also be able to make use of a special safeguard mechanism.

While the WTO membership has agreed to the establishment of a SSM for use by developing countries, those Members with an export interest (including the United States, Australia and some agriculture-exporting developing countries) have proposed many restrictions to the use of the SSM, such as that the change in price or volume of import has to be large before the SSM can be used, and that the SSM can be used on only a small number of products at any one time and only for a limited duration. They also proposed that the additional duty to be imposed, once the SSM is triggered, be limited; in particular that only in exceptional circumstances can the new duty exceed the pre-Doha bound duties. For most Members, these would be rates agreed to as part of the Uruguay Round outcome. Many developing countries argue that this restriction is unfair as there is no similar restriction either in the normal safeguard rules or in the existing special agricultural safeguard that is being used, mainly by developed countries.

The inability to agree on the conditions of use of the SSM, especially on the conditions for raising the SSM duty above the pre-Doha level, was one of the main factors for the collapse of the July 2008 mini-Ministerial meeting held at the WTO.

In conclusion, there are many imbalances in the existing WTO rules on agriculture, as the markets of developed countries are still extremely protected, and the rules were crafted in such a way that enabled this continued protection, especially in domestic subsidies. Meanwhile, the developing countries cannot compete with the developed countries in subsidies due to their financial constraints, but they have significantly liberalised their agricultural imports and many have experienced an increase in import surges, which have had damaging effects on local production. The Doha Work Programme was supposed to correct this imbalance, by addressing the loopholes, and especially by cutting the actual (and not just the allowed) domestic subsidies of developed countries.

However, the developing countries are most likely to get a bad deal, if the Doha Round were to conclude on the lines of the Chair's December 2008 draft. There is the probability that the developed countries' domestic subsidies will not be really reduced, or at best by only a little. They would be cutting "water" (the difference between the actual and the allowed levels) in OTDS, while they are able to maintain or increase the subsidies in the Green Box. Because of this maintenance of high domestic support, the developed countries will be able to continue to dump products that are subsidised at artificially low prices onto the poorer countries that cannot afford to subsidise, and to do this even if their export subsidies are eliminated. The import of subsidised food such as chicken, tomato, maize and rice from the EU and US into Africa, Central and South America and parts of Asia is a result of such subsidies. The developing countries are only able to defend themselves through tariffs, due to their inability to subsidise significantly, and due to the prohibition on quantitative restrictions. Yet they are being obliged to cut their tariffs even more steeply through the Doha Round than during the Uruguay Round, especially since they have to cut all their tariffs (line by line) by the tiered formula, and up to a maximum of 36 per cent tariff reduction on average. This is a much bigger commitment than in the Uruguay Round when developing countries only had to cut their tariffs by an overall average of 24 per cent (subject to a minimum 10 per cent cut in all lines), which enabled developing countries to have much greater flexibility in choosing which tariff lines to cut at what rates.

During the course of the negotiations from 2001 to 2009, many developing countries attempted to have a stronger development dimension with special and differential treatment components including "special products" and a special safeguard mechanism. Although these were accepted in principle, the export-oriented Members, especially the United States, were increasingly aggressive in whittling away the operational aspects of the concepts, thus reducing their utility and effectiveness significantly. Instead, these countries increasingly stressed the need for themselves to obtain "market access", which the United States articulated in terms of "new trade flows", which became a code term for getting significant exports into developing countries, especially the large countries such as China, India and Brazil. Trade Ministers of India and Indonesia, who have mainly defensive interests in agriculture, were strongly critical of this re-orientation of the agriculture negotiations, from what they envisaged to be a more development-based focus towards a commercial push for market access to developing countries, which would not be in the spirit of the Doha Ministerial Declaration, which states that the interests of developing countries are at the heart of the Doha World Programme.

3. Services

The General Agreement on Trade in Services (GATS), is said to be relatively development-friendly because there are many development flexibilities built into its provisions. In the present GATS architecture, a developing country can decide whether to enter any service sector in its schedules of commitments. Thus, sectors can be excluded. And if a sector is included in the schedule, the country can decide the extent of liberalisation to commit in that sector, in each of the 4 modes of service delivery. Restrictions and limits

can be placed, for example restrictions on foreign equity ownership in Mode 3 on “commercial presence.”

