



# Objectives and Organization of the WTO

# 1

## What is the WTO?

The WTO is an organization made up of 148 member countries with about 30 countries applying to join. Its main function is to ensure that trade between nations flows as smoothly, predictably, and freely as possible. It functions like a club, which national governments apply to join. If accepted as members, they commit to abide by the rules and settle disputes in an agreed upon way. Like most clubs, membership both provides rewards and requires obligations. In the case of the WTO, the rewards to each member are the economic benefits from liberalized trade; the obligations involve some mutually agreed upon codes of behaviour that are deemed acceptable in return for the benefits.

## What is the origin of the WTO?

The WTO came into being in 1995 but it has evolved over the past 50 years as the successor to the General Agreement on Tariffs and Trade (GATT). At the end of the Second World War, it was decided that international institutions were needed to assist in the process of economic recovery. Negotiators at that time were conditioned by the experience of the 1930s worldwide depression that had been associated with extreme measures of trade protectionism.

At a 1947 United Nations Conference on Trade and Employment in Havana, Cuba, a proposal was discussed to create an International Trade Organization (ITO) to complete the construction of a post-war multilateral economic regime begun several years earlier. At that time, the regime consisted of the International Monetary Fund and the World Bank. The ITO was to be the third pillar and be equipped with strong decision-making and dispute settlement powers to oversee the multilateral trading system. No major trading country ratified the ITO charter and it never came into existence.

As part of the ITO negotiations, various countries had begun discussing the process of lowering trade barriers, mainly tariffs, among themselves. In Geneva in 1947 these 23 countries adopted a provisional agreement,

the GATT, which was then carried forward when the ITO and the Havana Charter failed.

## What was/is the GATT?

The GATT from 1947 was two things: (1) an international agreement that sets out the rules for conducting international trade, and (2) an informal structure to administer the agreement. The text of the agreement could be compared to law, the structure and dispute settlement process to a combination of parliament and the courts. The term GATT was applied to both the agreement and the structure. Over time more countries signed on to the agreement. A version of the GATT exists today as part of the WTO.

## Is the WTO the same as the GATT?

The short answer is no. The WTO is the GATT plus a lot more, but before we describe the WTO since 1995, it is useful to summarize what happened between 1947 and the start of negotiations in 1986 leading to the WTO. There have been eight rounds of trade negotiations since 1947. The first five rounds were of relatively short duration and dealt mainly with tariff reductions. The sixth, the Kennedy Round (1963-67), achieved deeper and wider tariff cuts, especially in industrial tariffs, and brought developing country concerns to the fore. The seventh, the Tokyo Round, which lasted six years (1973 - 1979), cut tariffs substantially but also introduced a series of codes on non-tariff barriers (NTBs). These codes were only binding on the countries that signed them and were criticized by some as being "GATT à-la carte."

The WTO was the result of the eighth round of negotiations, known as the Uruguay Round (1986-93). It was named for the country, which held the conference (at Punta del Este) leading to the decision to proceed. By the 1980s, a number of problems with the world trading system needed to be addressed: certain areas such as agriculture were exempt from GATT rules or were managed under separate agreements such as textiles; trade in services and intellectual property were largely outside the

agreement; NTBs and new forms of protectionism were proliferating; and membership had grown to over 90 countries requiring the organization to be reformed.

The Uruguay Round was a complex set of negotiations undertaken to address the prevailing inadequacies of the GATT. The negotiations almost floundered on several occasions. The GATT Secretariat prepared an ambitious draft text in December 1991, but only after a breakthrough on agricultural issues between the United States and the European Community did a final agreement emerge in December 1993. In April 1994, in Marrakesh, representatives of 111 GATT member countries signed the Final Act incorporating the agreements. The *Final Act* was about one page long; the main text including the agreements and annexes about 430 pages long; and there were about 25,000 pages containing the schedules of commitments made by each member country. The *Final Act* took effect in January 1995 when the WTO was launched.

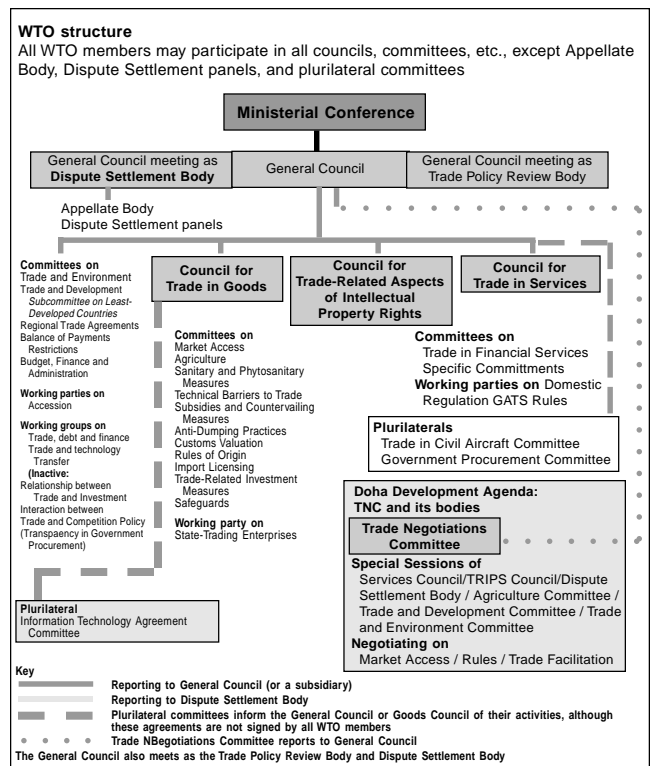
The WTO club now has more members (148 at the time of writing), has rules covering more activities, and has a more effective means to resolve disputes between the members.

The main differences between the GATT and the WTO are described by the WTO as follows:

- The GATT was provisional. Its contracting parties never ratified the General Agreement, and it contained no provisions for the creation of an organization.
- The WTO and its agreements are permanent. As an international organization, the WTO has a sound legal basis because all members have ratified the WTO Agreements, and the agreements themselves describe how the WTO is to function.
- The WTO has “members.” GATT had “contracting parties,” underscoring the fact that officially the GATT was a legal text.
- The GATT dealt with trade in goods. The WTO deals with trade in services and intellectual property as well.
- The WTO dispute settlement system is faster and more automatic than the old GATT system. Its rulings cannot be blocked.
- The WTO has introduced a trade policy review mechanism that increases the transparency of members’ trade policies and practices.

### What is the structure of the WTO

The structure of the WTO is dominated by its highest authority, the Ministerial Conference, composed of representatives of all WTO members, which is required



to meet at least every two years and which can take decisions on all matters under any of the multilateral trade agreements.

The day-to-day work of the WTO, however, falls to a number of subsidiary bodies; principally the General Council, also composed of all WTO members, which is required to report to the Ministerial Conference. As well as conducting its regular work on behalf of the Ministerial Conference, the General Council convenes in two particular forms - as the Dispute Settlement Body, to oversee the dispute settlement procedures and as the Trade Policy Review Body to conduct regular reviews of the trade policies of individual WTO members.

The General Council delegates responsibility to three other major bodies - namely the Councils for Trade in Goods, Trade in Services and Trade-Related Aspects of Intellectual Property. The Council for Goods oversees the implementation and functioning of all the agreements (Annex 1A of the WTO Agreement) covering trade in goods, though many such agreements have their own specific overseeing bodies. The latter two Councils have responsibility for their respective WTO agreements (Annexes 1B and 1C) and may establish their own subsidiary bodies as and when necessary.

Three other bodies are established by the Ministerial Conference and report to the General Council. The Committee on Trade and Development is concerned

with issues relating to the developing countries and, especially, to the “least-developed” among them. The Committee on Balance of Payments is responsible for consultations between WTO members and countries which take trade-restrictive measures, under Articles XII and XVIII of GATT, in order to cope with balance-of-payments difficulties. Finally, issues relating to WTO’s financing and budget are dealt with by a Committee on Budget.

Each of the four plurilateral agreements of the WTO - those on civil aircraft, government procurement, dairy products and bovine meat - establish their own management bodies which are required to report to the General Council.

### **The WTO Secretariat and Budget**

A Secretariat of about 500 persons headed by a Director General provides technical support for the various councils, committees and conferences as well as technical assistance to developing countries. It also analyzes world trade and explains the workings of the WTO to the public and the media. The Secretariat provides some forms of legal assistance in the dispute settlement process and advises governments applying to become members of the WTO.

In order to interact with this process, which is observed by analysts to be increasingly legalistic especially in terms of handling disputes, member countries need to have representatives in Geneva as well as persons at home in their trade or foreign ministry that can deal with the issues. This is an increasing burden on smaller and especially developing countries. Effectively it means that some member countries may be disadvantaged relative to others.

The annual budget of the WTO Secretariat is around 160 million Swiss francs (US\$135 million). This comes from individual contributions from the members calculated on the basis of their share of global trade. The largest single contributor is the United States, at about US\$21.5 million per year, though the EU countries together contribute nearly US\$57 million. The WTO budget also supports the International Trade Centre, a capacity-building organization jointly supported by the WTO and the United Nations Conference on Trade and Development, and members make special contributions for technical assistance.

### **What are the agreements that the WTO administers?**

Agreements covering three areas - goods, services, and intellectual property - are the heart of the WTO. The complete set consists of about 60 separate agreements, decisions and declarations, and a listing of the commitments - known as schedules - made by each

member country. The schedules list the agreed upon custom duty rates and the commitments made by countries concerning the access allowed to their service industries. In all, this constitutes over 25,000 pages of material.

The agreements mirror parts of the WTO organization. The principal ones concern:

- **The General Agreement on Tariffs and Trade (GATT)**, whose mandate is to eliminate all remaining tariff and non-tariff barriers to the movement of capital and goods across nation-state borders;
- **The General Agreement on Trade in Services (GATS)**, which is the first multilateral, legally enforceable agreement on trade in services. Negotiations are now underway to expand the scope of the GATS to potentially cover all services, including key public services which could be opened to competition with transnational corporations and privatization;
- **Trade Related Intellectual Property Rights (TRIPS)**, which sets enforceable global rules on patents, copyrights, and trademarks which restricts access to life-saving medicines, and permits the patenting of many plant and animal forms, as well as seeds, opening the door to bio-piracy and the commodification of bio-diversity;
- **Trade Related Investment Measures (TRIMS)**, which dictate what governments can and cannot do in regulating foreign investment;
- **The Agreement on the Application of Sanitary and Phytosanitary Standards (SPS)**, which sets constraints on government policies relating to food safety and animal and plant health, ranging from those governing pesticide use and biological contaminants to policies on food inspection, product labelling, and genetically engineered foods;
- **The Financial Services Agreement (FSA)**, which was established to remove obstacles to the free movement of financial services corporations, including banks and insurance companies. This opens the door to mega-mergers in the financial sector and the loss of local economic control;
- **The Agreement on Agriculture (AoA)**, which sets rules on the international food trade and restricts domestic agriculture policy, including protection against dumping, protection for small-scale farmers producing for their domestic market, government support for farmers and sustainable agricultural practices, maintaining emergency food stocks, and ensuring that citizens have an adequate food supply;

- **The Agreement on Subsidies and Countervailing Measures (ASCM)**, which sets limits on what governments may and may not subsidize and contains many loopholes favouring wealthy countries and agribusiness;
- **The Agreement on Technical Barriers to Trade (TBT)**, set up to limit national regulations (non-tariff barriers) that interfere with trade, such as eco-labelling regulations;
- **The Agreement on Government Procurement (AGP)**, which sets limits on government purchasing, including “domestic content” or community development requirements.

### **How do countries join the WTO**

Most WTO members are previously GATT members who have signed the Final Act of the Uruguay Round and concluded their market access negotiations on goods and services by the Marrakesh meeting in 1994. A few countries which joined the GATT later in 1994, signed the Final Act and concluded negotiations on their goods and services schedules, also became early WTO members. Other countries that had participated in the Uruguay Round negotiations concluded their domestic ratification procedures only during the course of 1995, and became members thereafter.

