

WHY THE SOUTH IS GETTING A RAW DEAL AT THE WTO

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WHY THE SOUTH IS GETTING A RAW DEAL AT THE WTO

I: BACKGROUND TO THE CALL: "NO NEW ROUND, TURNAROUND"

As the World Trade Organisation convenes its third Ministerial Conference in Seattle in November-December 1999, many citizen groups in the South, and many of their governments as well, are increasingly bitter and frustrated at how the interests of their countries and people have been marginalised and even stamped upon by the WTO.

Whatever hopes or illusions there were when the Uruguay Round negotiations ended, and when the WTO was born in 1995, are fast fading in the light of the realities of the WTO and its agreements.

The promises of benefits to developing countries have not been fulfilled. Instead, the obligations that these countries undertook in the many Uruguay Round agreements have turned out to be most onerous, and are likely to cause economic and social dislocation on a significant and even massive scale. National policies and laws are now being changed to conform to the WTO's rules, and more such changes are under way. These changes are going to be very painful, and for many developing countries there are going to be much more loss than benefit.

The officials of many developing countries were not really aware of what they had signed in the many complicated Uruguay Round agreements. The governments and people in these countries are now still trying to understand, digest and come to terms with the many serious and structural changes they have to undergo.

Dealing with the serious problems of implementation of the WTO agreements will already be a massive task in the next few years as countries hurry to meet deadlines for compliance.

Yet even before officials and citizens of the South can catch their breath, they are confronted with proposals emanating from governments of the North to inject more new issues into the WTO.

The earlier GATT system had mainly dealt only with liberalisation of tariffs in industrial products. The Uruguay Round added several "new issues" (intellectual property rights, services, and investment measures) as well as agriculture to the system and transformed GATT (General Agreement on Tariffs and Trade) from a contract among member states into a full-fledged organisation, the WTO.

The developing countries were then generally against these new issues entering the trade system, as the Agreements legally oblige them to change their national policies and laws so as to open up their economies further to foreign goods, services and companies.

Since their local firms and farms are generally small and lack the technology or marketing skills, they are unable to fairly compete with the big companies of the West or Japan.

There is a deep fear that when these existing Agreements are implemented (after a grace period of

five years for most of the agreements, which is now expiring), the developing countries will face a lot of problems. Cheaper goods or services may swamp the market, replacing what is locally made. Bigger foreign firms with the latest technology or with marketing outreach will increasingly take more market share away from the local sector. This process is expected to cause retrenchment and dislocation, especially in the less developed of the Third World countries.

Even before these problems arising from the Uruguay Round have been fully understood (let alone dealt with), the big companies are once again pushing their governments to open up yet more areas in the developing countries for them to enter.

In response to these corporate pressures, some major industrial countries are now proposing that another set of new issues enter the WTO through a new negotiating Round that they hope to launch at Seattle. The issues include investment policy, government procurement, competition policy, industrial tariffs, trade facilitation, electronic commerce, trade and environment and labour standards.

Many hundreds of citizen groups in the South are opposed to the proposed new issues, and to a new Round altogether.

They think that should there be new WTO agreements on these issues, these would further drastically restrict the ability of governments to regulate their economies or to plan for national economic and social development. The WTO would intrude into the domain of domestic policy making on a range of critical areas. The economic sovereignty of developing countries would be greatly eroded and their independence would be deprived of substance. The colonial-era pattern of dominance of Third World territories by a few colonial-master countries would be fully re-established.

The resistance against a new WTO Round, and the insistence that the WTO Members urgently review and reform the existing rules and also the WTO's system of decision-making are now top-priority activities of many Third World citizen groups and social movements. For them it is a battle to redress the inequalities and injustices of the WTO system; it is also akin to a new battle for national independence and people's sovereignty. They are urging and demanding that their governments protect their interests by resisting a new Round that would contain the proposed new issues.

What has caused this disillusionment among citizens of the South? Why are many governments of the South also sharing in this disillusionment? Why do they believe the WTO agreements and the WTO system itself are stacked against them? What are the massive problems of implementation (of the WTO agreements) that they face? Why do they believe a new round for reaching agreements on the new issues would be catastrophic for the South? These are large questions that require a full-length book to answer adequately. This paper seeks to give a glimpse of the answers.

II: THE WTO AS AN INSTRUMENT TO GOVERN THE SOUTH

(a) The WTO and the Instrument of Trade Agreements

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, which is the organisation of the multilateral trading system, has in fact become the main vehicle of choice of industrialised countries for organising and enforcing global economic governance.

At the regional level, trade agreements are also proliferating. NAFTA is a prototype of a regional legally-binding agreement involving North and South countries, and its model may be extended to South America; APEC is another model with both North and South countries, but without being ruled by a legally-binding agreement.

However, the WTO is by far the most important institution for evolving and implementing trade agreements. The Uruguay Round vastly expanded the scope of the multilateral trade system so that it no longer deals only with the conduct of trade at the border. Its scope expanded to cover 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 change-over 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.

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 vastly increased scope of "trade agreements" has tremendous significance for the shaping of national economic and social policies, for the scope of development options, concerns over equity and marginalisation, and national sovereignty.

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 a minority of developing countries and for many others (especially the poorer countries) the UR will 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.

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 implement it (should it come to power) if this were to contradict 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.

III: INEQUITIES IN THE WTO SYSTEM: THE LACK OF TRANSPARENCY AND PARTICIPATION.

The WTO is one of the most untransparent of international organisations. NGOs worldwide have criticised the fact that they have little participation in the WTO's activities, and that much of the negotiations are shrouded in secrecy. This is despite moves by the WTO Secretariat in recent years to increase the WTO's interaction with NGOs and the recent pronouncements by some WTO Member states about the importance of involving NGOs in the WTO.

But an even more serious charge is that the WTO is also untransparent and non-participatory for the majority of its official Member states, i.e. the developing countries.

This deficiency is due to the working methods and the system of decision-making of the WTO system as well as the lack of capacity of the developing countries to effectively participate.

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 WTO Ambassadors 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 WTO Ministers meeting at a Ministerial Conference, normally once in two years.

In practice, the GATT (the WTO's predecessor) and 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 the 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 these meetings take place, or what happened there. When agreement is reached among a relatively small grouping, the decisions are rather easy to pass through the Committees or the General Council.

The system of decisions by consensus is also odd in its implementation. On issues where a majority of developing countries, who form the vast majority of overall WTO membership, may agree, it is said that "there is no consensus" should even a few developed countries disagree with the majority, and the issue concerned is practically killed or would have no chance of being successfully dealt with.

However, should the major powers (especially US, EU, Japan) agree on a particular issue, whilst a sizable number of developing countries disagree with them, and a large number remain silent, the major powers are likely to embark on a process which 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 or even one or two remain "outside the consensus." It is then relatively easy to pressurise these few remaining countries to also agree, to "join the consensus."