Negotiations are based on the bilateral request-offer modality. Countries can make requests for liberalisation in certain sectors. However, it is up to each developing country to decide how to respond to the requests it receives. The country can make as much or as little in its offers as it deems appropriate to its interests.

Additional “special and differential treatment” clauses have been established in the GATS and in subsequent documents that clarify that developing countries should be allowed to liberalise less than developed countries and to choose their own pace of liberalisation.

However these flexibilities and even the architecture of the GATS itself came under threat in 2005 from proposals for “benchmarking” or, in more recent terminology, “complementary approaches” or “establishment of targets and indicators.” The proposals were mainly from developed countries including the EU, Japan and Australia, supported by the US.

Under these proposals, countries would be required to liberalise in a certain minimum number of key sectors. The EU in October 2005 proposed that developing countries be required to improve their commitments or make new ones in 57 per cent of the services sub-sectors. Other proposals are that developing countries would be required to bind in the GATS their present level of liberalisation in the various sectors, and then to extend the level of liberalisation through new GATS commitments. These proposed changes would, if accepted, affect the present architecture of the GATS and contradict the bottom-up and positive-list approach, thereby removing much of the present development flexibilities of the GATS.

Particularly targeted was the liberalisation of “commercial presence”, or Mode 3 of the GATS. The developing countries were asked to open up a minimum percentage of sub-sectors for the participation of foreign service enterprises and providers. Some proposals called for developing countries to bind existing levels of actual liberalisation, and then go further by committing to liberalise even more deeply.

Such an approach would remove many of the current development-friendly aspects of the GATS and would coerce many developing countries to commit to liberalise in several important services sectors.

Another proposal by the developed countries is that “plurilateral negotiations” be established, to complement the bilateral request-offer modality. In the plurilateral modality, a set of countries that demand wider and more rapid opening in a service sub-sector can formulate their demands and requests to a set of countries for negotiations on these demands. This plurilateral approach was also opposed by many developing countries which believed that they would be subjected to greater pressure under this method, and that this would also go against the development flexibilities of the GATS.

At the Hong Kong Ministerial Conference in December 2005, the “benchmarking” or “numerical targeting” approach was rejected by a large number of developing countries, and thus it has been left out of the negotiating agenda, at least for now. However the “plurilateral” modality of negotiations was adopted, despite the opposition and reservations of many developing countries.

After the Hong Kong conference, the new modality of plurilateral negotiations has been implemented, and a number of rounds of plurilateral negotiations have been conducted, in more than 20 sub-sectors or areas of negotiations.

The course of the services negotiations shows the intense pressures that the developing countries have come under to liberalise their services sub-sectors under the Doha Work Programme. This was another attempt to stress the “market access” aspect of the Doha programme, at the expense of the development aspect.

The developed countries argued that they need the new approach in order to get developing countries to liberalise at a faster rate. But this goes against the principle that developing countries be able to choose their own rate of liberalisation, which is the centrepiece of the GATS.

Moreover, the developed countries themselves have moved very slowly, if at all, in the only area where most developing countries could benefit from the GATS, which is in Mode 4 or the movement of people. The offers by them have been few and of low quality. Thus, developing countries rightly argue that it is the developed countries that are not forthcoming in making services commitments, and that they should not pressurise the developing countries to liberalise faster than what they can bear.

Before and at the July 2008 mini-Ministerial conference at the WTO, there were renewed attempts by the developed countries to get developing countries to agree to a declaration on services in which Members agree to “bind” in their GATS schedules their existing actual level of liberalisation in various service sectors. Since that meeting did not conclude with any outcome, the draft declaration was not adopted.