Aside from these arrangements which relate to “original” WTO membership, any other state or customs territory having full autonomy in the conduct of its trade policies may accede to the WTO on terms agreed with WTO members.

In the first stage of the accession procedures, the applicant government is required to provide the WTO with a memorandum covering all aspects of its trade and economic policies having a bearing on WTO agreements. This memorandum becomes the basis for a detailed examination of the accession request in a working party.

Alongside the working party’s efforts, the applicant government engages in bilateral negotiations with interested member governments to establish its concessions and commitments on goods and its commitments on services. This bilateral process, among other things, determines the specific benefits for WTO members in permitting the applicant to accede. Once both the examination of the applicant’s trade regime and market access negotiations are complete, the working party draws up basic terms of accession.

Finally, the results of the working party’s deliberations contained in its report, a draft protocol of accession, and the agreed schedules resulting from the bilateral negotiations are presented to the General Council or the Ministerial Conference for adoption. If a two-thirds majority of WTO members vote in favour, the

applicant is free to sign the protocol and to accede to the Organization; when necessary, after ratification in its national parliament or legislature.

### **What are the principles of the WTO trading system?**

First, the trading system should operate without discrimination. This means that a member country should not discriminate between its trading partners. They are all to be treated equally on a most-favoured-nation (MFN) and national treatment basis. For example, an importing country should not apply different tariffs to the same product or producers of the same product of different exporting member countries; each exporting country should face the lowest (most-favoured) tariff on a good applied by the importing country. National treatment means that each country agrees to treat foreign and domestic products and producers equally inside the country.

A second principle is that the trading system should become freer over time with tariff and non-tariff barriers (NTBs) coming down through successive rounds of negotiation. This has been achieved in large measure through the lowering of tariffs on goods but much room exists to reduce NTBs for goods, and all kinds of barriers to trade in services.

Predictability is a third principle. This refers to the need to ensure foreign companies, investors, and governments that trade barriers will not be raised arbitrarily, and that all trade related policies are transparent to foreigners.

A fourth principle refers to making the trading system more competitive by discouraging unfair practices such as subsidizing exports and dumping products in foreign markets. Dumping occurs when products are sold in foreign markets at a lower price than in domestic markets and harm is created to industries in the foreign markets.

Finally, it is recognised that not all countries are equal and less developed countries may require special treatment; for example, longer periods for their industries to adjust to the lowering of tariffs.

### **Prohibition on Quotas : tariff-only please**

In addition to the principles discussed in the main text, the WTO has an important principle applicable to trade in goods. In the case of goods, the WTO postulates that tariffs should normally be the only instrument used to protect domestic industry (“tariff-only please”).

International flow of goods is subject to various nontariff barriers, such as quotas and licencing. Economists agree that quantitative restrictions such as

quotas are more harmful than tariffs as means of protecting domestic industries because quotas create more distortion than tariffs. Thus, the GATT (predecessor of the WTO) provided that, if some restrictions are necessary, they ought to be in the form of tariffs (not quotas).

In reality, however, agricultural products (and textiles and clothing) have long been subject to various quantitative restrictions. Previously more than 30% of agricultural produce had faced quotas or other quantitative restrictions. The Uruguay Round, in which negotiations were made in 1986-1994, made agricultural products closer to the basic principle of the GATT/WTO. The new rules for market access in agricultural product are now "tariff only".

Under the new system, all quantitative restrictions must be replaced by tariffs. The initial levels of protection can be equivalent; i.e., if, due to quotas, domestic prices were 50 percent higher than world prices, then the new tariff could be 50 percent. The process is called "tariffication". Member countries agreed that developed countries would cut the newly committed tariffs by an average of 36 percent, in equal steps over six years. Developing countries would make 24 percent cuts over ten years.

### How do the principles work in practice?

"Give me chastity, but not yet" is how one observer, paraphrasing St. Augustine, characterizes the WTO. Despite high-sounding principles, the WTO Agreements contain an extensive range of measures that permit members at least to modify, and at times to escape, their obligations. A full explanation of how these work would require book-length treatment. Here we provide brief examples of some of the main qualifications, which indicate how a member government can exercise a degree of sovereignty within the framework of rules prescribed by the agreements:

1. **Grandfathering pre-existing preferences** - This means that if, at the time of signing the agreement, a country gives some trading partners preferential treatment it can continue to do so.
2. **Regional trade agreements** - countries can be members of regional trade agreements, as well as the WTO even though there are different obligations. This represents a derogation of the MFN principle but is allowed under certain conditions.
3. **Waivers** - Waivers to obligations are permitted in certain exceptional circumstances. For instance, the United States received a waiver in the case of the Canada-United States Automotive Agreement (Auto Pact).

4. **Non-application of national treatment** - The national treatment principle does not apply to government procurement or to the provision of subsidies for domestic production.
5. **General Exceptions** - General exceptions are permitted in cases where government measures, although restrictive of trade, are required for reasons of: public morals; human, animal, plant life and health; compliance with domestic regulations; trade in gold and silver; the products of prison labour; conservation of natural resources; protection of national treasures; and participation in international commodity agreements.
6. **National Security** - Actions can be taken to protect national security.
7. **Food and human security** - Temporary export prohibitions are permitted in the case of critical shortages of food and essentials.
8. **Balance of payments** - A country can take measures to alleviate a balance of payments problem.
9. **Safeguards and countervailing duties** - Allowance is made for safeguards against injury caused to domestic industries by sudden increases in imports of products. In addition, a country has the ability to address cases of dumping, and to provide countervailing duties against subsidies.
10. **Concessions** - A country has the ability to reduce or withdraw concessions offered.
11. **Developing countries** - Special conditions are provided for developing countries.

### Enforcement of trade agreements

As no external enforcement mechanism exists to punish violations of international trade agreements, the best guarantee that a commitment will be kept is that the members continue to view adherence to their agreement as in their mutual interest. Since countries trade repeatedly through time, a natural possibility is to use the threat of future punishments to deter violations of an agreement. The dispute settlement procedure can be seen as a codification of exactly that. Thus, the WTO system, unlike most legal systems does not exclude retaliation but rather gives it a prominent role. The dispute settlement and enforcement provisions contained in the WTO are thus essential to the functioning of the multilateral trading system.

The effectiveness of enforcement mechanisms depends on the severity of credible threats. If this is the case, governments' ability to implement international trade agreements is constrained by their temptation to cheat. Indeed, when enforcement issues are important, the incentive constraints may determine equilibrium trade

barriers. This important point can be illustrated in an infinitely repeated tariff game setting. The idea is the following:

- An agreement to bind tariffs can be enforced if the one-time incentive to cheat is sufficiently small, relative to the discounted value of avoiding the “trade war” that would be triggered as a consequence.
- Therefore, if the one time gains are relatively large and the cost of future punishments are discounted heavily (the preference for the present is strong), enforcement will constrain the feasible set of trade agreements.
- The size of the one-time gains and the cost of future punishments in turn can be thought of as depending on the length of time it takes to observe the trade policies of one’s trading partner and respond.
- If monitoring is difficult for instance, it is likely that enforcement will constrain the feasible trade agreements.

Taking as a starting point the idea that enforcement issues constrain international trade agreements, economists have investigated the role of the dispute settlement procedure on facilitating liberalization under the agreement. As mentioned, the dispute settlement procedures can be seen as a codification of the trigger strategies supporting the most-cooperative tariff and thereby as contributing to the elimination of the coordination problem. This view is plausible but it abstracts from many complications. One such complication stems from the fact that trade policies may not be costlessly observable. In other words, one difficulty with enforcing international trade agreements is that such agreements are difficult to monitor. If the dispute settlement procedure allows discerning whether or not one of the players has defected, it will contribute to the elimination of costly trade wars. If on the contrary, the information-gathering role is weak, the periodic outbreak of trade wars may be necessary to prevent countries from cheating on the agreement. Thus, if the dispute settlement does not play an important information-gathering role, there will be a trade-off between allowing low-tariff episodes to be interrupted by costly trade wars and the ability to maintain low levels of barriers. The existence of a dispute settlement procedure can also be seen as endowing countries with a sense of “obligation” to the agreement, and this in turn can relax the incentive constraints that restrict the degree of tariff liberalization attainable. Violating this “obligation” may be seen as imposing a psychic cost in addition to the other costs imposed by retaliation.

In sum, there are opposing forces, which work to

shape the dispute settlement procedures in practice. The design of such procedures is therefore quite complicated and enforcement capabilities are necessarily imperfect. As a result, the nature and performance of international trade agreements are likely to reflect the limitations imposed by weak enforcement capabilities.

## **The WTO Dispute Settlement Understanding (DSU)**

### ***Legal approach: rule orientation, or conciliation and negotiation?***

According to lawyers, the dispute settlement serves the purpose of clarifying the interpretation of the rule, its scope, and appropriate exceptions. The issues then are whether the dispute settlement is oriented towards “conciliation and negotiation” or more towards “rule integrity”, and more importantly whether it should be oriented towards one or the other approach. This issue is related to the distinction between two techniques of modern diplomacy: a “rule oriented” technique and a “power oriented” technique. Under a “rule oriented” technique, international disputes are settled with reference to norms or rules to which both parties have previously agreed. The parties need to understand that an unsettled dispute would ultimately be resolved by impartial third-party judgments based on the rules. Under a “power oriented” technique disputes are settled with explicit or implicit reference to relative power status of the parties. Threats will be a major part of the technique employed.

The history of the dispute settlement under GATT does not give a clear answer to the question whether the dispute settlement is oriented towards “conciliation” or “rule integrity”. On the one hand, many specialists and diplomats see the GATT/WTO mainly as a negotiating forum. On the other hand, there are signs, such as for instance the shift from a “working party” to a “panel” procedure that the practice evolved in the direction of “rule integrity”. The appellate panel reports seem to strongly reinforce the “rule orientation” of the system.

### ***The procedure***

The Dispute Settlement Body (DSB), which comprises all WTO members, has the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of the implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under WTO agreements. If a member considers that a benefit accruing to it directly or indirectly under the WTO agreements is being nullified or impaired, it must first request bilateral consultations. If

consultations fail to settle the dispute, the complaining party may request the establishment of a panel, which must be created unless the DSB decides by consensus not to do so.

A panel is generally composed of three panelists and its deliberations are confidential. Panels must conduct examinations within six months. Within 60 days of the date of circulation of a panel report to WTO members, the report must be adopted at a DSB meeting unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. The Appellate Body, a standing tribunal created in the Uruguay Round, considers any appeals. The tribunal consists of seven members, of whom three serve on any given case. Appellate Body proceedings are not to exceed 60 days and are confidential. When a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it must recommend that the member concerned bring its measures into conformity with the WTO agreement. The last recourse for countries in enforcing compliance with DSB recommendations and rulings is the suspension of concessions (retaliatory action).

### **Developing countries and the DSU**

A number of provisions in the DSU relate to developing countries. Most of those however have proved to be more declarative than operative.

More generally, it has been argued that it is a waste of time and money for developing countries to invoke the WTO's dispute settlement procedure against industrial countries. Even if, the argument runs, a developing country obtains a clear legal ruling that an industrial country has violated its legal obligations; the developing country has no effective way to enforce the ruling. The only enforcement sanction provided by the WTO dispute settlement procedure is trade retaliation — the imposition of discriminatory trade sanctions by the complaining country against the trade of the defendant country. And trade retaliation by smaller developing countries, it is argued, simply does not inflict any significant harm on larger industrial countries. In the end, the argument concludes, retaliation will harm the developing country imposing it far more than it will harm the industrial country it is supposed to punish. On the contrary, industrial countries are in a better position both because they can afford to take countermeasures and because they can incur the costs of action being taken against them.