The WTO has many Committees and Councils and there are often many meetings in a single day. Decisions and negotiations go on at these formal meetings. However, a significant part of the important bargaining and negotiation goes on in private, and even in the Committees and Councils.

Countries that are not considered significant are often not invited to the private negotiations.

There is also the major problem of lack of capacity of most developing countries to effectively participate in the formal meetings of the WTO, to which all Member states are entitled to attend. Several developing countries do not even have a Mission in Geneva, due to lack of resources. They thus do not have representatives attending the meetings. For many more developing countries that do have a Geneva Mission, the office is usually understaffed. Typically there is an Ambassador and one to three assistants. They have to cover many duties, including participation in the many United Nations agencies in Geneva (such as the WHO, ILO, UNCTAD, Human

Rights Commission) besides the WTO. Sometimes there are several meetings taking place at the same time in the WTO. It is physically as well as intellectually not possible for these Missions to adequately monitor the developments in the WTO, let alone be able to formulate well-informed negotiation positions. Moreover, the Geneva-based officials have to refer important decisions to their Ministries in the capital. And at the capital, there is also a lack of capacity to monitor and respond to the requests of the Geneva Mission, as the unit dealing with WTO issues may have only one or two persons.

This lack of capacity of developing countries is in stark contrast to the huge negotiating machinery of developed countries, which have many staff both at the negotiating arenas as well as in the Ministries at the capital, backed up by researchers, academics and research institutions. They are able not only to formulate precise language and positions in the negotiations on many areas (taking into account the substantive and the legal aspects) but also to design a framework of long-term trade strategies, and then plan negotiating strategies and positions around them.

On the other hand, developing countries are swamped by having to make sense of the agreements already in force and to implement them in ways that are less damaging to their economies; and hardly are able to keep track of the flood of new proposals and positions coming from the developed countries (and from other developing countries). They are unable individually to adequately respond to these new proposals and positions, nor to collaborate with other developing countries to have common positions on certain issues.

Developing countries are simply no match for the gigantic planning and negotiating machinery of the North. There is thus a gross inequity in the WTO, since negotiations and formulation of rules (and defence of a country's compliance or non-compliance of obligations) is at the centre of the WTO's activities. Given the gross imbalance in bargaining and negotiating capacities between North and South (as well as the manipulative devices that the major industrial countries have mastered, the rich nations normally have their way in GATT and now the WTO. Issues that they do not want to enter the system, or to be highlighted, are not allowed to emerge in the WTO; whilst issues that the North have agreed upon are given prominence and are pushed, even against the wishes of many developing countries, until new agreements are reached. In the negotiations, the interpretation of the powerful countries on how an issue should be treated is very likely to prevail, due to their much stronger negotiating capacity and bargaining position.

Recently, in the selection of the new Director General of WTO, there was a lack of transparency in the entire process. One of the candidates (Mr Supachai of Thailand) was in the lead by a significant margin for much of the period but there was no attempt by the General Council chairman to "form a consensus" around him. The United States campaigned strongly for the other candidate (Mr Moore of New Zealand). When support was mustered so that it was claimed he had one or two more supporters than Mr Supachai, the Chairman of the WTO Council announced that a consensus should be formed around Mr Moore. Many developing countries among the Supachai supporters (there were also some developed country supporters for him) cried foul, decried the untransparent process and demanded that a vote be taken. The US and other developed countries did not want voting, since this would set a precedence (there has not

been a vote taken in the WTO) and damage the "decision by consensus" system. In the end, a compromise was made, with Moore taking a three-year term to be followed by a three-year term for Supachai. The whole process, lasting several months, was most bitter, unsatisfactory and untransparent. In a more transparent exercise, voting at a predetermined date would have resolved the issue.

In 1996, developed countries lobbied very hard to get three topics (investment, competition, government procurement) introduced as new issues for study (and eventual negotiation for agreements) in the WTO. They wanted the Ministerial Conference in Singapore in December 1996 to endorse this. During the preparatory process, a significant number of developing countries vocally objected. Thus there was clearly no consensus. Nevertheless the issues became the main topic at the Ministerial through the devices of the Director General writing a letter to the Chairman of the Ministerial requesting the latter to consider taking up the three issues on which there was no consensus, and the establishment of a small "informal group" of 30 countries to negotiate the final text of the Ministerial Declaration. Who selected the 30 countries, on what basis, and what they were discussing, were not known to the 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 of the Ministers protested at the whole untransparent and undemocratic process, the draft was eventually adopted as the Ministerial Declaration unchanged. In it were the decisions to establish three new working groups on investment, competition and government procurement, which had only a few days earlier been objected to by many developing countries.

The above illustrate how lacking in transparency and participation the WTO system is, even for the majority of Members of the WTO.

The situation is so serious that many of the representatives of the Member states are not given adequate information and are not able to participate meaningfully. Further, manipulative devices are used to ensure that the decisions desired by the few Members that dominate the system are achieved, whilst the policies or decisions which many or most developing countries want are ignored or deflected or have little or no chance of success.

The above features of the WTO system explains why developing countries are at such an immense disadvantage, and why it is so likely that issues brought into or discussed at the WTO are skewed and biased towards the interpretation and interests of the major developed countries, whose governments effectively represent their commercial and corporate interests.

IV: INEQUITIES BETWEEN NORTH AND SOUTH IN THE WTO AGREEMENTS

(a) 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 1996, 1997; South Centre 1995; Dubey 1995; Nayyar 1995; G. Corea 1995; Shahin 1996).

According to Raghavan (1995): "From the perspective of developing countries generally (and more so of their poor and disadvantaged sections), the new trade order under WTO has more negative than positive features. And while it could be beneficial as a rule-based system (depending on how the major industrialised countries implement it in letter and spirit), the rules in some areas of obligations for the majors are ambiguous and vague, while those relating to developing countries are specific and quite onerous such as in the field on TRIPS, where the original purpose of intellectual property rights (namely, rewarding innovation while ensuring disclosure and sharing of knowledge for enabling further innovation), has now been overtaken by attempts to cater to the greed of the corporations and safeguarding their investments through monopoly rentier incomes."

A study by Bhagirath Lal Das (1997, 1998) 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."

In a more comprehensive study, Das (1998) 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.

Referring to the WTO Agreements, the Indian economic professor, Deepak Nayyar (1995) states: "It would seem that the institutional framework for globalisation is characterised by a striking asymmetry. National boundaries should not matter for trade flows and capital flows but should be clearly demarcated for technology flows and labour flows. It follows that the developing countries would provide access to their markets without a corresponding access to technology and would accept capital mobility without a corresponding provision for labour mobility. This asymmetry, particularly that between the free movement of capital and the unfree movement of labour across national boundaries lies at the heart of the inequality in the rules of the game for globalisation in the late twentieth century. These new rules, which serve the interests of transnational corporations in the process of globalisation, are explicit as an integral part of a multilateral regime of discipline."

