

THE WTO AS AN INSTRUMENT FOR DISCIPLINING THE SOUTH

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1. The WTO and the Instrument of Trade Agreements

A major aspect of the globalisation process is the emergence of trade agreements as key instruments of economic liberalisation and as mechanisms used by the major countries to have disciplines and rules placed on developing countries in a wide range of issues. Trade agreements, that are legally binding and have strong enforcement capability, have become the most important vehicles for disseminating and implementing economic and social policies across the world, policies that have been planned by the few developed countries for developing countries to follow.

The World Trade Organisation is by far the most important institution for evolving and implementing trade agreements. It has in fact become the "main vehicle of choice" of industrialised countries for organising and enforcing global economic governance.

The Uruguay Round trade negotiations, which gave birth to the WTO in 1995, vastly expanded the scope of the multilateral trade system so that it no longer deals only with the conduct of trade in manufactures (as did the old GATT). Its scope expanded to cover trade in agriculture; trade and investment in services; and beyond trade issues into intellectual property rights and investment measures. Moreover it directed that the new issue of trade and environment be discussed at committee level in the WTO.

The changeover from the old GATT to the new WTO with expanded powers and jurisdiction marked the arrival of the age of trade agreements in a new phase of the globalisation of policy making. Due to the extension of issues beyond trade into other areas such as intellectual property, investment and investment measures, and the environment, the WTO is no longer only a "trade" organisation.

"Trade" in the context of the multilateral system has become a code word to include all issues that have come or may come under the purview of the WTO. Moreover the WTO agreements have the most significant implications for non-economic matters; for example the WTO services agreement and the specific agreements on communications and information technology will have far reaching effects on the culture of countries around the world.

The conclusion of the Uruguay Round (UR) was heralded in the mainstream global media as a major triumph for the international economy and a boon for all countries. It is clear however that the results are at best mixed for some developing countries and for many others (especially the poorer countries) the UR is likely to have an overall negative effect that will further drain their economic resources. For all South countries, the Round will also foreclose a wide range of development options.

In a sense, the UR complements what structural adjustment programmes (SAP) are achieving. The Round will lead to a very significant external liberalisation of many sectors and facets of the domestic economy of all the developing country members of the WTO. Structural adjustment affects about 80 indebted developing countries facing repayment problems. Should some of these countries get out of debt crisis and no longer require SAP loans, or should there be a change of government or government policies, the SAP policies can be changed or reversed.

However, once a country's government has signed on to the UR agreements and enters the WTO, that country is obliged to follow the WTO rules. Domestic laws and policies in a wide range of areas have to be changed to bring them in line with these rules. According to several analyses, the UR agreements will severely restrict or constrain the possible policy options in many areas.

Non-compliance of the rules can result in complaints being brought against a country, and the threat of trade penalties and retaliation through measures affecting trade and other activities. Due to the "single undertaking" nature of having to sign on to all the multilateral agreements of the Round, and to the "integrated dispute settlement system", countries also risk having "cross sectoral retaliation". At the extreme, non-compliance can also lead to expulsion from the WTO, and thus the loss of the automatic "most favoured nation" status granted to a WTO member by all other members.

The WTO system has thus a powerful system for obtaining compliance from member countries. It is the organisation with the strongest "bite" in getting its legally binding rules enforced. Thus, signing onto a WTO agreement is a very serious undertaking. In contrast, signing onto a UN Declaration, even a UN Declaration of over a hundred heads of government, has little enforcement possibility and becomes only a moral commitment.

It would be very difficult, if not impossible, for a developing country Member to change the WTO rules, or to avoid compliance of obligations. The disciplines of the WTO are legally binding on present and future governments. Once the WTO agreements come into force, it would be difficult for a present government to have economic policies relating to foreign trade, investment, sectoral policies in services and agriculture, or technology policy (vis a vis intellectual property rights) that are in violation of WTO rules. Moreover, the rules are binding on future governments as well. Thus, should a present opposition party have a different economic programme, it would find it difficult or impossible to the WTO rules. In this way, policy options have been significantly narrowed, for a country's policies would have to be made (or changed) within the boundaries of what is permissible by the WTO Agreements.