While there is no doubt that the procedure is one-sided, this does not necessarily mean that legal complaints by developing countries — that is legal complaints without the retaliation option — cannot be

a useful and effective policy tool. Hudec (2002) for instance, argues that the enforcement of international obligations cannot be explained by superficial analysis of dispute settlement procedures and remedies. According to him, the compliance decisions of governments are determined more by calculated self-interest than by force. In his view, three factors influence the decision of governments to comply or not. First, in principle, at least some of the political constituencies in the defendant country are likely to consider that the measures imposed by compliance are good policy. Second, some interest groups in the defendant country should perceive a value in the legal system itself. Third, the influence of active pressure by other governments should not be underestimated. Hudec's two main conclusions are thus that a legal ruling without retaliation can still be an effective policy tool for a developing country seeking to reverse a legal violation by a larger country and that developing countries should not expect too much from a more effective retaliation mechanism, which would not bring about a decisive change in the political fundamentals of WTO enforcement.

### **Participation in the dispute settlement mechanism**

After a few years of operation under the DSU, there seems to be widespread opinion that the WTO Dispute Settlement procedures are quite successful. The number of cases brought to the WTO dispute settlement system per annum is significantly higher than the number of disputes brought to the GATT. In the post-Tokyo Round period (1980-94) an average of 5 disputes were initiated every year. This compares to an average number of disputes per year of more than 36 in the period 1995 to 2002. A cursory look at which countries have been involved in the dispute settlement procedure as either complainant or respondent shows that developed countries have been much more involved than developing countries. This should not come as a surprise if one admits that the number of disputes should be proportional to Members' share of world trade. The share of developed countries in world trade is still much larger than the share of developing countries.

<b>Number of complaints by developed and developing WTO Members, 1995-2002</b>								
	1995	1996	1997	1998	1999	2000	2001	2002
Developing	8	12	7	10	7	14	21	18
Developed	13	27	39	34	23	16	4	16
Both	1	3			1		2	
Total	22	42	46	44	31	30	27	34
<i>Source: WTO</i>								

## Suggestions for reforms

At the Doha Ministerial Conference, member governments agreed to negotiate to improve and clarify the Dispute Settlement Understanding. These negotiations take place in special sessions of the Dispute Settlement Body (DSB).

Various proposals aimed at improving the WTO Dispute Settlement System have been presented. Here are some suggestions:

- Cost of the proceeding. The WTO should continue to develop methods to reduce the cost burden on poorer countries of participation in the dispute proceeding.
- Problems of factual evidence and evaluating scientific opinions. There is a perception that the WTO dispute settlement process is inadequate when it comes to evaluating detailed and complex sets of facts. There is also some concern about how panels evaluate some very difficult and complex scientific evidence. There is no simple straightforward solution to this problem.
- Problems relating to the implementation of the results of a panel procedure. The problems are the following. First, it is not clear what a "reasonable period of time" for implementing a panel report means. Second, there has been some controversy regarding the question whether a government mandated to change its activities by an appellate procedure report, can or cannot freely choose, instead of fulfilling the request, to accept or provide compensatory measures. Third, determining adequacy of performance is a difficult problem.
- Criticisms about transparency and participation. There is a concern about the amount of secrecy and confidentiality involved in the WTO dispute settlement processes. Non-government organizations and more broadly the "civil society" would like to have the right to participate in the dispute settlement panel processes.
- Improving the efficiency of the panel process. One of the background problems is the lack of a definitive set of rules of procedure for the first-level panel processes. It has been argued for instance that complainants have an advantage since they have much more time to prepare their case than the respondents have to respond.

## Given these qualifications, who does the WTO work for?

The WTO is set up to serve the interests of big business and promote economic globalization in a world increasingly dominated by transnational corporations.

(Of the 100 largest economies in the world, 53 are now corporations.) What these corporations want is to operate across borders under common rules and with little interference. For this to happen, governments must lose their power to set rules and standards. The essential goal of WTO rules is to deregulate international trade. The WTO agreements provide extensive lists of things that governments can no longer do. So it is not surprising that transnational corporations and their domestic and international associations have had a direct voice in shaping the entire structure of the WTO from the beginning.

In the United States, more than five hundred corporations and business representatives have official credentials as "security-clear" trade advisors, including the U.S. Chamber of Commerce, numerous Fortune 500 companies, the Business Roundtable (BRT), and a host of industry-specific lobby groups. Their members include the major energy, insurance, and financial giants, as well as major pharmaceutical companies and the newer players in the field, like HMOs (Health Maintenance Organizations), who were instrumental in creating the list of services in the GATS.

The powerful U.S.-based Pharmaceutical Research and Manufacturers Association spent U.S. \$197 million to elect Republicans to office in order to protect their patent monopolies. This was the most money ever spent by any corporate sector on elections in American history. In addition, Ambassador Allen Johnson, the Chief Agriculture Negotiator for the U.S. government in all international trade negotiations, was formerly the President of the National Oilseed Processors Association, whose members represent every major factory farm and biotechnology corporation in the world, including ConAgra, Cargill, Unilever and Procter & Gamble.

It is the same in the other QUAD countries. In Japan, it is the industry lobby group, the Keidanren. In Europe, the Commissioner of the European Union on WTO Policies and Administration maintains direct links with the European Round Table of Industrialists (ERT), which is composed of representatives of the fifty largest European-based corporations. The European Services Forum has lobbied forcefully to remove exemptions for public services from the GATS. In fact, in a May 2002 letter to the CEOs of Europe's three largest water corporations – Vivendi, Suez and RWE/Thames - EU Director General of Trade, Ulrike Hauer, thanked them for their contribution in negotiations to reduce trade barriers in water services.

None of these privileges are given to not-for-profit non-governmental organizations. As a senior WTO official told the Financial Times, the WTO "is the place where governments collude in private against their domestic pressure groups."



## How do WTO rules affect our lives?

Since its creation in 1995, the WTO has become a major influence in the lives of the world's citizens. Using both the fundamental rules of most WTO-enforced agreements combined with WTO enforcement mechanisms; the major power blocks and their big business sectors are forcing many countries to weaken their regulatory frameworks in several important areas.

### ● *Economic insecurity*

The WTO was not designed to produce jobs. It has rules and regulations that limit a government's ability to create jobs. For example, look at the WTO's Trade Related Investment Measures (TRIMS). Under these measures, governments cannot require a transnational corporation to meet job creation targets. Governments cannot demand that the transnationals balance their imports with exports to maintain a level of job security. **For the most part, WTO rules favour the interests of foreign-based corporations over domestic companies.** While transnational corporations certainly create jobs, they are not the major source of employment. **The largest 200 corporations in the world have more economic clout than 4/5<sup>th</sup> of humanity; yet employ a tiny percentage of all workers.**

The gap between the rich and poor is staggering. According to the 2000 United Nation's Development Report, there is a difference of 150 to 1 between the income levels of the top 20 per cent and bottom 20 per cent of the world's population. That represents a doubling in the last 30 years. The 225 richest people in the world now have a combined wealth equal to the annual income of half of the world's population. The three richest people have more assets than the combined gross domestic product of 48 countries.

By promoting free trade rather than fair trade, the WTO rules contribute to these gross economic differences. The prices paid to most Third World countries for their exports have declined steadily over the past 10 years. But the cost of imports to these countries has gone up considerably. Industrialized countries too have not lived up to their commitments to open markets for exports from the Third World. About \$100 billion USD are lost every year by goods exporting countries in the South because they cannot get access to markets in the North.

If global trade is going to increase economic security, then a fair trade agenda must replace the WTO rules.

### ● *Political insecurity*

Why do governments often seem powerless in the face of globalization? Why do people feel they have little

or not control over their economic, social, or ecological future? A big part of the reason lies in the WTO and its trade rules.

The WTO is much more than a global trade body. It makes the rules that control the global economy. **The WTO rules amount to a bill of rights and freedoms for transnational corporations.** Under these rules, governments must provide a safe haven for transnational investment and trade in their countries.

Through the WTO, transnational corporations are given virtually free reign to operate within the trade organization's 148 member countries. Equipped with WTO power tools like "National Treatment" rules and "Most Favoured Nation" status, these corporations can move their operations from one country or region to another. They can take advantage of more profitable investment opportunities, without being restricted by government intervention or regulation.

What's more, the WTO's mechanism for settling disputes gives the organization incredible power to enforce trade rules. **The WTO can strike down laws, policies and programs of democratically elected legislatures — including economic, health, social and environmental laws. All it takes is a panel of unelected trade experts to say that a country is violating the WTO trade rules.** If a country refuses to change its laws, it could face economic penalties that get bigger and bigger. No other global institution has such powers. The WTO is a serious threat to the political security of citizens and governments in democratic societies.

If we want global trade to provide conditions for political security through democratic control, then a fair trade agenda must replace the WTO rules.

### ● *Social insecurity*

Why is our social security rapidly disappearing through the privatization of basic public services and social rights? A major reason lies in the GATS rules of the WTO.

The General Agreement on Trade in Services (GATS) **gives transnational corporations the power tools to open up markets. These tools are largely aimed at deregulating and privatizing public services.** The GATS rules apply to all the ways of supplying and delivering services. This includes foreign investment, cross-border delivery, electronic commerce and international travel. The GATS rules include a set of legal limits on what governments can do to restrict the private sector. No other trade regime has reached so far into the policy jurisdiction of governments.

Negotiations are now taking place at the WTO to expand the GATS to include public services like health care, education, social assistance, transportation, postal,

drinking water and a variety of municipal services. Trade-in-services is the fastest growing sector of the global economy. No wonder, there is a lot of money to be made in privatizing public services. Health care is already a \$3.5 trillion annual market worldwide. Education is pegged at \$2 trillion and water at \$1 trillion.

The CEO of the world's largest for-profit hospital corporation (Columbia/ HCA) insists that health care is no different than the airline or ball bearing industry. He vows to destroy every public hospital in North America. Investment houses like Merrill Lynch predict that public education will be privatized the world over during the next decade. Water service corporations like Vivendi and Suez of France are moving aggressively to privatize water in the U.S. and Canada. At the same time, they are working hand-in-glove with the World Bank to force developing states to do the same.

This is nothing new for most peoples in the Third World. There the "structural adjustment programs" of the IMF and World Bank have already stripped the poor majority of their basic social rights. The GATS will simply reinforce the effects of these programs.

If global trade is going to provide conditions for strengthening peoples' social security, then a fair trade agenda must replace the GATS rules on public services.

#### ● *Ecological insecurity*

Why are so many people feeling anxious about their ecological future? Why do climate change, global warming and the fear that not enough is being done to ensure the survival of the planet trouble people? Part of the reason lies in the WTO and its trade rules.

The WTO rules do not protect the environment. Under Article XX of the General Agreement on Trade and Tariffs (GATT), member countries can adopt laws "necessary to protect human, animal or plant life or health ... relating to the conservation of exhaustible natural resources..." But the WTO rules also make it clear that environmental protections cannot be applied in a way that discriminates against transnational corporations. Nor can governments legislate environmental regulations that the WTO says are a disguised barrier to trade.

**In disputes brought before the WTO, business rights have been consistently upheld over environmental rights.** Also the WTO rules trump all international environment standards in favour of the global economy. For example, the WTO rules do not recognize the authority of the Multilateral Agreements on the Environment. They also threaten to undercut agreements such as the International Convention on Endangered Species of Fauna and Flora.

The WTO rules are also a threat to the Earth's biodiversity. Under the WTO rules on Trade Related Intellectual Property Rights, transnational corporations can claim ownership by taking out patents. Now pharmaceutical and agro-chemical corporations want to revise these rules at the WTO. They want to allow the patenting of life forms, including medicinal plants.