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...According to some estimates, the industrialised countries, which make up only 20 percent of the GATT membership, will appropriate 70 percent of the additional income that will be generated by the implementation of the Uruguay Round. It would seem that this does not allow one to conclude that the Uruguay Round will translate into a positive balance to developing countries...Unquestionably, the developing countries are the losers both individually and collectively."

(b) The Uruguay Round's Combination of Liberalisation and Protectionism for Corporate Interests

It is a mistaken notion that the Uruguay Round was set up to promote liberalisation overall. As pointed out by Nayar, 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. The "free trade" so much bandied around by the proponents of the Round 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.

V: DIFFICULTIES GENERATED BY THE WTO AGREEMENTS FOR DEVELOPING COUNTRIES AND THEIR PROBLEMS OF IMPLEMENTATION

On the whole the Round has benefitted the rich industrial nations. A few developing countries (mainly the more advanced ones) may also derive some trade benefits (whilst losing out on having to open up their services and on having to implement strict intellectual property rights laws). Most developing countries (especially the LDCs and weaker economies) have lost out. They have been unable to take advantage of any additional potential export opportunity, whilst they themselves are obliged to open up more deeply and in more sectors, thus placing their local firms and farms in danger of becoming unviable. export

It is simply not true that "we are all gainers, there are no losers", as some leading proponents of the Uruguay Round and the WTO would have it. Some have gained more than others; and many (especially the poorest countries) have not gained at all but may well suffer severe loss to their economic standing.

The Uruguay Round outcome is expected to bring some benefits to those developing countries able to take advantage of certain changes, but even those benefits have not been significant or have not been till now. Some examples of this:

** A lowering of Northern countries' industrial tariffs will benefit those Southern countries with a manufacturing export capacity. Even then, the reduction of average industrial tariffs of developed countries has only been from 6.3% to 3.8%, which means that an imported product costing \$100 before duty could enter after duty at \$104 instead of the previous \$106, which is not a significant reduction. And "tariff peaks" (or higher-than-average import duties) remain for many products that developing countries export. For instance the US tariff for orange juice is 31%.

** The planned phasing out of the multifibre arrangement (an arrangement in which the developing countries had for many years agreed to subsidise the North by allowing quotas to be placed on their exports) was supposed to be the aspect of the Uruguay Round to most immediately benefit the South, or at least the Southern countries that export textiles, clothing and footwear. However, textile-exporting developing countries have been extremely disappointed and frustrated that due to end-loading of the implementation schedules of developed countries (that is, the liberalisation of most of the products they buy from developing countries will take place only in the final year or years), the benefits will accrue only at the end of the ten year phase-out period. So far, the developing countries have not yet seen tangible benefits. There is also a fear that non-tariff barriers will be used to continue to block Third World products when the phase-out of tariffs is completed.

** The Agriculture Agreement was supposed to result in the reduction of agricultural subsidies in the North, and this was expected to improve the market access of those Southern countries that export agricultural products. As it turned out, however, the Agreement eventually allowed the developed countries to maintain most of the high subsidies that existed prior to the Uruguay Round conclusion (for example, they are obliged to reduce domestic subsidies by only 20%). In contrast most developing countries had no or little domestic or export subsidies earlier. They are now barred by the Agriculture Agreement from having them or raising them in future. There is a great injustice in this very odd situation.

As seen from these examples, from the viewpoint of countries of the South, one of the major categories of "problems of implementation of the Uruguay Round" is the way the Northern countries have not lived up to the spirit of their commitments in implementing (or not implementing) their obligations agreed to in the various Agreements. This has led to the non-realisation of the expected benefits to developing countries of their joining the WTO.

In any case, the projected benefits were mainly expected to accrue to the better-off developing countries that already have an export capacity. The weaker countries (and especially the least developed countries) would not be able to benefit, or to benefit much. Even before the Uruguay Round concluded, several countries (especially in Africa, but also including Indonesia) were projected to suffer absolute losses as a result from the Round agreements. The benefits (which fall significantly short of what had been requested by the developing countries) were also projected to take a long time (10 to 20 years) to come on stream, whilst the problems of compliance are already

being felt by developing countries.

In exchange for some uneven and very limited benefits in the Uruguay Round, the South as a whole has had to make major concessions, especially in agreeing to bring in the new issues of services, investment measures and intellectual property rights, into the GATT/WTO system. Even for agriculture, many developing countries are in danger of having their food security and farmers' livelihoods come under threat, as explained below.

Thus, the second category of the "problems of implementation" that are now striking at developing countries are problems they face when they change their economic policies at national level to comply with their Uruguay Round obligations. Examples of these implementation problems are as follows:

** Agriculture Agreement

The agriculture agreement could have severe negative effects on many Third World countries. Most of them (excepting the least developed countries) will also have to reduce domestic subsidies to farmers and remove non-tariff controls on agricultural products, converting these to tariffs and then progressively reducing these tariffs. This will impose global competition on the domestic farm sector. Farmers unable to compete with cheaper imports may not survive. Hundreds of millions of small Third World farmers could be affected. Agricultural liberalisation will also raise world food prices, which may benefit food exporters but about 100 Third World food importing countries will face a higher food import bill and are likely to be among the biggest UR losers.

** Services

The Uruguay Round also for the first time brought services into the GATT system, and liberalisation of services will be an important part of the WTO's agenda. Although the framework of the Services Agreement does not oblige countries to conduct blanket liberalisation, (as liberalisation will be on the basis of a listing of positive offers by each country), there will of course in reality be far increased pressures on developing countries to liberalise their services sector.

In many Third World countries, the services sector is relatively shielded and local enterprises in banking, insurance, trade, the media and professional services have been able to develop. It is feared that under the pressures of liberalisation, the Northern TNCs involved in services will make further inroads and in some countries may come to dominate some of the services.

** TRIPS Agreement

The South's collective loss was most acutely felt in the agreement on TRIPS (trade related

intellectual property rights) through which countries are obliged to introduce IPR legislation with standards of protection that are similar to Northern countries. This will hinder Southern countries' indigenous technological development. It should be noted that the present industrial countries did not have patent or IPR laws, or laws as strict as will now be imposed through TRIPs, during their industrialising period, and this enabled them to incorporate technology design originating from abroad in their local systems.

The agreement will also give rise to increasing technical payments such as royalties and license fees to TNCs owning most of the world's patents.

The new IPR regime will also have significant impact on raising the prices of many products. By restricting competition, the IPR rules will enable some companies to jack up prices of their products far beyond costs and thus earn rents in terms of monopoly revenues and profits. This is clearly seen in the case of computer software.

Also, most Third World countries have in the past exempted agriculture, medicines and other essential products and processes from their national patent laws, but with the passage of TRIPs, everything is subject to IPRs unless explicitly exempted. The prices of medicines are expected to shoot up in many countries, and foreign drug sales will increase rapidly at the expense of local products.

The TRIPs agreement also opens the door to the patenting of lifeforms such as microorganisms and modified genetic materials, thus providing the boost in incentives so much desired by the biotechnology industry. Many environmentalists are concerned that this will be detrimental to the global environment as the present lack of controls and accountability in biotechnology research and application will likely accelerate biodiversity loss and could threaten natural ecosystems.