2. The Imbalanced and Inequitable Outcome of the Uruguay Round

The Uruguay Round negotiations that gave birth to the WTO resulted in a package of Agreements that were on the whole imbalanced and inequitable in favour of developed vis a vis developing countries. Various aspects of the asymmetries and disadvantages to developing countries have been brought out in several studies (for example, Raghavan 1990, 1995; Das 1997; Nayyar 1995; G. Corea 1995).

A recent and comprehensive study by B.L. Das (1997) concludes that the Uruguay Round "has been a unique negotiation in which most of the concessions have been made by developing countries without getting anything but meagre concessions in return. It is not because the negotiators or trade policy officials of developing countries ignored the interests of their countries...The results are in fact characterised by the massive gap between the economic and political strengths of developed and developing countries."

The study analyses the severe overall imbalance in concessions made by South and North and how the recent trend in WTO enhances the imbalance. It then examines the imbalances and deficiencies in various areas: the dispute settlement system, market access, balance of payments and safeguards; subsidies and dumping; specific sectors like agriculture and textiles; the new issues of services, and IPRs; neo protectionism; and commitments of developed countries.

A significant critique of the Uruguay Round outcome was also made in 1994 by Luis Fernando Jaramillo, then Chairman of the Group of 77 in New York and Colombia's permanent representative to the United Nations. In a speech after the Round's conclusion, he stated: "The Uruguay Round is proof again that the developing world continues to be sidelined and rejected when it comes to defining areas of vital importance for their survival. The Third World confined itself to a role of passive spectator of the decisions adopted...The countries of the Third World have been put in a situation in which they already paid the price of accepting the new terms in different areas of interest for the industrialised countries, without obtaining in exchange satisfactory conditions of market access...Unquestionably, the developing countries are the losers both individually and collectively."

3. The Uruguay Round's Combination of Liberalisation and Protectionism

It is a mistaken notion that the Uruguay Round was set up to promote liberalisation overall. The main asymmetry in the Round's results was the liberalisation of those areas which are of benefit of the major countries, whilst protectionism was given a major boost in the area of technology and IPRs, and liberalisation of labour services (proposed by some developing countries) was unacceptable to the North.

When the Round began in 1986, many Third World countries were strongly resisting the Northern countries' push to expand GATT's powers into "new areas" such as services, investments and intellectual property rights. Up to then, GATT's jurisdiction was only in keeping the rules in trade in manufactured goods. The Southern countries were rightly concerned that the North was interested in liberalising economic areas in which they had an advantage, where their corporations could penetrate and capture new markets which till then had been relatively protected by Southern governments.

This was certainly the case in services, a fast expanding sector, with transnational enterprises ranging from banking and insurance to motion pictures eagerly awaiting the removal of barriers to their advance into Third World markets.

The negotiations over "trade-related investment measures" (TRIMS) were similarly initiated by the North to pressurise Third World governments to give up their powers to impose conditions

on the entry and operations of foreign companies. The "liberalisation" of investments would clearly benefit the North, where most transnational companies are based. The South was concerned that with only weak restrictions permitted to be placed on these big corporations, the smaller scale domestic businesses may not survive the onslaught of foreign investments.

On the other hand, when it came to the subject of technology transfer, the North took an aggressively anti liberalisation stance and instead pushed for all GATT members to compulsorily introduce a standard set of national laws to protect "intellectual property rights". Since most patents are owned by transnational companies, this in effect meant the legal protection of technological monopoly by these Northern owned firms, and a drastic curtailment of possibilities by the South to learn and use new technologies.

The North's motives for introducing "trade related intellectual property rights" (TRIPS) in the Round were to enable their firms to capture more profits through monopolistic higher prices, and through royalties and the sale of technology products; and to place stiff barriers preventing the technological development of potential new rivals from the South.

The Northern push in TRIPS proved that "free trade" and "liberalisation" were only nice slogans waved to move the Round forward. The reality was "liberalisation if it benefits me, protectionism if it benefits me, what counts is my commercial interest."