**An example of bio-piracy that would be protected by the WTO rules is the use of patent laws by the W.R. Grace Co. to claim ownership over the Neem Tree in India. This tree has been a traditional source of medicine for communities for centuries.**

#### ● *Peace insecurity*

Why did the global arms race continue after the collapse of the Berlin Wall and the end of the Cold War in 1989? One of the reasons is that the WTO encourages militarism and the arms race.

According to the WTO, it looks like governments have one legitimate role. That role is to provide a military infrastructure to protect their countries and a police force to ensure civil order. The only areas of government activity not covered by WTO trade rules are military operations and police enforcement. The right of individual governments to control these areas is provided under the WTO's so-called "security exception" clause (Article XXI of the General Agreement on Trade and Tariffs).

The security exception clause gives governments the freedom to take any actions deemed necessary to protect their national security interests. **These include actions "relating to the traffic in arms, ammunition and implements of war and such traffic in other goods and materials as is carried on directly for the purpose of supplying a military establishment [or] taken in time of war or other emergency in international relations."**

Under the protection of this WTO clause, massive government subsidies fuel the arms industry and military build-up in Third World countries. In the U.S., much of the annual \$309 billion military budget subsidizes corporate players like Lockheed Martin, Boeing, BAe Systems, Raytheon, Thomson-CSF, and Daimler-Chrysler. These corporations form the backbone of the military-industrial complex.

If we want global trade to establish conditions for peace security, then a fair trade agenda must replace the WTO rules.

#### ● *Food insecurity*

Why is there so much insecurity about food in the world today? Why do millions of people face the constant threat of hunger? Why do unsafe genetically engineered products now threaten people all over the

world? Once again, the answer lies in part with the WTO rules.

The world's largest agribusiness corporations are using the WTO negotiations on agriculture to remove any government mechanisms that can still be used to stimulate domestic food production. Government support programs for domestic food production are a key target. So are state enterprises that control the imports and exports of food products. Support programs for small farmers are essential for food security in many parts of the world. They provide food supplies for domestic needs and guarantee a livelihood for small producers.

Nations and peoples have a sovereign right to maintain food security. But the major food producing and exporting countries are using the WTO to take away this right.

They want to create a global system to make all nations and peoples dependent on a handful of agribusiness corporations and food conglomerates like Nestlé, Unilever, Conagra, Cargill, Sara lee, Nabisco and Archer Daniels Midland.

Meanwhile, the WTO has undercut the right of governments to regulate the safety of genetically engineered food products. For example, when the European Union banned the import of hormone beef products, the WTO ruled against the EU and called for the ban to be lifted. The EU refused to do so. The WTO let the major beef exporting countries slap trade sanctions on the EU, even though the ban was to protect public health and the environment. Recently, biotech food corporations have been calling for a "stand alone" accord at the WTO. This accord would open up all countries to genetically engineered foods.

If food security is to become a reality, then a fair trade agenda must replace the WTO rules.

- **Human insecurity**

As the global economy expands, why do labour and human rights violations continue to grow, causing

more and more social unrest? The WTO contributes to these human insecurities as well.

**The WTO rules do not incorporate core human rights standards of the U.N. Human Rights Commission. They do not include core labour standards of the International Labour Organization (for example, workers rights to organize unions, collective bargaining, fair wages, health and safety standards).**

As a result, transnational corporations can take advantage of the WTO's trade and investment rules to exploit workers. They can take advantage of cheap labour conditions through sweatshop factories and free trade zones with no labour laws or human rights codes.

At the same time, corporations have used the WTO to stop citizen attempts to prevent human insecurities. For example, the U.S. State of Massachusetts passed a law restricting trade and investment in Burma, a country that consistently violates labour and human rights. But European and Japanese corporations tried to have the law struck down at the WTO. Finally, the federal district court in Boston overturned the Massachusetts Burma law. It did so in response to a legal challenge by the National Foreign Trade Council, which represents 600 U.S. corporations. The council argued that the U.S. government had to maintain its commitments at the WTO.

As the U.S.-led war on terrorism heats up, these types of human insecurities are bound to intensify.

**The recent outbreak of hate crimes against Arab and Muslim communities in the U.S. and elsewhere could extend to people of colour in general. Since "fighting terrorism through trade" has become the rallying cry of the U.S. Trade Representative, one wonders if and how the WTO and its rules will be used to further suppress labour and human rights.**

If conditions for human security— respecting both human rights and core labour standards— are to be put in place, then a fair trade agenda must replace the WTO rules.





# Agreement on Trade Related aspects of Intellectual Property Rights (TRIPS)



## Introduction

Intellectual property rights have become progressively more important as the trade in goods and services, as well as foreign direct investment, increases quantitatively in the global environment as well as qualitatively—in the digital environment.

According to a Pricewaterhouse Coopers report in 1999 the global intellectual property (IP) licensing market totaled more than \$100 billion, up from \$50 billion in 1990. National laws to protect intellectual property preceded international treaties by several centuries. It is thought that the first law to protect inventions by a form of patent was in Venice in 1474. Modern laws were established in many countries towards the end of the 19<sup>th</sup> century, during a period of rapid growth in industrialization.

## International protection

There are numerous international treaties and agreements relating to intellectual property some of which have been in existence for a long time. Treaty regimes include the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1889). They have been amended several times. These treaties give international protection by providing foreigners equal protection to those given to nationals of signatory countries.

The Paris Convention also gives priority rights to applicants of trademarks, designs and patents in other member countries. They are administered by the World Intellectual Property Organization (WIPO) which is a UN specialized agency located in Switzerland. There are also a number of newer international treaties for example the Patent Cooperation Treaty (1970) (PCT). This streamlines and reduces the cost of obtaining international patent protection as well as providing protection for a new invention in all of the member states (presently 117) throughout the world. There are also a number of bilateral and regional treaties.

Although the Paris and Berne Conventions provided IP protection during the 20<sup>th</sup> century, this provision has not been as satisfactory in recent years due in part to increasing globalisation and new discovery and invention areas such as integrated circuits and computer software.

Additionally there has been the reality of growing technological capabilities of some developing countries that may not have joined the international agreements and/or did not enforce the IP laws.

Many countries were able to acquire IP protected goods at cheaper prices through copying, with “piracy” of books, videos and computer software being simple and readily available, as well as counterfeiting of fashion and other goods. The loss of revenue US corporations were suffering as a result of counterfeiting and piracy was the motivation for the United States to push in the Uruguay Round of negotiations to have an agreement on intellectual property included in World Trade Organization (WTO). The sectors that were mainly affected were pharmaceuticals, entertainment, publications, specialty chemicals and information technologies.

## Protection of intellectual property

Debate over the claim to intellectual property traces back to the beginnings of IP protection. It has varied over history and among societies just as have perspectives on real property. The positions taken by various nations reflect their differing cultural, philosophical, historical, economic and political points of view regarding the need for strong IP protection<sup>11</sup> as well as their public policy and health needs and stage of development. For example during its period of development as a newly emerging industrial nation the United States used its copyright laws to deny IP protection for other nations’ authors. We need to keep in mind the difference between protecting IP within countries and protecting it globally and the differing effects. For each rationale a countervailing view, which seeks to address the global dimension, is put.

1. *Natural or moral rights.* The person who creates the property should have the right to own and control it. Art 27 (2) of the Universal Declaration of Human Rights provides: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author".

The question here is what is the nature of the right? How long should the protection last and under what circumstances should the protection be granted? If rights and responsibilities go together then the rights and obligations of individuals to society must be factored into this right as well as obligations of nations to each other. The countervailing human right is the right of all human beings to a standard of living that affords adequate health and medical care: Universal Declaration of Human Rights Art 25.

Abbott (1997) notes that whilst to some commentators, IP rights are a "right of nature" to others they are "purely a product of government." He states that whatever the fundamental basis of IP rights ownership, it has long been accepted that the scope of the protection must be defined by government. Moreover the scope is defined under a public welfare analysis that balances the interests of IP owners and the public, just as government decides the extent of ownership rights afforded by title to land. Global governance bodies are now increasingly deciding the scope in the international arena.

2. *Recognition and reward.* IP rights are an incentive for the time and money put into the research and development taken to produce the inventive work. The owner should get the recognition and benefit of the revenue generated by the exploitation of the intellectual property created and "free-riding" should be prevented. As against this is the argument that actual individual inventors rarely do so for the money. It is the major corporate owners of the work who have the time and money to produce the work and to patent it. Obtaining the patent is expensive both in research and development and in filing an application. However the reward over 20 years may often be excessive and the cost to the purchaser of the IP is a major part of technology transfer. Whereas free riding may be "unfair", so too are some licensing fees that require poor nations to pay dearly for essentials.

3. *Economic growth.* Recognizing and rewarding innovation stimulates further creativity and innovation and this in turn stimulates economic growth. TRIPS protection enhances the security of capital of IP rights holders. However economic studies since the 1980s have not been able to determine or measure the relationship between IP protection and international economic development.

4. *Dissemination of information and ideas.* Protecting intellectual property encourages the dissemination of the ideas and contributes to the knowledge base e.g. patents are published and provide a valuable source of technical knowledge. However, the cost may be out of reach of many countries, which need technology and essential medicines and food. Many argue that access to such essentials is a common heritage of humans especially given intellectual property's undeniably historic role in the industrialization of a developed country and in improving the health of its citizens. And are the inventions new and innovative or are corporations simply patenting what may have formerly been regarded as community property in developing countries, for example seeds and plant varieties?

5. *Economic efficiency.* Recognizing intellectual property rights, like any other property rights, results in an efficient use of resources. One could also argue that the creation of monopolies (which intellectual property protection does) results in inefficient use of resources. There is no international competition law to balance and contain anti-competitive practices. Rather the wealth of developed countries is protected and the right of the international community to share the benefits accruing from the advancement of science and technology is denied.

6. *Consumer protection.* Consumers are able to make informed choices about products and services. Brand names simply make products more expensive. Consumers pay for the name not necessarily a better product and big brand names are often produced in overseas third world countries in sweat shop conditions where the workers earn a fraction of the price that is ultimately charged for the product.

7. *Technology transfer.* Intellectual property systems facilitate the transfer of technology through foreign direct investment, joint ventures, licensing, franchising, turnkey arrangements and other business applications and agreements.

Countries are "locked in" to arrangements with western transnationals, which, it can be argued, benefit the transnationals as much as if not more than the host country. Although government and other public institutions are involved in technology transfer, the bulk of it is done through the private sector dominated by multinational corporations which conduct nearly all the world's research and development and are the sources of most technology.<sup>19</sup> There is no obligation to transfer technology on the part of the industrialized nations of the North, although there are now increasing obligations on the developing countries of the South to provide IP protection. Moreover there is absence of correlation

between developing countries that grant high levels of IP rights protection, and the level of foreign investment in them.

### **The Agreement on Trade Related Aspects of Intellectual Property Rights**

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) was finalized at the end of the Uruguay Round of world trade negotiations in 1993. It was signed at Marrakesh, Morocco in April 1994 as an annex (Annex 1C) to the Agreement establishing the World Trade Organization (WTO). TRIPS entered into force on January 1, 1995. It was been described as being probably the most significant development in intellectual property in the 20th century.

The main purpose of TRIPS was to improve IP protection and enforcement in developing countries and prevent exports from countries in East Asia and Latin America of pirated and counterfeit products.

What is significant about TRIPS is that it links intellectual property rights to trade under the WTO and subsumes aspects of the Berne and Paris Conventions. This means that a country cannot become a member of the WTO, and thereby part of the world trading system without acceding to TRIPS. This also involves enacting legislation in home countries to give effect to TRIPS and its enforcement mechanisms, which includes sanctions. Additionally TRIPS has greatly extended IP protection to areas where patent protection was not required under the Paris Convention, such as pharmaceuticals, agricultural chemicals, food and new plant varieties.