For plant varieties, TRIPs does permit countries the option to either introduce patents or an alternative "effective" sui generis system of intellectual property protection for a trial period of four years, after which the agreement will be reviewed. Many farmers' groups (especially in India, where huge farmers' demonstrations and rallies have been held against GATT/WTO) and environmentalists are concerned that in the end Third World farmers will be disallowed the traditional practice of saving seed for the next season's planting (if the seed used is under the intellectual protection of a company) but forced to purchase the seeds.

** Trade-related Investment Measures (TRIMS)

In the area of TRIMs (investment measures), the most important point is that national policies relating to foreign investments have also now explicitly come under the ambit of the GATT/WTO system. Originally the Northern countries proposed an agreement on investment policy per se, in which foreign companies were to be given an automatic "right to establishment" or "commercial presence". This would have given rights to foreign companies that were attained by the colonisers through war and bloodshed in the colonial era. Eventually the objections of some developing

countries prevailed.

In the final TRIMS agreement, "investment measures" such as local content (obliging foreign firms to use at least a specified minimal amount of local inputs) will be phased out. This of course has serious enough implications in terms of prohibiting measures that promote local industry and greater linkages to the domestic economy, and that protect the balance of payments. In implementing TRIMS, developing countries will lose some important policy options to pursue their industrialisation.

Just as significantly, once the area of "investment" has been brought into the ambit of the WTO, even if only in relation to investment measures (which had already been part of the old GATT rules), it could be easily predicted that the Northern governments would soon resume their pressures to bring in the whole body of "investment policy per se" into the WTO framework. This has now happened, with the current intense pressures by the North to establish a multilateral investment agreement in the WTO, along the lines essentially as the failed MAI model in the OECD.

VI: THE NEED TO REVIEW AND REPAIR THE WTO AGREEMENTS

Given the serious problems faced by developing countries in implementing their Uruguay Round commitments (and in the developed countries not properly implementing their commitments), there should be a review of many of the Agreements with a view to amending them. In fact many of the Agreements themselves mandate that reviews be carried out four or five years after their coming into force.

The next three to five years of the WTO's activities should focus on the review process, so that the opportunity to rectify the defects of the Agreements can be taken. This review process would in itself be a massive task, involving analyses of the weaknesses of the various Agreements, assessments of how they have affected or will affect developing countries, proposals to amend the Agreements, and negotiations on these proposals.

A good idea of the enormity of the task is provided by the recent writings of Bhagirath Lal Das (1998, 1999), who has compiled an analysis of the deficiencies and imbalances of many of the Agreements, and provided suggestions on how they can be rectified.

A few examples of the need for amending some Agreements, and of how this could be done, is as follows:

** TRIPS Agreement Article 27.3(b)

This Article deals with the patenting of life forms and the intellectual property protection of

plant varieties, issues which are of major concern to developing countries, to farmers' groups, environmental groups and civil society worldwide. A review of this Article is mandated to begin in 1999, and has started in the TRIPS Council.

The Article allows countries to exclude from patentability plants and animals and essentially biological processes for the production of plants and animals, but makes it compulsory for countries to patent microorganisms, microbiological and non-biological processes. It also mandates that countries patent plant varieties or set up a "sui generis" system of protection.

The problems with this Article are that: (i) it does not make scientific sense to distinguish between microorganisms (which must be patentable) and plants and animals (which can be excluded) as all are life forms and should not be allowed to be patented; (ii) it does not make scientific sense to mandate the patenting of microbiological processes since they are also natural processes; (iii) there is ambiguity about the "sui generis system" option for plant varieties. The concern of NGOs is that the Article will facilitate the patenting of all life forms, and patenting of plant varieties or strict protection of plant breeders' rights, at the expense of small farmers.

To correct the serious problems, the review process could lead to amendments of Article 27.3b, clarifying that (i) all life forms cannot be patented; (ii) all natural processes for producing plants and animals cannot be patented; (iii) that a sui generis system can include national laws that recognise and protect the traditional knowledge of indigenous and local communities, in line with the Convention on Biological Diversity.

** AGRICULTURE AND FOOD SECURITY

In most developing countries, small farmers form a large part of population. Their livelihoods and products (especially food) are the main basis of Third World economies. These livelihoods could be threatened by agricultural liberalisation under the WTO's Agriculture Agreement. Local food production could also be threatened by cheaper imports. Developing countries would then become more dependent on imports for their food supplies, thus eroding national food security.

To deal with these two serious problems, it can be proposed that in developing countries, food produced for domestic consumption and the products of small farmers shall be exempted from the Agriculture Agreement's disciplines on import liberalisation, domestic support and subsidies.

** THE TRIMS AGREEMENT

In the review of the TRIMS Agreement, which is scheduled to begin in 1999, the problems of implementation for developing countries should be highlighted. The prohibition of "local content" requirement (i.e. that firms or projects make use of a certain minimum amount of local materials) will seriously hinder the efforts of developing countries to promote local industry, save on foreign exchange, and upgrade local technological capacity. There is also a prohibition on

investment measures that limit the import of inputs by firms to a certain percentage of their exports. Such measures had been introduced to protect the country's balance of payments. The prohibition of these two investment measures will make the attainment of development goals much more difficult.

The TRIMS review can conclude with an amendment to allow developing countries the right to have "local content" policy and to limit the import of inputs to a certain percentage of a firm's exports.

VII: THE PRESSURE FOR NEW ISSUES

(a) DANGERS OF THE PROLIFERATION OF "TRADE RELATED ISSUES"

The Uruguay Round has already introduced new areas into the trading system, vastly expanding its scope. In recent years, the developed countries have intensified the pressures to incorporate yet more and more issues which are to their advantage into the WTO. This is being resisted by many developing countries, on the grounds that (i) they are not ready for negotiations on yet more new issues as they are already unable to grapple with the problems generated by the Uruguay Round, (ii) the proposed issues are not in their interests but instead can seriously harm their economies should they become the subject of new WTO rules; and (iii) the issues are not directly related to trade and do not belong to the WTO.

There is a long list of "new issues" being put forward by the Northern governments to link trade (and the possible use of trade measures and sanctions as enforcement mechanisms) to several economic and non-economic areas. Three working groups have been created to examine trade and investment, trade and competition policy, and government procurement. 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 possible 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", "trade and investment" and "trade and competition policy."

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.

(b) THE PROPOSED NEW ISSUES AND DANGERS FOR THE SOUTH

The European Union, backed by Japan, Canada and other developed nations, have announced they want to launch a new comprehensive "Round" of trade negotiations at the WTO Ministerial Conference in Seattle in late 1999. They hope that in such a Round, several issues will be made the subject of negotiations for new multilateral Agreements that will be legally binding on WTO members.