Although in the early and middle stages of the Round, several Third World countries (including the influential India and Brazil) put up a stiff resistance to the Northern push and interpretation of the "new areas", by the final two years the Southern fight had melted, and in the end the Round adopted texts to protect IPRs, liberalise services and prohibit trade related investment measures. All three issues have thus become integrated with trade in manufactured and agricultural goods, and all now fall under the jurisdiction of WTO.

In effect the Uruguay Round has most benefitted the transnational corporations. "Free trade" has come to mean, in reality, the vastly expanded freedom and powers of transnational corporations to trade and invest in most countries of the world, whilst correspondingly governments now have significantly reduced powers to restrict their operations; and at the same time, these corporations have "freedom" from potential new competitors whose possibilities to develop technologically are now curbed by intellectual property provisions in TRIPS. The big companies, which were the powerful lobbies behind the Northern governments propelling the Round from start to end, have won many more rights without having to meet new obligations: indeed, previous obligations they may have had to observe are now dropped.

4. DANGERS OF THE PROLIFERATION OF "TRADE RELATED ISSUES"

In the recent post-Uruguay Round period, the developed countries have intensified the pressures to incorporate more and more issues which are to their advantage into the WTO. Developing countries, on the other hand, are unprepared individually or as a group, for these new negotiations. It is likely that the WTO will be used for implementing more and new rules that would be detrimental to the interests of the South.

Northern government plans to link trade (and the possible use of trade measures and sanctions as enforcement mechanisms) to several economic and non-economic issues in ways that are to their advantage. Trade and environment is already being negotiated under the WTO's Committee on Trade and Environment. There have been strong attempts by some Northern governments (especially the US and France) to link trade with labour standards in the WTO. It is likely that a wide range of other issues, such as human rights, tax systems, cultural behaviour, will also be sought to be linked to trade measures in the WTO in future.

The linking of issues to the possibility of sanctions under the device of attaching a "trade related" prefix to the chosen topics was successfully used in the Uruguay Round to inject IPRs (through a trade-related intellectual property rights agreement) and investment issues (through a trade-related investment measures agreement) into the GATT/WTO system. The justification for introducing these issues was that they were "related to trade." In fact, the real objective was to link the chosen issues to the threat of "trade retaliation and penalties" for non-compliance of disciplines. The device of bringing in new topics by alleging that they are trade-related has continued to be used in on-going WTO negotiations. In fact the pretence of being directly trade-related is no longer even necessary and may unnecessarily restrict the scope of the issues being introduced. The prefix "trade-related" has now been dropped in proposals for these new issues, which are now sought to be brought into the trade arena through simply using the word "and", as in "trade and environment", "trade and labour standards" and "trade and investment."

The device of linking trade with other issues (when the intention is really to link the dispute settlement system of the WTO to new policy areas) is being increasingly used for the purpose of further opening up Third World economies or to reduce their competitiveness in the scramble for world market shares. The WTO could also be used as an instrument to shift a great portion of the burden of future global economic adjustment (for instance, because of environmental imperatives) to the South, which presently has a very weak bargaining and negotiating position in the WTO forum. Indeed it is precisely because the South is so weak in the WTO arena, coupled with the fact that the WTO carries the power of "bite" in the form of trade retaliation mechanisms, that this institution has been chosen as a vehicle to institute reforms favourable to the North.

5. THE NORTHERN INITIATIVE FOR A MULTILATERAL AGREEMENT ON INVESTMENT.

The most important "new issue" being promoted by Northern countries in the international arena is investment policy per se. What was dropped in the Uruguay Round TRIMS negotiations, as a result of strong opposition from the South, is now being pushed with tremendous energy and resources. The investment initiative is being promoted in two fora: the WTO and the OECD. The objective is to establish an international agreement that tremendously strengthens the rights of foreign investors far beyond the current position in most developing countries, and to severely curtail the right and powers of governments to regulate the entry, establishment and operations of foreign companies and investors. This initiative is currently also the most important development in attempts to extend the scope of globalisation and liberalisation.