It has also signaled the shift from what were minimum standards of protection under WIPO to global harmonization of IP protection laws administered by a WTO Council. The result is a set of worldwide rules with stronger enforcement, protecting a broad range of intellectual property, which is largely owned by industrialized countries.

The TRIPS Agreement does not define intellectual property. It states in Art 1.2 that intellectual property includes the seven categories dealt with in the Agreement (Part II, sections 1-2). These are:

- Copyright and related rights i.e. rights of performers, producers of sound recordings and broadcasting organizations
- Trademarks, which distinguish goods and services
- Geographical Indications, those relating to origins of goods in a particular geographical place or name. This includes particular protection for wines and spirits

- Industrial Designs that are new and original
- Patents including the protection of new plant varieties
- Layout Designs of Integrated Circuits
- Protection of Undisclosed Information including trade secrets and test and other data.

### **Breadth and length of TRIPS protection**

One of the most problematic areas of global intellectual property protection under TRIPS is the patent. Although it is argued that patents are a valuable source of technical knowledge encompassing “state of the art” inventions, yet today patents extend far beyond technical knowledge and inventions. The Paris Convention applies to “industrial property” which includes inventions, marks, industrial designs, utility models and trade names. TRIPS goes much further in what is required to be patented.

It requires all **products and processes** to be patented and this includes plant varieties, seeds, genetic materials (animal and human) and pharmaceuticals, which are all life-creating and life-sustaining substances. There is a qualitative difference between life sustaining substances and technical innovations. Patents create a monopoly, which under TRIPS is for a universal period of not less than 20 years. This is a longer duration than may have been provided by existing domestic legislation. For example Australia had to increase its patent protection term from 16 to 20 years to comply with TRIPS.

The existence of these lengthy patents means that importing poor countries have to pay large sums of money, which they may not be able to afford, to sustain life itself in the form of certain foodstuffs and pharmaceuticals. This expense is quite apart from outlays for technology required for development needs. The example often given is of the need in developing nations of anti-viral medicines to combat such illnesses as HIV-AIDS, tuberculosis, malaria and yellow fever. These are fatal illnesses with HIV-AIDS having reached pandemic proportions in Africa, Asia and South America.

Prior to TRIPS, countries could import cheaper generic drugs because patents on pharmaceuticals were not part of the world IP protection regime. TRIPS has also figured in two high profile disputes. In South Africa, 39 drug companies began a court action to prevent the South African government from importing cheap generic copies of HIV / AIDS drugs. Subsequent to this the US took Brazil to a WTO dispute panel to prevent Brazil from producing generic copies of vital drugs.

Trade secrets are also given protection under TRIPS. This is an area that has not had international protection

before, at least until The North Atlantic Free Trade Agreement. Some countries argued during the Uruguay Round that it was not necessary to include trade secrets in TRIPS, as IP protection deals with disclosable subject matters, not business secrets, which had historically been left to legal provisions of national systems.

### **Implications of TRIPS**

The consequence of TRIPS is that for rich and developed countries whose corporations develop and export technology there is a huge advantage. IP protection is now mandatory, tied to trade and enforceable by the WTO, which may impose trade sanctions. Moreover, the owners of IP may impose other retaliatory measures on those who fail to provide adequate protection. Additionally IP protection is extended under TRIPS. Transnational corporations now have added protection for pharmaceuticals, agricultural chemicals, food and new plant varieties.

For importing developing and least developed countries there is severe disadvantage. Lacking bargaining power and needing technology and to be part of the world trade system they had little choice but to accept the TRIPS Agreement. They have been denied the "soft" protection of WIPO and have been placed on a level playing field with the most advanced countries. Additionally TRIPS further disadvantages developing countries in areas of pharmaceuticals, agricultural chemicals, food and new plant varieties where patent protection was not required under the Paris Convention.

TRIPS is another manifestation of the globalization process being in danger of widening the gap between the rich and poor. A sophisticated, globalized, increasingly affluent world currently exists with a marginalised global underclass.

### **Implications of the TRIPS Agreement for Developing Countries**

Overall, the TRIPS Agreement will have a substantial impact on intellectual property regimes in developing countries. Two groups of countries can, however, be distinguished in terms of the adjustments called for.

The first group comprises those countries which already have legislation that conforms to a considerable degree with the substantive standards of the TRIPS Agreement. Some of these countries have introduced significant changes in their IPR legislation in the last five to ten years, as a result of pressures and threats by the USA to apply Section 301 of the US Trade Act. In these countries, the level of substantive adjustment required may not be very significant, though changes in certain aspects or the enactment of new legislation (e.g. concerning layout designs of integrated circuits) may be necessary to satisfy the Agreement's provisions.

In particular this may apply to the provisions relating to the enforcement of IPRs, i.e. those that regulate the judicial and administrative actions available to private parties to combat infringement of IPRs.

A second group consists of countries that, despite foreign pressures, have not yet amended their legislation or have only done so partially. In this case, legislative action will be required and the implications will be wide-reaching and significant. They will, however, differ sector by sector. A comprehensive analysis of the implications of the TRIPS Agreement for developing countries is, however, beyond the scope of this document. When drafting the legislation or considering its eventual review, developing countries should take account of the possible impact of the new framework for IPRs on local innovation, technology transfer, foreign direct investment and trade. No conclusive evidence exists on the benefits and costs of reinforcing IPRs. They are likely to vary considerably in accordance with the level of economic and technological development of the country concerned. Some of the key aspects to be addressed are outlined below.

### **Innovation**

One of the key issues to be addressed is whether the new regime is likely to stimulate local innovation. If the national R&D infrastructure is weak, strengthened protection is unlikely by itself to lead to any general increase in the rate and level of innovation.

Expanded protection may, however, affect public policies on science and technology. This may be the case if public research institutes become more inclined to protect their research results and privatize their use, for instance by transferring the titles to such results to a private enterprise or by granting it exclusive rights of exploitation.

### **Technology transfer**

It is not clear what the impact of increased protection is likely to be on the transfer of technology. On the one hand, it may facilitate access to technologies that the title-holders may be reluctant to transfer in the absence of intellectual property protection. On the other hand, with stronger protection, the risk of imitation will be lower and, to the extent that title-holders can exploit their technology alone, they may be less inclined to part with it. As a result, it could become more difficult to obtain protected technology and, if it is obtained, royalties and other prices are likely to be higher.

There is evidence to suggest that since the 1970s policies and measures affecting access to technological and scientific knowledge held in industrialized countries have become more restrictive, reducing the flow of technology to developing countries. This trend



could be reinforced by the higher levels of protection established by the TRIPS Agreement.

### **Foreign direct investment**

As in the case of technology transfer, the existence of certain standards of IPR protection will be one of the elements taken into consideration by potential foreign investors with respect to their decisions on where to locate their production facilities. However, to the extent that the levels of protection are substantially harmonized under the TRIPS Agreement, IPRs are likely to become a less significant issue in investment decisions, except with respect to the effective enforcement of available rights.

Moreover, as mentioned above, the reinforcement of IPRs (and, in the case of patents, the lack of obligation to work the protected technology locally) may lead to corporate decisions to locate production in the home country and to promote the export of products that incorporate protected innovations, rather than to engage in foreign direct investment for the purpose of manufacturing products in or near attractive foreign markets. The TRIPS Agreement, in the absence of other incentives, may, therefore, reduce the flow of foreign direct investment.

### **Trade**

Technology-holders from industrialized countries, which generally possess the resources to protect and enforce their rights globally, will be able to trade under the exclusive rights conferred by IPRs. Firms from developing countries, in contrast, generally lack the means to seek and enforce protection for their innovations in foreign countries, because of the high cost involved and their lack of specialized knowledge. The TRIPS Agreement could have an asymmetric impact on North-South trade flows.

### **Implications in selected areas**

In view of the importance of the implications of the TRIPS Agreement in the fields of pharmaceuticals, plant varieties and software, particularly for developing countries, these are examined briefly below.

Special value is attached by large pharmaceutical firms to the availability of patent protection both for processes and for products. They have pursued unilateral action and have been among the most vigorous protagonists of multilateral negotiations with respect to intellectual property in order to extend and reinforce such protection. This is partly explained by the heavy expenditure involved in the development of new drugs, estimated to average around US\$ 200 million per new chemical compound, as also by the fact that new products may be imitated relatively easily, as suggested by short imitation time-lags.

Many developing countries did not begin to grant patent protection for pharmaceutical *products* until the late 1980s, though the majority did recognize *process* patents in the field. The enforcement or threatened enforcement of section 301 of the US Trade Act by the US Government and the GATT negotiations were intended to secure changes in the legislation of these countries. Facing the threat of trade retaliation, due to what was considered to be their lack of or inadequate protection for pharmaceuticals, many developing countries have thus responded in recent years by changing their laws accordingly (Chile, Mexico, South Korea and others).

Others (e.g. Egypt, India, Jordan), however, have not so far granted product protection and are considering availing themselves of the possibility of the additional transition period provided by the TRIPS Agreement. This would permit a delay in providing patent protection for pharmaceutical products of up to ten years for developing countries and sixteen for least developed countries. Many developing countries are also introducing or strengthening provisions concerning compulsory licences on grounds of competition, health or public interest.

There are strong arguments favouring such an approach. Pharmaceutical products have wide social implications and governments are particularly concerned with health aspects and with the impact of patents on consumer prices and government health expenditures.

There is evidence that the patent system has a detrimental impact on pharmaceutical prices, particularly if the product itself is protectable. Even after a patent expires and competition from 'generic' products (which are not protected by patents) develops, the original innovator is able to maintain, through brand loyalty, prices higher than those that would be realized in the absence of patents.

The introduction of patents for pharmaceuticals in countries that do not currently grant them may, therefore, imply significant social costs due to the higher prices charged for medicaments. Depending on the scope and coverage of the national health systems, there may also be a significant impact on public finances.

Governments may also have broader development concerns. Given the technological superiority of large pharmaceutical firms and the high costs of R&D for new drugs, it is almost always foreign enterprises that hold product patents in developing countries. With very few exceptions, pharmaceutical firms owned by developing country nationals have neither the size nor the competence to develop new molecules, and will therefore be dependent on the willingness of foreign

companies to license their new patented products. As a result, national industrial development could be substantially hindered and there is likely to be an immediate increase in repatriated profits and royalties, which will have an impact on the balance of payments.

Moreover developing countries have ground for suspicion concerning the argument that patent protection generates benefits in terms of more local R&D by domestic or transnational companies and of increased flows of technology. Given the substantial finance needed to develop a new drug, very few developing countries' firms, if any, have the minimum size required to support the necessary R&D expenditures. In addition, with the granting of product patents, access to protected technology by local firms in developing countries will become more difficult, even impossible, since the title-holder's bargaining position will be reinforced and it will be possible to supply the market through exports from elsewhere. As suggested by the case of Turkey after the abolition of pharmaceutical patents, the transfer of technology and foreign direct investment may be stimulated in the absence of patent protection.

Many developing countries also fear that the most dynamic segments of the pharmaceutical market, where the prospects of growth are highest, will be excluded for domestic firms as a result of the new patenting rules. This is likely to be the case with respect to drugs based on biotechnology, where 'inventing around' (i.e. developing drugs based on similar compositions) is more difficult, particularly to the extent that the drug in itself replicates a substance existing in nature.

In conclusion, the concern that the social and economic costs of introducing pharmaceutical patents are likely to outweigh the benefits in the case of most developing countries suggests a cautious approach to intellectual property protection in the area of pharmaceuticals. Since under the TRIPs Agreement member countries are bound to provide such protection, compensatory measures and schemes to avoid the negative impact of monopolization of drugs will need to be devised. Such measures could include, for instance, appropriate compulsory licence systems which facilitate access to protected technologies and raw materials. In the new framework for IPRs, this type of licence may be an important tool for preventing anti-competitive practices and for persuading title-holders to grant voluntary licences on reasonable commercial terms.