VIII. FUNCTIONING OF THE WORLD TRADE ORGANIZATION DECISION-MAKING SYSTEM

The functioning of the WTO and the process of decision-making, especially with regard to the making of new rules, and to the running of Ministerial meetings (during which in practice some of the most important decisions have been taken) are flawed from a democratic viewpoint. In particular, as a group, the developing countries, which are the majority of the Members, are not afforded the exercise of their full participation rights. In addition, there have been exclusionary as well as extraordinarily manipulative methods that were employed at crucial moments, especially during Ministerial conferences, in attempts to get decisions adopted which may not have been agreed to or even seen by a large number of participants.

In theory, the WTO consists of Members that are equal in terms of formal decision-making rights. This contrasts favourably with the system in the International Monetary Fund and the World Bank, in which the voting rights of Members are based on the allocation of quotas, and this quota allocation itself is very skewed in favour of the developed countries. The developing countries in formal terms have only a small say in the decisions of the international financial institutions, whereas in the WTO they formally have a decisive say, given that they form a clear majority of Members in the WTO.

In reality, many developing countries have been unable to realize their participation rights. Some developing countries do not even have a Mission in Geneva, where the WTO is headquartered, and thus are unable to follow the negotiations at first hand. Many Missions of developing countries in Geneva are understaffed and thus have been unable to adequately follow the discussions and negotiations. This is because these Missions have only a few officials, and they also cover meetings in the United Nations agencies and are often unable to be present at meetings taking place simultaneously in the WTO. Moreover, when there is a busy session at the WTO, there can be two or even four meetings taking place simultaneously, and thus the typical developing country Mission has to choose which of the meetings to attend. 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 the impact they may want to. Unequal capacity thus leads to unequal degrees of participation.

This problem is made more acute by the relative lack of transparency in some key aspects of WTO operations. The WTO has been and remains one of the most non-transparent of international organisations. 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 organisation 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 GATT and in the first decade of the WTO, the most powerful Members by far were the so-called "Quad" (comprising the United States, European Union, Japan and Canada), which had the practice of formulating a common position among themselves, and then seeking to influence more and more countries around that position, until a "consensus" is said to have been formed. The informal "Quad-led system" operated until a few years ago, when it was realized that this old way of getting business done could not work anymore, because of the emergence of developing countries, which could not be "rolled over" in the same way as before. In 2004, a new informal "Group of 6" emerged in the agriculture negotiations, comprising the US, EU, Japan, Australia, Brazil and India. Members of this group negotiated among themselves during a mini-Ministerial meeting in July 2004, and again at Ministerial level at various stages of the Doha negotiations in 2006 to 2008, while at the mini-Ministerial meeting in July 2008, China was included in this small-group negotiation.

The inclusion of Brazil, India and now China in this small-group configuration has widened the role of developing countries in the "core" of the informal circle of decision-making, with this "core" functioning at critical moments. However, the reality remains that for the majority of developing countries, participation in real decision-making remains out of reach. The developing countries in this innermost circle have also made it clear that they do not "represent" the developing countries (nor have they been mandated to do so) inside the Group of 6, and only carry their own views.

Although the WTO's articles allow for decisions to be taken by a vote, in practice decisions are taken by consensus. Traditionally, the system of decision-making by 'consensus' has been implemented in an odd way. On issues where a majority of developing countries may agree, it is said that 'there is no consensus' should even a few developed countries disagree with this majority of the membership, and the issue concerned has no or little chance of being successfully dealt with. However, should the major powers (especially the United States, the EC, 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.’ Pressure is then put on the few remaining countries to ‘join the consensus.’

Ever since the WTO was established, the Ministerial Conferences (which are mandated to be held every two years) have become controversial and unpredictable events. In most of the conferences, several delegations, especially those from developing countries, have complained about how they and their Ministers have been denied participation in the important meetings where the real decisions are taken. Due to the dissatisfaction of the majority which are kept out, sometimes also due to the inability of the minority in the inner circle to agree, and often also due to the manipulative methods used which leads to unhappiness and even outrage, these WTO Ministerial meetings are usually fraught with uncertainty and have more often than not failed in spectacular fashion, with no conclusion reached in the end.