Although the US originally seemed cool to the idea (preferring to push issues it liked on a sector by sector basis), it may eventually agree to go along with the proposals for initiating negotiations on at least some of the proposed new issues.

A few developing countries, such as India, Egypt and Malaysia spoke up strongly against such a new Round with new issues thrown in. Many other developing countries, especially in Africa, have supported this position. They believe that instead of injecting the new issues, the WTO should allow developing countries (who after all form the majority of the membership of the WTO) the time and space to tackle the problems of implementation of the existing Agreements. Despite such an opposition by these countries, it is unclear whether a sizable number of them will be able to withstand the intense pressures for the new issues.

The main category of new issues being proposed are international investment rules, competition policy and government procurement.

These three issues were put on the agenda of the first WTO Ministerial Conference in Singapore in 1996. Most developing countries were against having any negotiations for Agreements on these issues, but the pressure from the developed countries was so strong that they compromised and agreed to taking part in "working groups" to discuss the issues.

The developing countries made it clear that the working groups had the mandate only to discuss the topics in a sort of academic way, in what was called an "educative process". The working groups had no mandate to start negotiations for Agreements.

The three working groups have now gone through almost three years of discussion, during which

some of the developed countries made it clear they intend to "upgrade" the talks into negotiations. Their plan now is to use the device of the "Millennium Round" to make the three issues (investment, competition, government procurement) the subject of talks for new Agreements.

Many countries are also proposing that "industrial tariffs" (the reduction of import duties on manufactured products) be another new issue for negotiations. Although there have of course been several previous negotiating rounds on tariff-cutting in this sector, the issue is nevertheless considered "new" in that fresh negotiations on the industrial sector are not mandated in the WTO agreements. Thus, a decision to negotiate on this issue would mean a fresh commitment on the part of members.

Some of the developed countries are also proposing that "trade and environment" and "labour standards" to be part of the new proposed Round. The governments of these countries want to placate environmental groups and labour unions who have been protesting about the negative effects of free trade. If the environment and labour standards are also thrown into the pot of the New Round, the influential civic groups may then be won over, or at least they may not campaign so hard against the proposed Round. Or so the establishment thinking goes.

The US meanwhile is very keen that the Uruguay Round issues of services, agriculture and intellectual property rights be revisited and revised so that its corporations will have yet more market openings or advantages. New negotiations on these existing topics, which are already on the WTO agenda in any case, will also certainly be part of a new stage of negotiations, whether or not the new issues are accepted as part of a Round.

VIII:THE DANGERS OF FOUR NEW ISSUES: INVESTMENT, COMPETITION, GOVERNMENT PROCUREMENT AND INDUSTRIAL TARIFFS

The three issues that should especially worry developing countries are investment, competition policy and government procurement. If there is a new Round, it could lead to new WTO Agreements on these topics. Another round of cuts in industrial tariffs would also pose dangers to developing countries.

The following is a summary of how these issues will affect the developing nations.

(a) The Investment Issue

On the INVESTMENT ISSUE, the rich countries are pushing to introduce new rules that give new rights to foreign investors, making it easier for them to enter countries and to operate freely. Pressures would be mounted on WTO member states to liberalise investment flows and to grant "national treatment" to foreign investors and firms. Governments would lose a large part of their present rights to regulate the operations of foreign investors. Restrictions on the free flow of capital into and out of the country would be prohibited. Moreover, the "performance requirements" that host governments now place on foreign companies (such as technology transfer, the use of local professionals) would come under pressure. There is even talk of prohibiting the use of investment incentives to attract foreign investments.

The recent proposal by the European Union on investment negotiations in the WTO is a watered down version of the discredited "MAI" (multilateral agreement on investment) that the developed countries had negotiated in the OECD. The original OECD-MAI model had defined foreign investment to include both short-term flows and foreign direct investment; given rights to foreign investors to enter any country (i.e. "pre-establishment rights"), own 100 percent equity, and be automatically given "national treatment." Due mainly to public protests, the MAI negotiations collapsed, and the EU has taken a lead in getting negotiations for an investment agreement started at the WTO through the Seattle Ministerial.

Implicitly acknowledging that an MAI relic would not be politically acceptable either to many developing countries nor to civil society worldwide, the EU has put in the diluted version, in which countries could still have options on the degree of liberalisation and "national treatment" to offer in a "positive list" on a sector-by-sector basis, and only for direct foreign investment. It is obvious, however, that this is a tactical move to make their proposal more acceptable. Once such a watered-down version enters the WTO, pressures will then pile up to get the developing countries to liberalise more and more, and to offer national treatment.

The entrance in principle of investment policy per se in the WTO would tremendously expand the mandate and powers of the WTO, and pose a serious threat to developing countries. Investment liberalisation in the South will become an objective to be intensely pursued by the developed countries, just as trade liberalisation has been so ruthlessly pursued. Eventually, developing countries would no longer be able to defend the viability or give preferences to local investors, firms or farmers, which are all much smaller than the transnational companies and will thus be unable to withstand the latter's onslaught. They would face the threat of having their local products wiped out by competition from the bigger foreign firms, or of being taken over by them.

(b) The Competition Issue

On COMPETITION POLICY, the EU is advocating a new agreement that would look unfavourably on domestic laws or practices in developing countries that favour local firms, on the ground that this is against free competition. The EU argues that what it considers to be the core principles of the WTO (national treatment and non-discrimination) should be applied through the WTO on competition policy.

Through an agreement on competition in the WTO, it would be compulsory for developing countries to establish domestic competition policies and laws of a certain type. Distinctions that favour local firms and investors would not be allowed. For example, if there are policies that give importing or distribution rights (or more favourable rights) to local firms (including government agencies or enterprises), or if there are practices among local firms that give them superior marketing channels, these are likely to be called into question and disciplines may be imposed on them.

The developed countries are arguing that policies or practices that give an advantage to local firms create a barrier to foreign products or firms, which should be allowed to compete on equal

terms as locals, in the name of free competition. Such pro-local practices and policies are to be targetted in negotiations for a competition agreement.

Developing countries may argue that only if local firms and agencies are given certain advantages can they remain viable. If these smaller enterprises are treated on par with the huge foreign conglomerates, most of them would not be able to survive. Perhaps some would remain because over the years (or generations) they have built up distribution systems based on their intimate knowledge of the local scene, that give them an edge over the more endowed foreign firms. But the operation of such local distribution channels could also come under attack by a competition policy in the WTO, as the developed countries are likely to pressure that the local firms also open their marketing channels to their foreign competitors.

At present, many developing countries would argue that giving favourable treatment to locals is pro-competitive, in that the smaller local firms are given some advantages to withstand the might of foreign giants, which otherwise would monopolise the local market. Providing the giant international firms equal rights would overwhelm the local enterprises which are small and medium sized in global terms.

However, such arguments will not be accepted by the developed countries, which will insist that their giant firms be provided a "level playing field" to compete "equally" with the smaller local firms. They would like their interpretation of "competition" (which ironically would likely lead to foreign monopolisation of developing country markets) to be enshrined in WTO law and operationalised through a new Round.