Developing countries possess most of the world's biodiversity. They are the source of genetic resources (such as medicinal plants) of great value for agriculture and industry. Traditional farmers in particular have contributed and still contribute to the continued

improvement of plant varieties and to the preservation of biodiversity. These genetic resources providing gene pools crucial for major food crops and other plants have been freely transferred to developed countries in the past, on the understanding that they were a 'common heritage' of humanity, as expressed by the FAO International Undertaking on Plant Genetic Resources (FAO Resolution 8/83).

In contrast to their wealth in genetic resources, most developing countries lack the technological and financial resources to fully exploit these resources. With the advent of modern biotechnology, many developing countries fear that their varieties may be genetically changed and that the new varieties may later be substituted for the original varieties from which they were derived. Moreover, if intellectual property protection for plant varieties is reinforced and extended, foreign companies may become the 'owners' of varieties originating in developing countries.

Protection for plant varieties is not new. In the 1920s and 1930s several countries introduced legislation that gradually evolved into a *sui generis* system of protection (breeders' rights) that is distinct from the patent system. Based on the criteria of distinctness, novelty, uniformity and stability which have to be satisfied, "breeders' rights" have typically allowed control over the commercialization of propagating materials such as seeds, without prejudice, however, either to the use on their own land of seeds saved by farmers ("farmers' privilege") or to the development of new varieties by a third party taking as a starting point a protected variety ("breeders' exemption"). The *sui generis* regime was established at the international level in the 1960s, with the adoption of the International Convention for the Protection of New Varieties of Plants (the UPOV Convention). This regime introduced a number of minimum standards for the recognition of breeders' rights and prohibited the simultaneous use of patent and *sui generis* protection for plant varieties. Many countries explicitly excluded the patentability of plant varieties and of the essentially biological processes such as breeding methods involved in obtaining them.

The UPOV Convention was ratified by a small number of developed countries and until recently no developing country had become a member. Some, however, have introduced national legislation on breeders' rights. During the 1980s, however, developed country enterprises began to exert pressure to modify the situation described above. Biotechnology-based firms were interested in obtaining patent protection for processes and genes used in plant varieties and for plant varieties as such. In 1986 a patent for a plant was granted in the United States, which gave rise to a worldwide debate on the patenting of plants and plant varieties.

In 1991 the UPOV Convention was revised with the effect of eliminating the prohibition of double protection (i.e. through patents *and* breeders' rights), expanding exclusive rights (to cover propagating and harvested materials in some circumstances) and incorporated the concept of "essentially derived variety". Furthermore, "farmers' exemption" was no longer a general principle and became an exception which may be established by national legislation.

In European countries the ban on patenting plant varieties is still in force, but these countries now tend to accept an interpretation of the prohibition on patenting plant varieties such that other plant classifications, parts or uses of a variety can be protected.

The differences between developed countries concerning the form of protection to be given to plant varieties were reflected during the negotiation of the TRIPs Agreement. The result is that the TRIPs Agreement stipulates that the protection of plant varieties may be based on patents or a *sui generis* regime or on a combination of both systems. For most developing countries, this will represent a substantial change since the majority currently do not protect plant varieties.

The recognition of patents on plants (including plant varieties) is strongly resisted by many developing countries, for several reasons. First, the patentee would be authorized, in principle, to prohibit the re-use of saved seeds by farmers, with the consequence that farmers' costs would rise and the dominance of large seed companies would be strengthened. Second, breeding based on protected varieties would be banned, while patent protection would not encourage the kind of innovation that generally takes place at the farm level. Third, the patenting of certain traits (e.g. higher oil content, disease resistance, higher yield, etc.), or broad claims on genes, seeds and/or plants, may subject the production and marketing of important crops to monopoly rights. Fourth, patenting would contribute to further standardization and reinforce the trend towards monoculture, both of which erode biodiversity. Patenting could also lead to increased concentration in farm ownership and in the seeds industry, with small and medium farmers and breeders likely to suffer the worst impact.

In the opinion of the proponents of an expanded and reinforced patent-based approach, protection is required in order to provide an incentive for innovation, by ensuring a reward for R&D outlays. In their view, the possible negative impact of protection would be offset by benefits to be derived in terms of new and better varieties. It is clear, however, that the negative consequences of patenting plant varieties in developing

countries may outweigh any possible advantages. This would suggest that a *sui generis* regime would be the most appropriate approach in such countries, and that the coexistence or "accumulation" of patent protection for plant varieties with that of the *sui generis* approach should not be contemplated by developing countries.

Software has become a major component, in value terms, of any computer system. Though its development may require considerable time and resources, it is easy and inexpensive to copy. World software production and trade is largely controlled by firms of developed countries, particularly those in the United States.

The protection of software has been one of the most controversial issues in the recent history of intellectual property. Since the formal adoption in the United States, in 1980, of copyright law as the main framework for the protection of software, many developed and developing countries have followed the same approach. The United States Government and firms have actively promoted this mode of protection at the international level. Software became one of the main issues in bilateral negotiations and frequently the subject of actions under Section 301 of the US Trade and Tariffs Act. The firm stance of the world's major software producers contributed to the imposition of the copyright standard and to the dismissal of proposals to establish a *sui generis* regime for software. Thus the TRIPs Agreement defines computer programmes as literary works which are protectable under copyright law.

Copyright has many advantages for the protection of software internationally. Unlike patents, registration in each country is not necessary. In order to obtain protection, which is conferred as of the date of creation and for very long periods (typically, for 50 years after the death of the author). Copyright protection does not require disclosure, in this case of the source programmes. Therefore, computer programmes sold in their object programme (i.e. the programme in its magnetic form), benefit *de facto* from both trade secrets and copyright protection. Moreover, the requirements to be satisfied in order to qualify for protection (based on the concept of originality) are less stringent than under patent law.

Notwithstanding these advantages, the copyright solution has not satisfied everybody in the field, and its application to software is still under discussion. It is generally accepted as appropriate that legislation should protect software producers against 'piracy', that is, against the copying of computer programmes — a practice that has allegedly caused multi-billion losses to innovating firms. Discussion therefore focuses on what form protection should take and on the extent of the rights conferred.

The functional nature of software has posed a major challenge to copyright law, and particularly to the fundamental distinction between ideas (which are not protectable) and expression (the copyrightable subject matter). Some court decisions in the United States have held that the protection afforded by copyright extends beyond the copyright of expression to the functional aspects of the software — its structure, sequence and organization. More recently, a heated debate has taken place on the possibility of protecting user interfaces — that is the ‘look and feel’ of the software.

The question of the protectability of programme interfaces has drawn attention to one of the key points with respect to the development of the industry, particularly in developing countries, namely to degree to which reverse engineering is legitimate under copyright law. Reverse engineering is necessary in order to understand a programme and for developing other programmes that may inter-operate with it or replace it, or for purposes of maintenance. The vast majority of interfaces used in the computer world today are produced by large suppliers and are *de facto* standards. If reproduction (including decompilation or reverse engineering) of protected software is forbidden and interfaces can be protected through copyright, the development of competitive products would be drastically limited.

While the extent of protection conferred on software under copyright law is the subject of debate, a growing number of patents on computer programmes have been issued in the United States. Its Patent and Trademark Office regularly considers a computer algorithm to be patentable subject matter in that it is not purely mathematical. The number of computer-related patent applications have significantly increased. The patentability of software-related inventions may permit the title-holder to monopolize the basic concepts and the crucial programme interfaces. Moreover, patent protection may not be a substitute for copyright protection but may be additional to it, thereby tending to curb competition and new developments even further.

The countries that considered the possibility of developing a *sui generis* system of protection but which were forced to abandon it, now face the paradoxical situation that, even in the United States, a growing number of experts have come to the conclusion that software, as a unique functional work, requires a new, hybrid intellectual property system.

The Office of Technology Assessment (OTA), in a Statement to the US Congress, suggests that: “the distinction between writings and inventions is indeed breaking down with respect to functional works such

as computer software and semiconductor chip masks. Because there are many works of this type, they may require their own framework for protection. If it were based on the distinctive characteristics of these works, the law might be more accurately targeted to achieve specific policy outcomes, thus serving as a more robust policy tool. With a new category of law, both producers and users would face less uncertainty each time a new type of work were introduced”.

Notwithstanding the shortcomings of the existing institutions of intellectual property, the establishment of a standard of protection for computer programmes in the TRIPS Agreement requires that national legislation strike a proper balance among all the interests involved and, particularly, that the legislation ensure sufficient room for legitimate reverse engineering and the development of competitive products.

### **Redressing the balance**

TRIPS has elevated the IP rights policy formulation to the international trade level. TRIPS is one of the so-called “three pillars” of the WTO, the other two being trade in goods and trade in services. It means a huge increase of IP profits in the rich countries of the North. Because of the increasing need in the poor countries of the South for technology as well as for essential medicines and foodstuffs it is seen as a transfer payment from the poor to the rich in the form of royalty payments and income losses. It is also a direct challenge to developing countries’ ability to play a significant role in the world economy. “While IPR protection is in large part an economic issue, moral arguments couched in terms of ‘equity’ and ‘fairness’ still play an important role in IPR policy formulation and the judicial process” according to Revesz.

Developed nations argue that weak protection means unfair competition. Developing countries argue that strong regulation means unfair burdens. Industrial countries own 97% of the world’s patents. There is a social responsibility to share scientific advancement and wealth given that it is the developing countries that account for 90% of the world’s biological resources on which many of the patents depend. Peterson has pointed to the developed world’s pharmaceutical industry as being a prominent source of the heightened interest in the rain forest, as pharmaceutical companies explore the forest more intensively for medicinal plants and information on their possible uses. This has been accompanied by a growing interest in the traditional knowledge of indigenous peoples. Likewise the international seed industry depends on plant materials derived from crop varieties selected and improved by farmers in developing countries.



# The GATS and Access to Services (GATS)



## What is GATS?

GATS, a legally binding set of rules covering international trade in services, is one of more than 20 international agreements enforced by the WTO among its 148 members.

GATS differs from other WTO agreements, in that its mandate not only aims to reduce barriers on the trading of goods but also to open up countries' service sectors comprehensively to global trade and competition. With "services" pertaining to anything outside of manufactured goods, raw materials and farm products, the scope of GATS is far ranging and unprecedented. It establishes the trade rules governing cross-border trade in services for WTO member countries that are supposed to make it easier for services and service providers to move from one country to another.

In truth, there is more than just the acceleration of services liberalization in GATS. Contrary to how it is packaged, GATS is not the trade agreement that it is but a one-sided investment tool that gives global corporations increasingly unhampered access to markets and human services, and grants them as much if not even greater rights than citizens to exploit such access. The WTO and the European Commission have said as much, respectively flaunting GATS as the first multilateral agreement on investments and principally as an instrument of business.

GATS emerged at the close of the 1986-1994 Uruguay Round of negotiations, upon the urging of the developed countries to set up an international trading regime similar to the General Agreement on Tariffs and Trade (GATT) governing manufactured goods, but this time, dealing with trade in services. It then came under the auspices of the newly formed WTO in 1995 and has, since 2000 been the subject of negotiations or "rounds" among members aimed at establishing cross-border trade regulations that would progressively remove all obstacles to competition in the services sector.

GATS was previously tackled on a separate track from the other WTO concerns, but in November 2001, during the 4th Ministerial Conference in Doha, Qatar, it was integrated with other WTO treaties into a "single undertaking", euphemistically called the Doha Development Agenda. This means that GATS issues will no longer be tackled independent of the other issues that the WTO is mandated to enforce upon its members. (All WTO Members, currently some 148 economies at present, are also Members of the GATS.)