In 1996, developed countries lobbied very hard to get three topics (investment, competition, government procurement) introduced as new issues initially for “study” and eventually for “negotiation” for new 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, including India, Indonesia, Malaysia and Tanzania vocally objected. Thus there was clearly no consensus. Nevertheless, the issues became the main topic at the Ministerial through the devices 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, were 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 why the Seattle meeting collapsed at the end, without any decision taken. One significant feature of the Seattle Ministerial was that a few developed countries had attempted to push for the acceptance of launching new negotiations (towards establishing treaties) on the “Singapore issues”, even though many developing countries were against this. With the overall failure of the Seattle meeting, this attempt failed.

In November 2001, the Doha Ministerial conference did end with a Ministerial Declaration that launched a “work programme”. However this outcome was 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 Singapore 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 of bias of the system towards the major developed countries, and placed the concerns over the lack of transparency and democracy again in the forefront of the issues confronting the future of the WTO.

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 (initiated at the Singapore Ministerial) should continue in the WTO. ‘Negotiations’ imply a commitment to draw up a new agreement, whereas ‘discussions’ or a ‘study process’ do not. These views were expressed by many countries at the WTO meetings in Geneva to prepare for Doha, as well as in joint statements made in their respective preparatory meetings by the ministers of the LDC Group, the Africa Group and Africa, Caribbean and Pacific (ACP) group.

However, these positions were not reflected in a draft Ministerial Declaration (WTO, 2001f) 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 to form the basis for the negotiations at the Conference.

At Doha many developing countries again stated their opposition to the draft Declaration committing the WTO to negotiate the Singapore issues. However, once again such a negotiating commitment was placed in a new draft near the scheduled end of the Conference. This caused widespread dissatisfaction and it was clear that there could not be a consensus on this issue. Then the Conference was extended by an extra day, with the decision to do so being announced through television screens. Many Ministers were already

leaving, and not many were left. An all-night “Green Room” meeting involving about 24 Ministers was convened on the night before the final “extra day”. Some participants who tried to enter the room were forbidden to do so. On the last morning of the Conference, on 14 November, the secretariat released a final draft in which 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 Conference on modalities of negotiations (WTO, 2001e). 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 these countries were asked to accept a compromise, in which at the formal closing ceremony the Conference Chairman 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.

The Doha Conference and its preparatory process 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.

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 five or six 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 the negotiations, caused exasperation and frustration among the delegations of several developing countries, as well as among many non-governmental organisations (NGOs) that witnessed the events and the processes. The manner in which the Doha Work Programme was launched, amidst such controversial and non-transparent processes, did not augur well for its future course.

At the Ministerial Conference in Cancun in 2003, there was again a controversial process. Although many developing countries made clear, including through joint statements and press conferences, that they did not want to launch negotiations on the Singapore issues, this position was ignored by the “facilitator” appointed by the Chair of the conference to formulate a text on the Singapore issues. An informal “Green Room” of 25-30 Ministers was again convened, while the majority of Members waited. Eventually, a meeting of Ministers of Africa, LDC and ACP groups conveyed the message that they would not agree to a compromise sought at the Green Room on the Singapore issues, and a decision was made by the Chair of the Ministerial meeting (the Trade Minister of Mexico) to end the Conference without a decision. This was portrayed as a collapse of the Conference by the media. Thus, the decision taken at Doha that this Cancun meeting would launch “negotiations” towards treaties could not be fulfilled and eventually the General Council of WTO in July 2004 decided to drop three of the Singapore issues from the Doha agenda.

The Ministerial Conference in Hong Kong in 2005 was rather tame by comparison. The reason is that major decisions had already been taken at the General Council on 1 August 2004, following a “mini-Ministerial” of about 25 Ministers at the end of July, held at the WTO building in Geneva. This was the first time that a “mini-Ministerial” was held at the WTO and thus to some extent “legitimized”, since meetings of a few Ministers had since then been held at the invitation of a Minister of a particular country, and held at that country. The July mini-Ministerial had its own controversies. For example, the key decisions in the agriculture modalities framework were made by a meeting of Ministers of six Members of the WTO that lasted many days, and then these were endorsed by the mini-Ministerial of some 30 Ministers. The framework of modalities on NAMA was not properly discussed even at the mini-Ministerial. Despite strong objections from many developing countries, including through the position taken at a full meeting of African Trade Ministers just a fortnight before the Geneva meeting, the key elements of NAMA modalities proposed by the Chair of the NAMA negotiating groups remained the same, and these were eventually adopted.