In the discussions at the WTO's Competition Working Group, developing countries have raised issues which are more relevant to them, including the restrictive practices of transnational companies, and the abuse of anti-dumping measures by the US and other developed countries (that are anti-competitive in that they prevent the competitive exports of developing countries from having access to their markets). However, such extremely relevant and legitimate concerns under the topic of "competition" have not been welcomed, especially by the US. Given the relatively weak negotiating position of the South, the interpretation of developed countries are more likely to prevail, should there be a decision to begin negotiations for a competition agreement in the WTO. Then, another instrument would be available to the developed countries to pry open the markets of the developing countries.

(c) The Issue of Government Procurement

On GOVERNMENT PROCUREMENT, the developed countries want to introduce a process in the WTO whereby their companies are able to obtain a large share of the lucrative business of providing supplies to and winning contracts for projects of the public sector in the developing countries.

At present, such government expenditure is outside the scope of the WTO, unless a member country voluntarily joins the "plurilateral" agreement on government procurement. This means that governments are free to set up their own rules on procurement and project awards, and most

developing countries give preferences to locals in such awards.

The aim of the rich countries is to bring government spending policies, decisions and procedures of all member countries under the umbrella of the WTO, where the principle of "national treatment" (foreigners to be treated on par with or better than locals) will apply.

Under this principle, governments in their procurement and contracts for projects (and probably also for privatisation deals) would no longer be able to give preferences or advantages to citizens or local firms. The bids for supplies, contracts and projects would have to be opened up to foreigners, who should be given the same (or better) chances as locals. It is even proposed that foreign firms that are unhappy with the government's decisions can bring the matter to court in the WTO.

Since government procurement expenditure in some countries is bigger in value than imports, such an agreement to bring procurement under the WTO rules would tremendously enlarge the scope of the WTO and its rules.

As most developing countries would object to having their public-sector spending policies changed so drastically, the developed countries have a two-stage plan for this issue: firstly, to have an agreement limited to achieving greater "transparency" in government procurement; secondly, to have a broader agreement that would cover the aspects of liberalisation, market access for foreign firms, and the national treatment principle. Stage One would inject the procurement issue into the WTO multilateral system; Stage Two would seek to "fully integrate" government procurement into the WTO system.

At the WTO Seattle Conference, the United States will try to wrap up an agreement on "transparency in government procurement". Governments need not apply the "national treatment" principle and can

still favour locals. But they must make public (to the WTO members) what they are purchasing and the projects they are opening up for awards, who are eligible for the bids, and what the terms are.

After such an interim agreement is obtained, the developed countries will then push for an expansion of the agreement so that it incorporates the market access element, i.e. that foreign firms be given national treatment.

By agreeing now to a negotiation for a transparency agreement, (or even to sign an agreement itself in Seattle), developing countries would also put themselves on the road to a full-scale procurement agreement incorporating liberalisation and national treatment. At stake is the right of governments to reserve some of its business for local firms. With the removal of that right, a very important instrument for assisting local firms, for national development, and for socio-economic objectives, would be removed.

(d) Industrial Tariffs

Besides the three issues of investment, competition and procurement, another economic issue that

is being pushed for the Seattle Conference is "industrial tariffs." This would entail another round of negotiations to further reduce duties on manufactured products. Since the tariffs in this sector are generally lower in the developed countries, a new round of tariff cuts would mainly entail new commitments by the developing countries.

Most developing countries have already significantly reduced their tariffs on industrial products in recent years. Many did this under the structural adjustment programmes directed by the IMF and the World Bank. An influential study by the UN Economic Commission for Africa on the effects of structural adjustment policies in 1991 warned that: "External trade liberalisation for underdeveloped economies can have some serious side effects. For one, it can lead to dumping of cheap products from outside such as clothes, shoes, creams, etc. This undermines the local industries that produce or those that would have started to produce these products as they cannot compete with similar but much cheaper products from abroad. So African infant industries fail to take-off under extensive trade liberalisation."

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

A further round of cuts in industrial tariffs, as proposed by the developed countries, would render the industrial sector and industrial enterprises of most developing countries even more unviable. The future of industrialisation, especially that based on the survival and development of local enterprises, is at stake in the South.

Therefore, there should not be another formal round of negotiations to further cut developing countries' tariffs. If anything, the next stage of negotiations should only involve the reduction of "tariff peaks" (high tariffs) and "tariff escalation" (the practice of imposing no or low tariffs on raw materials but progressively higher tariffs on products that are processed or manufactured from the same raw materials) of the developed countries. The developed countries should commit themselves to reducing their tariff peaks and tariff escalation, and not use the promise of this as a carrot to draw in the developing countries to cut the latter's industrial tariffs in a new Round.

IX: OTHER ISSUES AT THE DOOR: ENVIRONMENT AND LABOUR

(a) Social and Environment Issues Seeking an Entrance

Another set of "new issues" are knocking on the door to enter the WTO system. Unlike other "new issues" that are pushed by the Northern-based corporations, this other set of issues are being advocated by social organisations (mainly of the North but also including some in the South) that are seeking ways to protect or promote their interests. The environment and labour are presently the key issues in this category of linkages. There may be attempts in future to introduce other issues, such as human rights, gender equity, etc. Indeed, if environment and labour were to enter the WTO system as subjects for agreements, it would be conceptually difficult to argue why other social and cultural issues should also not enter.

The objectives of the social organisations in linking their particular causes to trade measures are different from the aims of corporations who seek linkages (in investment, procurement) to gain greater market access and market share, or (in IPRs) to protect their domination and hinder potential new rivals. The social organisations are looking for more effective ways to protect their interests and believe that the instruments of trade measures or trade sanctions can be very effective. They believe that their causes (to defend animal rights and life and conserve the environment, or to protect jobs and promote higher social standards) can be most effectively promoted if governments of countries that have "low environment and social standards" are faced with the potential threat of trade measures and sanctions on products that are produced using the low standards.

In this, the social organisations concerned are seeking methods similar to the corporations, in that they are pressuring their governments and negotiators to make use of a strong enforcement mechanism (unilateral trade measures, or the dispute settlement mechanism of the WTO backed up with the possibility of trade sanctions).

Thus, trade measures have become methods of choice, and the WTO has become a vehicle of choice, for big corporations and some social organisations in promoting their interests.

(b) TRADE AND ENVIRONMENT

That are links between trade and environment cannot and should not be denied. Trade can contribute to environmentally harmful activities. Ecological damage, by making production unsustainable, can also have negative effects on longterm production and trade prospects. In some circumstances trade (for example, trade in environmentally sound technology products) can assist in improving the environment.

What is of concern or relevance in looking at "linkages" is the advocacy of the use of trade measures and sanctions on environmental grounds. Some environment groups and animal rights groups believe that national governments should be given the right to unilaterally impose import bans on products on the grounds that the process of production is destructive to animal life, and that WTO rules should be amended to enable these unilateral actions.