At the WTO, an investment treaty has been pushed, particularly by the European Union. Due to growing opposition to such a treaty by many developing countries, the Northern countries instead proposed a "study process" in the WTO to examine the links between trade and investment. They enlisted the support of some developing countries. This was endorsed by the WTO Ministerial Conference in December 1996, which established a new WTO working group to examine the relationship between trade and investment. In the working group, the rich countries are expected to advocate for upgrading the study process to negotiations that would lead eventually to a legally-binding treaty.

In the OECD, the treaty is termed the Multilateral Agreement on Investments (MAI). The MAI is being negotiated by the 28 members of the OECD and is expected to be completed by 1998. After the OECD rich countries reach agreement, they intend to invite (or pressurise) non-OECD countries to also join, although they had no part whatsoever in the negotiations. The MAI will give international investors the right of entry, establishment, national treatment (to be treated as well or better than local firms and citizens), free entry and repatriation of funds and generous terms of compensation for "expropriation" of property. Foreign companies that believe they have not been treated properly can sue the host government for violating the MAI in an international court, and claim compensation. If accepted, this treaty would very severely constrain the future development of local enterprises in the South and can lead to their inability to survive. The potential implications for economic sovereignty, domestic development, employment, balance of payments and resource outflows would be extremely serious.

The industrialised countries are putting great efforts and pressure on this issue as they would like their companies to be able to operate much more freely in developing countries, and thus are asking that current restrictions and regulations be removed. Gaining access to the resources and markets of the South, and to the right to invest and operate in the developing countries, has been a major strategic objective of the governments and companies of the North.

It was this objective that largely prompted the takeover of the Third World's territories in the colonial era. It was the need to recapture control over resources, and to have national policies in favour of domestic rather than foreign interests, that spurred the anti-colonial struggles that finally led most colonies to win independence. It would thus be a great irony if the ex-colonial master countries were to succeed yet again to gain rights for their companies to establish themselves and dominate the economies of the former colonies, this time not through military conquest but through the device of a treaty to be agreed to by all parties. This would be the modern version of the "unequal treaties", with possibly the same disastrous effects on many countries.

For it is likely that if governments are not allowed the powers to impose regulations on foreign companies, or to give a helping hand to domestic companies, then the bigger foreign firms will overcome the local ones and win an increasing share of the domestic as well as international markets. The irony would be all the greater should the developing countries agree to such rules without clearly understanding their full significance.

6. Other New Issues: Competition and Government Procurement

Besides investment, the WTO Ministerial Conference in Singapore also decided to start new working groups on trade and competition policy, and government procurement. These issues were put on the agenda by developed countries, aided by the WTO Secretariat, even though there had been widespread initial resistance from many developing countries. On competition policy, the aim of the industrial nations is to get developing countries to eventually enter an agreement under which all WTO members would introduce competition policy and laws (with elements to be agreed on) in their countries. The aim, as frankly revealed by the US trade representatives, is to curb or tear down local monopolies in the Third World countries, so that the transnational corporations will be able to have greater access to their markets.

On government procurement, the industrial nations have noted that government expenditure, which runs into several trillions of dollars each year, is not part of the WTO's rules. Their real intention is to get the developing countries to join a new WTO agreement whereby decisions on government procurement (or government spending on supplies or projects) should be subjected to WTO principles such as national treatment. In other words, it should be illegal for a government to give preference to local companies or citizens when they buy stationery or give a contract for building roads and bridges. Foreign firms must be given the same rights as (or more rights than) local firms in bidding for government business. If they are dissatisfied with the results, they could complain to the WTO.

It is clear the proposals on competition and procurement are being pushed by the Northern countries in order to place their big corporations in a very strong position to penetrate the markets and economies of the South. The aim is for the transnational companies to get more and more market share in developing countries, at the expense of the smaller firms of the South.

At present the issues of investment policy, competition policy and government procurement are at the discussion stage in working groups in the WTO. The danger is that the developing countries are unable to strongly argue a case against these issues coming into the WTO, the working groups will eventually lead to three new Agreements in the WTO, which would have further very negative consequences for the Third World.

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