The Hong Kong full Ministerial in December 2005 also had its share of contention, as the Chair of the services negotiations also maintained many of the elements of his draft on the modalities of negotiations, even though there had been strenuous objections from several developing country Members. The most contentious aspect was the introduction of “plurilateral negotiations” for several sectors.

Following the 2005 Ministerial, the WTO failed to hold another full Ministerial in 2007 or 2008, although there is a mandate to hold a Ministerial every two years. It would appear that the Director General and the Members were reluctant to hold a formal Ministerial conference unless there is a possibility for “negotiations” in terms of making decisions on new rules or new market access outcomes. A decision has been taken to hold a full Ministerial conference at the end of November 2009, and this could be a “routine” meeting, or it could again contain the drama of full negotiations.

Meanwhile, the “mini-Ministerial”, with 30 or so invited Ministers, and with a small group of six or seven Ministers holding their own meeting within this mini-Ministerial, has become the new practice at the WTO. As noted above, this began with the July 2004 mini-Ministerial, whose decisions were immediately endorsed by a General Council meeting that was convened at the closing of the mini-Ministerial. Since this new model of decision-making seemed to have succeeded, the same model was tried again in July 2006 and July 2008. However the July 2006 mini-Ministerial collapsed in spectacular fashion. This meeting tried to follow the July 2004 model, in which six Ministers met first and then when they succeeded in coming to an agreement, the mini-Ministerial of 30 Ministers was immediately convened. Thus the July 2006 series of meetings also began with a meeting of six Ministers convened by the WTO Director General Pascal Lamy in his capacity as Chair of the Trade Negotiations Committee, while the rest of the other invited Ministers waited. Unfortunately the six Ministers could not come to any agreement, and thus the mini-Ministerial of 30 Ministers was called off, even though these Ministers had already arrived. This was portrayed by the media as another of WTO’s spectacular failures.

In July 2008, another mini-Ministerial meeting was called, with about 30 Ministers invited. This time the meeting of the 30 started, and there were general exchanges of views for the first one or two days. However, the Director General then convened a meeting of some seven Ministers to undertake the “real negotiations”, while the other Ministers were practically kept waiting, and many of them expressed deep frustration. Eventually the group of seven Ministers also could not come to an agreement, and thus the whole meeting ended with what was portrayed by the media as another collapse. Although the failure was most commonly depicted to have been caused by an inability to agree on a special safeguard mechanism in agriculture for developing countries, with the United States and India being the main protagonist, in fact this was only one of several major issues (including cotton subsidies, and modalities on NAMA) that remained unresolved by the end of the meeting.

From the above account of some of the key meetings and conferences of the WTO, it can be concluded that the processes of decision-making in the negotiations that can lead to new rules or treaties, or to new commitments on market access, are not transparent nor participatory. Although there is “formal democracy” at the WTO, with each country having an equal say, and with decisions taken by consensus, in fact there is a system of “informal oligarchy”. In this system, there are various groupings (which include developing country groups such as the G20, G33, Africa Group, LDC group and ACP group, and the group of “small and vulnerable economies”), and representatives of many of these groupings are invited to some of the Green Room meetings. However, it is still a smaller grouping, or groupings, that make the key decisions, and when agreement is reached among them, the other WTO Members are expected to follow. The composition of this small grouping has changed, from the Quad, but there is no formal or permanent membership. The real “core” of this exclusive small grouping is the United States and Europe. Sometimes the group has only four Members (with Brazil and India included), often Japan is also included to make five, and sometimes Australia is included to make six. And most recently, at the July 2008 meeting, China was included to make it seven. The meetings of this small group (or many of them) have more recently been convened by the Director General of the WTO. However there is no formal announcements that the meetings would be held, nor formal reports or

minutes of the meetings. Neither are there reports or minutes of the meetings of the mini-Ministerial meetings, nor of the “Green Room meetings” held during the formal Ministerial conferences.