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

This set of ideas poses complex questions relating to concepts, estimations and practical

application, particularly as they relate to the international setting and to the WTO. Developing countries are likely to find themselves at a great disadvantage within the negotiating context of the WTO should the subject (which has already been discussed in the Committee on Trade and Environment) come up for negotiations.

One of the main issues is whether all countries should be expected to adhere to the same standard, or whether standards should be allowed to correspond to the different levels of development. The application of a single standard would be inequitable as poorer countries that can ill afford high standards would have their products made uncompetitive. The global burden of adjustment to a more ecological world would be skewed inequitably towards the developing countries.

This is counter to the principle of "common but differentiated responsibility" of the UNCED or Earth Summit in which it was agreed that the developed countries, which take the greater share of blame for the ecological crisis and have more means to counter it, should correspondingly bear the greater responsibility for the global costs of adjustment.

Given the unequal bargaining strengths of North and South in the WTO, the complex issues relating to PPMs, cost internalisation, trade related environment measures etc. should not be negotiated within the WTO but if at all discussed, the venue should be the United Nations (for example in the framework of the Commission on Sustainable Development) in which the broader perspective of environment and development and of the UNCED can be brought to bear.

Unilateral trade measures taken by an importing country against a product on grounds of its production method or process are also fraught with dangers of protectionism and the penalising of developing countries. However tempting the route of unilateral import bans may be for the environmental cause, it is an inappropriate route as it will lead to many consequences and could eventually even be counter-productive.

Policies and measures to resolve environmental problems (and there are many genuine such problems that have reached the crisis stage) should be negotiated in international environmental fora and agreements. These measures can include (and have included) trade measures.

The relationship between the WTO and its rules and the multilateral environment agreements (MEAs) is the subject of debate in the WTO. On one hand there is the fear (of developing countries) that a system of blanket and automatic approval by the WTO of trade measures adopted by a "MEA" (for example by an amendment to Article XX to enable ex-ante approval of MEA measures) could lead to abuse and protectionism. A sticking point here is what constitutes a "multilateral environment agreement" as it may include not only truly international agreements convened by the UN and open to all members and enjoying near-universal consensus, but also agreements drafted by a few countries which then invite others to join (and would then also enjoy exemption under the proposed amended WTO rules).

The fear of protectionist abuse explains the reluctance of developing countries to amend Article XX, which in their opinion is already flexible enough to enable exceptions to accommodate environmental objectives.

On the other hand there is the genuine fear of environmental groups (and also developing country and some developed country Members of WTO) that negotiations in new MEAs can be (and are being) undermined by the proposition of some countries that WTO rules prohibit trade measures for environmental purposes, or that WTO "free-trade principles" must take precedence over environmental objectives. Such arguments were for example used by a few countries in the negotiations for an International Biosafety Protocol. Such arguments are false, as the WTO allows for trade measures agreed to in MEAs through the present Article XX (although not in the ex-ante manner proposed by some countries). The use of the WTO name by a few countries to turn away the proposals by the overwhelming majority of delegations to establish checks on the trade in genetically modified organisms and products (through a prior informed consent procedure) gave the impression that commercial interests were placed before global ecological and safety concerns and understandably generated outrage among most delegations as well as environmental and social organisations. Negative actions like this that blatantly use the slogan of "free trade" to undermine vital health and environmental concerns are the reasons for the erosion of public confidence in "free trade" and the WTO system. Thus governments should not wrongly make use of "free trade" or "WTO rules" to counter international agreements that deal with genuine environmental problems, otherwise the credibility of the trading system itself will be eroded even further.

For many NGOs (especially of the South) as well as developing country WTO members, an important "trade and environment" issue is the effect of the TRIPS Agreement in hindering access to environmentally sound technologies and products. There can be "synergy" between liberalisation, environment and development objectives if TRIPS is amended to enable exemptions for environmentally sound technology. Also, Article 27.3b of TRIPS opens the road to patenting of life forms. Adverse effects include facilitation of the appropriation of traditional knowledge on the use of biological resources by corporations who claim to meet the patent test; promotion of environmentally harmful technologies; and promotion of technologies that are against the interests of small farmers (such as the "terminator technology" or "suicide seeds" or seeds engineered not to reproduce themselves so that farmers are prevented from saving seeds).

These are examples of some issues that can and should be taken up in trade and environment reviews of various Agreements.

In short, discussions within the WTO entailing the environmental effects of WTO rules can be beneficial, provided the environment is viewed within the context of sustainable development and the critical component of development is given adequate weightage.

The Committee on Trade and Environment should orientate its work to the more complex but appropriate concept and principles of sustainable development. But there should not be any move to initiate an "environment agreement" in the WTO that involves concepts such as PPMs and eco-dumping.

(c) TRADE AND LABOUR STANDARDS

The push for incorporating labour standards with trade measures in the WTO has come from labour unions in the North and international trade unions which also have affiliations in developing countries. Some trade unions in some developing countries are however opposed to including labour standards in WTO. The issue of labour standards is also linked to the concept of "social clause" (which is broader than labour standards and could include the rights of various groups in society) and supported by some political parties in developed countries.

There may be various strands in the objectives of the advocates. Many trade unions believe that transnational corporations are relocating from countries with higher labour standards to those with lower standards, and that this trend acts to depress labour standards by reducing bargaining power of workers. They also believe that by linking the threat of trade sanctions to labour standards, there will be pressure to upgrade the level of standards in developing countries. They are careful to include only internationally-recognised core labour standards and to exclude the issue of wage levels in the demands for linkage to trade and WTO.

Other advocates believe that the linking of social issues (including but not exclusively labour standards) to the WTO and its sanctions system of enforcement is an effective way of countering the adverse social effects of free-trade free-investment globalisation, by forcing corporations and governments to observe socially responsible policies.

Developing countries fear that the objectives of the Northern and international trade unions, and of developed country governments that back the social clause demand, are mainly protectionist in nature, i.e. to protect jobs in the North by reducing the low-cost incentive that attracts TNCs to developing countries. They argue that low labour costs in their countries are a function not of deliberate exploitation of workers but of the general low standard of living and the lower level of development, and that the low cost is a legitimate comparative advantage. They therefore have opposed the inclusion of labour standards in the WTO, and argued successfully (as reference the Singapore Ministerial Declaration) that the issue belongs in the ILO.

There is of course justification for public interest groups to be concerned about the social consequences of globalisation and liberalisation and to campaign to change the nature and effects of the present globalisation trends. However the issue is whether labour standards and social clauses in trade agreements is the or even an appropriate route. There is merit in the argument that labour standards or the "social clause" should not be introduced in the WTO.