## Why services?

By the 90s, the services sector was promising to be a profitable investment area. From 57 percent in 1990, the contribution of the service sector to world gross domestic product grew to 64 percent in 2000 (World Bank). Of various services sectors, water, health and education services are registering the biggest potential for profit. According to the International Consortium of Investigative Journalists: "...water companies are chasing a business with potential annual revenues estimated at anywhere from US\$400 billion to US\$3 trillion." The market base of the most globally active water firms (all French) have in fact multiplied from 51 million to 300 million over a 12-year period, with business operations reaching across 56 countries. On education and health care, global expenditures have reportedly gone beyond US\$2 trillion and US\$3.5 trillion, respectively. (Barlow) The table below shows the US, Japan, Canada and the EU countries dominating global trade in services.

## What types of services are covered by GATS?

GATS covers 12 broad categories: services to business; communications; construction and engineering; distribution; education; environment; financial services; health and social services; tourism; sports, culture and entertainment; and transport. Anything else not covered by these sectors comes under the classification "others". One hundred sixty subcategories go even deeper into the sectors, covering a whole range that includes postal services to scientific research,

**World Exports and Imports of Commercial Services<sup>1</sup>**  
(In Bn Euros and % of World Total)

	1992				2000			
	Exports		Imports		Exports		Imports	
EU-1.5 <sup>2</sup>	148.7	(28.0%)	140.8	(26.1%)	291.1	(24.3%)	286.1	(23.8%)
USA <sup>2</sup>	126.4	(23.8%)	79.6	(14.8%)	297.8	(24.9%)	215.7	(17.9%)
Japan	38.1	(7.2%)	75.1	(13.9%)	74.1	(6.2%)	125.5	(10.4%)
Canada <sup>4</sup>	15.4	(2.9%)	23.2	(4.3%)	40.3	(3.4%)	45.4	(3.8%)
China <sup>4</sup>	7.0	(1.3%)	7.1	(1.3%)	32.7	(2.7%)	38.9	(3.2%)
Rest of World	195.2	(36.8%)	212.9	(39.6%)	457.7	(38.3%)	489.5	(40.8%)
World Total	530.8	(100.0%)	538.7	(100.0%)	1193.8	(100.0%)	1201.2	(100.0%)

<sup>1</sup>Table taken from Eurostat News Release 117/2001, 8 November 2001. 'The EU Figures for the Doha Conference'. Data source: IMF, Figures excluding intra-EU transactions. Commercial services excluding government services.

<sup>2</sup>Intra-EU transactions are excluded. Intra-EU-15 trade in commercial services was worth 710.8 bn EUR in 2000.

Including this trade, the EU-15's share of world exports in 2000 was about 42%, and about 41% for imports.

<sup>3</sup>Including repairs on goods & expenditure of foreign governments & international organisations in the USA excluding postal & courier services.

<sup>4</sup>Not by ranking order, Figures for Canada and China are given for comparative purposes only.

architecture, publishing and rubbish collection.

An important aspect of the bilateral request-offer processes that have been undertaken during trade rounds is the Schedule of Specific Commitments. "Each WTO Member is required to have a Schedule of Specific Commitments which identifies the services for which the Member guarantees market access and national treatment and any limitations that may be attached. The Schedule may also be used to assume additional commitments regarding, for example, the implementation of specified standards or regulatory principles..." The schedule of commitments are organized into "sectoral" and "horizontal" sections:

- **Horizontal Section:** contains entries that apply across all sectors subsequently listed in the schedule; often refers to a particular mode of supply, notably commercial presence and the presence of natural persons.
- **Sector-Specific Sections:** contain entries that apply only to the particular service.

**What are the modes of supplying services?**

"Requests" or commitments are made with respect to each of four different modes of that a service supplier of supplying services.

- a. **Cross-border supply** is defined to cover flows of services from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);
- b. **Consumption abroad** refers to situations where a service consumer (e.g. tourist or patient) moves into another Member's territory to obtain a service;
- c. **Commercial presence** implies that a service supplier of one Member establishes a territorial

presence in another Member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains); establishing a presence includes ownership or lease of premises.

- d. **Presence of natural persons** consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers).

Mode 4 deserves special attention for Asia Pacific because of its implications on the huge, largely unskilled numbers of overseas workers who have been forced to find jobs abroad because their own countries have failed to provide decent employment. An increasingly large number of these workers are women.

Although GATS does not specify the level of skills of workers, countries have made commitments only for the highly skilled (e.g., technical experts, managers, business executives etc.), who will be amply remunerated, and are not as vulnerable as less-skilled migrants desperate for employment. Gross violations of their human rights are well documented. As it pertains only to temporary employment (ranging from several weeks to a maximum of five years), GATS cannot claim to be an enabling instrument for providing employment across borders, as supporters have claimed. It can only benefit big business and their home countries, whose expatriate executives and technical specialists are already enjoying highly paid jobs in multinational subsidiaries around the world.

There are possibilities that developed countries may attempt to squeeze out more from the developing countries in exchange for concessions under Mode 4. But as Walden Bello has pointed out, accepting the liberalization of services in return for Mode 4 concessions that liberalize only professional labor is a

very bad exchange indeed. If anything, this will only worsen the brain drain of developing countries, and not bring relief to their unemployment problems since the EU and the US will likely liberalize entry only for the most highly skilled professional workers.

### **Which countries are bound by the GATS?**

The GATS is Annex 1B of the Agreement Establishing the World Trade Organisation (the WTO Agreement) and, as such, is binding on all WTO Members: 148 countries.

### **What are the general and specific GATS obligations and disciplines for WTO members?**

The GATS defines two broad types of obligations. There are “general obligations and disciplines”, which apply to all WTO member countries. And then there are the “specific commitments” that any individual WTO member country may have undertaken to allow the service suppliers of all other WTO member countries to sell services on its domestic market in a given sector and under certain limitations and conditions. The specific commitments are “market-access commitments” and they are set out in individual countries’ “schedules of specific commitments”.

Apart from defining these various obligations, the GATS establishes a framework for multilateral negotiations aimed at increasing the number of specific market-access commitments undertaken by individual WTO member countries.

### **What do GATS market-opening commitments normally imply?**

The GATS defines six categories of measures that a country should not normally maintain or adopt in the sectors where it has made market-opening commitments. The six categories include:

- Limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test,
- Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

The first rule above obviously has implications for the organisation of public services and utilities. Under the GATS, WTO member countries are expected to liberalise their domestic services – governments are supposed to remove barriers to the free entry of suppliers into services markets.

The second rule underlines GATS’s role as a treaty on investment, and thus its advantages for the operation

of multinational companies. The rule is also relevant to the often heard argument that the GATS does not require the privatisation of services. True, the GATS makes no direct reference to privatisation. But there is a contradiction between maintaining or establishing public ownership and, on the other hand, not being able to limit the participation of foreign capital in enterprises. This rule encourages governments to privatise services. And, once services are privatised, the GATS makes their “re-socialisation” very difficult.

The GATS does allow WTO members to opt out or limit the application of these and other market opening rules. However, in terms of policy and practice, it is important to note that the GATS defines liberalisation in very broad terms. To escape those rules, countries have to opt out, and the longer term expectation is that such “opt-outs” will be dropped in the course of future negotiations for “progressively higher levels of liberalisation”. Weaker economies, in particular, will find it difficult to resist that logic, especially where it is combined with pressure from the World Bank or the IMF.

### **Does the GATS contain a social dimension?**

No!.

The WTO remains essentially closed to civil society as well as isolated from most international organisations in the UN system. That includes not only the ILO but also organisations such as the UPU, the ITU and UNESCO, which play an important role in sectors that are covered by the GATS negotiations.

### **Is GATS enforceable?**

Yes.

Like all other WTO agreements and commitments, GATS rules and market-access commitments are covered by the WTO’s Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Annex 2 of the Agreement Establishing the World Trade Organisation.

DSU, the ultimate means of enforcing WTO rules and commitments, defines the conditions under which a WTO member country or countries may take retaliatory trade measures (e.g., new tariffs) against a WTO member that is found to be in violation of a WTO agreement or commitment.

GATS even permits a government to have recourse to the DSU if it considers that a market-opening commitment made by another country is being nullified or impaired by a measure that does not conflict with GATS obligations. There is a risk that this open-ended provision could easily be abused.

<b>General Obligation</b>	<b>What does it mean for WTO members?</b>
Most Favored Nation (MFN) Treatment (Part II, General Obligations and Disciplines, Article II)	Treat the foreign service suppliers of other member - countries equally and consistently.
Transparency in regulations (Part II, General Obligations and Disciplines, Article III)	Promptly inform other members of relevant measures which affect the application and operation GATS, immediately inform the Council for Trade in Services of any new, or any changes to existing, laws, regulations or administrative guidelines which affect trade in services.
Objective, reasonable, and impartially administered regulations (Article VI Domestic Regulation)	In sectors where specific commitments are undertaken, ensure that measures affecting trade in services are carried out in a reasonable, objective and impartial manner.
Administrative review and appeals procedures (Article VI Domestic Regulation)	Maintain or institute judicial arbitral or administrative tribunals or procedures to address and/or review decisions affecting trade in services.
Disciplines on the operation of monopolies and exclusive suppliers (Article VIII Monopolies and Exclusive Service Suppliers)	Ensure that any monopoly supplier of a service in its territory does not violate the MFN, specific market access of national treatment obligations.  If a member's monopoly supplier competes in supply of a service, it should ensure that the monopoly supplier does not abuse its position in its territory and acts in a manner consistent with MFN, specific market access of national treatment.
<b>Specific Obligations</b>	<b>What does it mean for WTO members?</b>
Market access (Part III Specific commitments Article XVI)	Applies in areas where commitments have been made, but subject to 'limitations' (the laws, rules and regulations that may be counter to MFN, national treatment and market access principles of GATS)  These include limitations on the number of service suppliers, outputs, operations natural persons to be hired or value of transactions, whether in the form of quotas monopolies, exclusive service suppliers or the requirements of an economic needs test, the total quantity of service outputs (quantitative restrictions).  Members cannot require specific types of legal entity or joint venture through which a supplier may supply a service nor limit foreign capital participation or the total value of individual or aggregate foreign investment.
National treatment (Article XVII National Treatment)	In the sectors where it has specific commitments, each Member shall grant the services and service suppliers of other Members treatment to less favorable than that it accords to its own services and service suppliers.  The treatment of domestic and foreign services and suppliers should be identical, meaning that conditions of competition should be the same for the services or service suppliers of all Members. National laws should not be changed to favor the member's own service industry.
Source: 1) General Agreement on Trade in Services; 2) The General Agreement on Trade in Services (GATS): objectives, coverage and disciplines. Posted at the WTO website, (3) GATS Primer, Understanding the General Agreement on Trade in Services. Friends of the Earth International, November 2002.	



Just as important as the submission of formal complaints is the opportunity that the WTO enforcement machinery provides to governments to - explicitly or implicitly - threaten other countries with the possibility of a complaint, only governments - not companies - can file complaints. But business can and do put pressure on governments.

### **What is the connection between GATS and privatization?**

GATS adds to the creation of conditions and of enabling environments to surrender to the private sector its responsibility of providing a service. This could take various forms, from divestments or actual transfers of public assets to concessions or contract agreements. GATS skinned to the core is nothing more than the drive to pressure governments, especially those of the majority of LDCs, to relinquish their publicly entrusted mandates in determining investments in services and surrender this to private big business.

Article I (Section 3, b) disingenuously excludes services "supplied in the exercise of governmental authority" and "not supplied on a commercial basis, in competition with one or more service suppliers".

This is one of the arguments that supporters cite when asserting that GATS does not threaten public services. Such claims, however, are clearly misleading and utterly deceitful. Since many public services today are supplied commercially and in competition with one or more service providers, they cannot escape the thrust of GATS to eventually bare the services markets to full international competition.