There are divergent views on whether and how to reform the decision-making system in the WTO, which is widely perceived to be non-transparent and non-inclusive. Those who advocate the retention of the status quo may even agree that the system is exclusionary but claim that for the sake of “efficiency” in coming up with an outcome, the decision-making system has to be confined to a relatively few delegations, while the other Members not in the inner circle can also make their views heard through their representatives in the “Green Room.” On the other hand, those who are critical of the non-transparent and non-participatory nature of decision-making argue that the exclusionary system and the manipulations that often characterize the operations of meetings and production of drafts do not guarantee that an outcome will be obtained, as seen by the conferences and mini-Ministerials ending more times in failure and collapses than in success. And even in the case of one of the few “successes”, the Doha Conference of 2001, the decisions concerning some of the most controversial elements could not be sustained and were overthrown by another decision subsequently.

A good account of the manifold problems of lack of transparency and inclusiveness, and the methods employed in the running of Ministerial conferences and their preparatory processes, is given in a Memorandum on the need to improve internal transparency and participation in the WTO that was issued by several NGOs that are involved in WTO related issues.⁸ Among the practices at the Ministerial conferences that it documents are the misuse of the opening ceremony for obtaining approvals for important substantive decisions, the undemocratic adoption of the Draft Declaration as the basis for conference negotiations, the undemocratic selection of chairpersons or so-called “friends of the chair” to conduct negotiations on key issues, the holding of “informal”, undocumented and exclusive meetings that undermine transparency and participation, the sidelining of views of many Members that are not reflected in the negotiating texts, and the operating of the “green room” process excludes many Members from meetings and decision-making.

The NGOs have made many proposals to make the system more open, democratic and inclusive. These include that:

- The consensus system should be applied in a manner that fully respects the views of developing country Members.
- The views of every Member must be respected in a decision involving consensus.
- The WTO should adopt a realistic agenda and work schedule that is fair especially for smaller delegations.
- Developing countries should not be subjected to economic and political pressure relating to negotiations.

⁸ See TWN et al. (2003) for this memorandum that documents the manifold problems and provides proposals for reforming the decision-making system.

- Developed countries should be ready to resolve development issues (including implementation and special and differential treatment) without exacting a new price.
- Meetings, including “informal consultations”, should be open to all Members.
- There should be agreed procedures for smaller, issue-based meetings in the event these meetings are proposed. Authorisation should come from all Members and the meetings should be governed by transparent rules.
- There should be agreed terms of reference for the roles of chairs of formal and informal groups. Chairs should facilitate discussions among Members rather than negotiating with Members.
- Agreed procedures for drafting of texts are needed. It should not be assumed that the Chairs would draft the texts. The practice of a chair producing draft text “under my personal responsibility” should be replaced by drafts approved by all Members.
 - There should be a fair reflection of diverse views in texts.
 - Adequate time should be given to Members to consider and discuss texts.
 - The secretariat must maintain neutrality.
 - The holding of “Mini Ministerials” should cease.
 - During Ministerial conferences, the Opening Ceremony should be only ceremonial in nature and it should not adopt decisions on business matters.
 - Members (not the conference chairman) should appoint the chairs and facilitators to conduct discussions and determine their role and terms of reference.
 - All meetings should be inclusive and transparent, minutes should be kept and subject to Members’ approval.
 - The drafting of texts and decisions should be done in a transparent and inclusive manner and texts distributed to all. Texts should fairly reflect the divergence of views, if any, among Members.
 - The system of holding “Green Room” exclusive meetings should be stopped.
 - There should be proper rules and procedures for smaller issue-based meetings, which should be open to all interested Members. Authorisation should come from Members who should also receive reports as soon as possible.
 - Proposals for the extension of the conference, amendment of agenda and other process issues should be decided on by all Members.
 - The neutrality and impartiality of the Secretariat should be observed during Ministerials.

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