This is because:

- (i) Such an issue when placed in the WTO context would be linked to the dispute settlement system and the remedy of trade penalties and sanctions. In other venues, there is the option (which many would argue is more appropriate) of linking the improving of labour standards to positive incentives rather than punitive measures.
- (ii) Even though most advocates only demand minimum labour standards such as the right of association for workers, there is no certainty that the issue will be so confined in the future. Once the concept of social issues and rights enters the WTO system, it

- can in future be expanded within the particular issue (eg an extension to social security and wage levels within the issue of labour standards) and extended to other issues (such as the rights of children, women, disabled, human rights in general, the right to education, health, nutrition, etc).
- (iii) It is possible or even likely that once rights and social issues enters WTO, the GATT concepts of dumping and subsidies, and the relief of countervailing duties, will bsought to be applied. Thus, countries with low social standards would be deemed to be practising "social dumping" (or unfairly subsidising its products by avoiding to meet social costs) and importing countries could be enabled to impose countervailing duties.
 - (iv) Developing countries are likely to bear the costs of loss of competitiveness. The low social conditions in the poorer countries are largely related to the low level of development and the lack of resources (although the wastage and mismanagement of resources also do contribute significantly). Lower social standards are thus linked to (though not entirely cuaed by) lower levels of development. It is very possible that the operationalising of linkage between social standards and trade measures in the WTO system would lead to additional pressures being placed on developing countries and that many of their products would become higher cost and uncompetitive or face trade penalties or both.
 - (v) It is possible that the firms and products eventually affected are not confined to those involving trade and exports but also the firms (most of them small and locally owned) that cater to the local market. By not being able to remain competitive, some may close.
 - (vi) It is also possible that the erosion of competitiveness and the higher costs (perhaps beyond what would normally prevail in countries at the existing stage of development) would cause loss of jobs, closure of firms and farms and reduced investment; or movement of some workers to more poorly paid jobs.
 - (vii) The inclusion of labour standards would open the door to a much wider range of issues relating to social standards, social rights and human rights. Many new "conditionalities" would be introduced not only on trade at the border but production, investment, etc within the domestic economy. The issues will be so complex and complicated that they will tie the WTO system up in knots, and occupy the time and energy of diplomats and policy makers, not to mention the NGOs and social organisations, in an enterprise that is fraught with controversies, dangers and with no clear benefits guaranteed.
 - (viii) Finally, the efforts of NGOs and social organisations could be directed towards the sources of the social problems within and outside the WTO. For example, to offset problems caused by the WTO, those concerned about human rights and the right of

ordinary people to livelihoods and adequate incomes could examine and campaign for changes to aspects of the existing agreements (such as Agriculture, TRIPs, TRIMS, services) that affect farmers' rights and livelihoods, the viability of small farms, food security, the cost of medicines caused by drug patenting, etc. They could also try to prevent new agreements (such as investment, procurement, industrial tariffs) that would affect the viability of local firms, the livelihood of workers and the people's right to development. And to counter problems whose sources are beyond the WTO, there can be intensified campaigns for debt relief, reforms to the IMF and structural adjustment programmes, a pro-employment macroeconomic policy (rather than priority to restrictive monetary policy), improved human rights and against exploitative child labour and poor working conditions, etc. But the notion that linking social rights to a trade sanctions regime, though tempting at first sight, is likely to be counterproductive in results.

X: CONCLUSIONS

This survey of the WTO from a Southern perspective shows how the developing and the poor countries are continuously being disadvantaged by the WTO, its rules and system.

The system itself upholds the weak bargaining position of the South and the grave inequities in negotiating capacities.

In the recent past, this has already led to many agreements in the WTO that reflect the inequities on the negotiating table. The WTO agreements and rules themselves are inequitable and unbalanced, and in many respects place developing countries not only at a disadvantage or at a marginalised position, but also in a position where their economic sovereignty, their development prospects, and their food security are in grave danger of being taken away.

Yet, if anything, the WTO is not a static organisation. Among its main functions is further and continuous negotiations, with the intention of making more rules, and to monitor (and if necessary, to ensure the enforcement of) the implementation of existing agreements. The WTO can also review existing rules and amend them to offset their deficiencies and weaknesses.

It is thus possible that the WTO focus its energies on correcting the present inequities and imbalances both in its rules and its process. Indeed this is already on the agenda of the WTO, whatever happens at the Seattle Conference, since the problems of implementation of the WTO agreements and a review of many of the agreements (including amendments to the Agreements as part of the review) are mandated for discussion as part of the WTO's work in the next few years.

The past many years have seen a programme of very intense negotiations that have expanded the GATT system's scope of issues and propelled the WTO into the forefront of international organisations. The negotiations and their results in the WTO Agreements have been at such an

accelerated pace that policy makers, diplomats, parliamentarians, NGOs, civil society, and scholars have all not been able to keep abreast of developments, nor to analyse them, or to implement national policies and laws to conform to the Agreements, nor to assess the serious implications of this compliance.

The WTO has, in a very few years, stamped a new paradigm for national economic and social policies worldwide, and a new framework of international economic relations. The more that one understands the paradigm, the more are there serious questions on where the WTO is leading our societies to.

From the viewpoint of civil society worldwide, and especially from the South, the next few years must see the WTO engaged in a serious act of review and repair of its rules, process and system.

However, the Commerce Departments and Trade Ministries of the rich countries do not seem to share this priority. They represent the short-term views and interests of their large corporations, which are obsessed with obtaining more rights for themselves, with getting governments to remove whatever little restrictions are left on their behaviour and freedoms, and with gaining more trade and investment access to the markets, natural resources and territories of the developing world.

Thus, the biggest pressures at the Seattle Ministerial Conference will be for more "new issues" to be added to the WTO. If these new issues enter, the multilateral trading system will balloon even further, taking on a load that may cause it to sink. But before that happens, many countries and many people will be subjected to even greater pressures that can be expected to lead to economic and social disintegration and political chaos.

The people of developing countries will be the main victims of a further distortion of world trade. But people everywhere will also suffer, as the gap will grow wider between rich and poor, and between weak and powerful, the goal of environmental protection will be over-run, control over

biodiversity, food and natural resources will revert to a few transnational corporations, and economic and social sovereignty will be gravely eroded.

The operational principles of the WTO urgently need an overhaul. Its present assumption is that whatever hinders total trade and investment liberalisation is "distortive" and should be removed, and that the WTO's mission is to lead this process of removal of barriers. This concept itself is a distortion of reality. For developing countries, weak enterprises and small farms, such liberalisation has already caused closure and dislocation. The development process requires that a liberalisation policy can only be pursued on a selective basis, at a pace which corresponds with the strengthening of the capacity of such enterprises and farms and of the developing countries themselves.

Pressurising and forcing countries to liberalise trade and investment before they can sensibly or practically do it is the real distortion of the multilateral trading system. The sooner the political

leaders and trade representatives of developed countries realise this the better. Otherwise, with their control of the system, they will continue to lead the WTO in the wrong direction and on a road with a bleak future strewn with countries, communities and people victimised by economic and social disintegration and environmental destruction.

NOTE: This paper draws on some previous articles by the author, some of which are listed in the reference below.

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