Leaked documents on the EU's final requests from 109 member-countries have exposed the truth behind the EC's denial that GATS would inevitably compel countries to privatize public services. This only confirms what supporters, like the lobby group International Financial Services of London have plainly acknowledged, that the very act of "opening service markets to foreign providers is self-evidently inconsistent with retaining public monopolies." (Hillary)

### **How is GATS-WTO linked to the priorities and thrusts of international financial institutions?**

"The interlinkages between the different aspects of economic policy require that the international institutions with responsibilities in each of these areas follow consistent and mutually supportive policies. The World Trade Organization should therefore pursue and develop cooperation with the international organizations responsible for monetary and financial matters....," so the WTO has declared. In the same

declaration, it invites the Director-General of the WTO to "...review with the Managing Director of the International Monetary Fund and the President of the World Bank, the implications of the WTO's responsibilities for its cooperation with the Bretton Woods institutions, as well as the forms such cooperation might take, with a view to achieving greater coherence in global economic policymaking". (Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking).

As far back as the Bretton Woods conference in 1944, there was already recognition that in addition to the IMF and the International Bank for Reconstruction and Development (the World Bank), there had to be another mechanism for globally overseeing liberalized trade. The WTO and the world's dominant financial and lending institutions continue to work for so-called "harmonization" or the convergence of policies and actions. Concretely, the WTO's privatization-enabling trade regimes and the IFIs' drive to privatize public services have seen greater coherence over the last few years. In fact, the expanded reach accorded by services transactions under GATS has increased so-called "harmonization" and further enlarged areas of interaction, complementation and coordination.

"The structural adjustment programs and other liberalization reforms as conditions on loans by the IMF and World Bank have, and continue to be, a major method of supporting WTO trade liberalization objectives." From 1981 to the close of the Uruguay Round in 1994, 75 countries were the recipient of 238 loans supporting the liberalization of trade or foreign exchange policy. (Rowden)

With the World Bank's approval of the Private Sector Development Strategy in 2002, service donor and lending agencies have been prioritizing the increased involvement of the private sector in services provision. Loan conditionalities have also been made contingent on borrowing countries' ability to ensure business climates that are attractive to private investors.

"Privatization frontiers" is how the Bank's private sector investment arm, the International Finance Corporation, describes the water sector, among other social services targeted for greater private sector participation. In 2002, the Bank released the Water Resources Sector Strategy (WRSS), its new agenda for increasing levels of private sector involvement in the water sector, from sourcing to management and distribution. Large dam projects, various types of urban and rural water privatization arrangements, cost recovery schemes, etc., have gained resurgence from the WRSS.

These three institutions are clearly moving towards coordinating not just global trade but global finance as well. In April 2001, the World Bank released the document *Leveraging Trade for Development*, in which it offered new lending instruments meant to assist borrowers in meeting WTO requirements and prepare for participation in multilateral, regional and bilateral trade agreements. (Rowden, 2001) Then in 2003, a historic first transpired at the General Council: the meeting of the heads of the World Bank, IMF and the WTO. It was further suggested by the WTO secretariat

that governments accord these bodies observer status at the highest level of negotiations, the Trade Negotiating Committee and its various negotiating bodies, a status that not even the UN bodies have been granted. "Members should ask themselves why these institutions rather than the UNDP and, in particular UNDP's regional offices, are not proposed for such status instead—since the round is supposed to be about development." (Geneva Update, Trade Information Project, Institute for Agriculture and Trade Policy, May 20, 2003.



# NAMA



## What is NAMA?

NAMA is the acronym for Non Agricultural Market Access, and refers to one of the ongoing negotiating groups in the WTO Doha Development Round. These NAMA negotiations focus on market access for a wide range of non-agricultural products, basically all products that are not covered by the agriculture negotiations or the services negotiations. NAMA products therefore include fish and fishery products, wood and forestry products, electronics, automotive products, machinery, textiles, clothing, leather, chemical products and mining products.

The negotiations aim to reduce and eliminate the barriers that restrict trade in these products. Negotiations therefore focus on the reduction of tariffs and non-tariff barriers (NTBs). Non-tariff barriers include, for example, quotas, safety and health standards, technical requirements, packaging requirements and environmental standards. A complete list of NTBs to be addressed in the negotiations has not yet been decided upon, and some of these barriers are already the subject of negotiations in other groups, such as subsidies, technical barriers to trade (TBTs) and Sanitary and Phytosanitary measures (SPS). Other barriers are likely to be covered by the negotiations on trade facilitation.

## The Doha mandate

The ongoing negotiations are based on the mandate that was given for the Doha Round at the 4th WTO Ministerial Conference (Doha, Qatar, November 2001). The Doha mandate states that NAMA negotiations should address:

- *tariff peaks* - these are tariffs that are three times higher than the average tariff applied by a country, in order to protect a certain sector or products. Not all high tariffs are tariff peaks, since tariff peaks are defined in relative terms, as tariffs that are high in comparison to the average level of tariffs that the country applies;
- *high tariffs*;
- *tariff escalation* - tariffs that increase when the

value added of a product increases. For example, average tariffs for natural resources are 5%, whereas average tariffs for processed natural resources are 15%;

- and *non-tariff barriers* (NTBs, such as quotas and technical requirements). According to the Doha text, these should be addressed in particular for those products that are of interest to developing countries.

The Doha text states the need for comprehensive product coverage, and for less than full reciprocity, which means that developing countries should be allowed to decrease tariffs to a lesser extent than industrialised countries and spread commitments over a longer time period. And finally, paragraph 16 of the Doha text says: “the modalities to be agreed will include appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations”.

## NAMA negotiations

A first proposal for modalities for NAMA negotiations was made in 2003 by the Swiss chairman of the NAMA negotiating group, Pierre-Louis Girard. The main elements of the Girard text included a Swiss formula (cutting higher tariffs by a larger percentage than lower tariffs in order to achieve harmonising of tariffs), a sectoral initiative for the full elimination of tariffs in seven sectors, and some elements of Special and Differential Treatment (S&D) for developing countries.

During the Cancún Ministerial in 2003, a second text on NAMA was proposed, the so called Derbez text. This text was based on the Girard text, but left more flexibility. The text included a non-linear formula (i.e. harmonising of tariffs, with similarities to the Swiss formula) and a proposed sectoral initiative (without specifying the sectors). This text was not adopted in Cancún, and was the subject of considerable opposition from developing countries, in particular from the G-90 countries.

During the July 2004 General Council meeting at the WTO, a number of developing countries strongly

opposed the inclusion of the Derbez text on NAMA in the July package. They wanted to include several further proposals in future work; asked for the non-linear formula to be deleted; asked for alternative language to the proposal that “unbound tariffs should be bound at twice the applied rate”; wanted the sectoral tariff component to be voluntary; and asked for more flexibility in tariff cuts and tariff bindings.

However these proposals were reflected only in an introductory paragraph that was added to the annex on NAMA. The July text on NAMA was similar to the Cancún proposal (the Derbez text) except for that paragraph. The text had the following elements:

- A formula approach for tariff reduction and for reduction or elimination of tariff peaks, tariff escalation and high tariffs. This formula approach included the following elements:
  - a. no a priori exclusion of products;
  - b. reductions in tariffs from bound rates (bound rates indicate the maximum tariff level a country can apply), or from twice the applied most favoured nation (MFN) rate in the case of unbound tariffs (taking the level applied in 2001 as the base year);
  - c. credit for autonomous liberalisation (trade liberalisation on an MFN basis that was undertaken independently from the WTO negotiations);
  - d. conversion of non-ad valorem duties (based on quantity) into ad valorem duties (based on product value) and binding of ad valorem duties;
- Countries that had bound less than 35% of their tariffs would be exempt from tariff reductions through the formula, but have to bind 100% of their tariff lines;
- A sectoral approach, aiming at eliminating or harmonising tariffs in a specific sector. Seven sectors had been identified previously (in the Girard proposal) for this sectoral approach.

The only difference with the Derbez text was that the July text had an introductory paragraph which stated that: *“This Framework contains the initial elements for future work on modalities by the Negotiating Group on Market Access. Additional negotiations are required to reach agreement on the specifics of some of these elements. These relate to the formula, the July framework were implemented, WTO issues concerning the treatment of unbound tariffs in indent two of paragraph 5, the flexibilities for developing-country participants, the issue of participation in the sectoral tariff component and the preferences. In order to finalise the modalities, the Negotiating Group is instructed to address these issues expeditiously in a manner*

*consistent with the mandate of paragraph 16 of the Doha Ministerial Declaration and the overall balance therein.”*

This was taken to mean that further discussion was needed on the formula, on tariff binding, on participation in the sectoral approach, on preferences and on flexibilities for developing countries.

### **Where do negotiations stand?**

There are substantial differences between most industrialised and most developing countries. Most industrialised countries are being very ambitious in their proposals, whereas most developing countries are defensive. The main focus at the moment is on:

- **Product coverage:** It still has to be determined which products will be covered by NAMA negotiations.
- **The formula:** Some new elements have been added such as the possibility to have one formula with two different coefficients, one for industrialised and one for developing countries, proposed by the US (in exchange for less S&D, and for participation of developing countries in the sectoral negotiations).
- **Tariff binding:** this applies to “unbound” tariffs, i.e. those products where there is no commitment to place a maximum cap on the tariff for that product. It is not clear yet what percentage of unbound tariffs would be bound, at what tariff level these tariffs would be bound, and if bound tariffs should be included in the tariff formula for tariff reduction.
- **Conversion of non-ad valorem duties into ad valorem duties.** Negotiations focus on a conversion methodology.
- The **sectoral approach** and participation in this approach. As noted above, sectoral negotiations aim for complete tariff elimination. It appears acceptable to most WTO members that participation by developing countries could be voluntary, however there is an effort to try to get a critical mass of countries for participation in the sectoral negotiations.
- **Nuisance duties:** Some countries wish to eliminate low tariffs, below 3% or 5%. Although very low, these tariffs do provide important government revenues for a number of countries.
- **Flexibilities for developing countries:** how flexibilities for developing countries and least developed countries should be built into the negotiations.
- **Non-tariff barriers:** which non-tariff barriers should be included in the NAMA negotiations and which non-tariff barriers dealt with in other negotiation committees, such as TBT, SPS, Trade Facilitation and rules negotiations. Another issue

is which NTBs should be allowed and which should be prohibited.

- **Preference erosion:** generalised tariff reductions will lead to preference erosion for those countries that currently benefit from trade preferences, such as the ACP group.

The negotiators are aiming to have agreement on full modalities by the Hong Kong Ministerial in December.

A developing country proposal is being prepared by Mexico.

### **Critiques of the current draft modalities**

Many developing countries, have expressed their concerns with regard to the NAMA negotiations in general and the July framework in particular. If tariffs (applied rates) will not favour developing countries, the binding of tariffs and the sectoral approach with a zero tariff objective will have negative effects on developing countries.

Recently, Unctad has presented several country studies which show the impact of trade liberalisation on the industrial sector in developing countries. This trade liberalisation was undertaken 'autonomously', in many cases as part of the structural adjustment programmes that were imposed by the IMF and World Bank. Gains were limited in most cases, whereas costs in terms of employment and production were significant. The studies included experiences from Malawi, Zambia, Brazil, Jamaica, Bangladesh, India, the Philippines and Bulgaria. In the majority of the countries trade liberalisation led to disappointing export and GDP growth and to rapid growth of imports of industrial products. Cheap imports led to the closure of some local industries and to stagnation or low growth in industrial jobs. For example in Zambia, tariff reductions led to closures or relocations of industries and to a decline in formal employment from 23% in total employment in 1991 to 8% in 2003. A 1997 survey found that almost all sampled firms experienced a decline in employment of over 50%. These massive job losses had increased levels of poverty. Moreover, tariff reductions led to trade deficits, with imports increasing while exports had fallen. Experiences in other countries including Malawi and Jamaica showed a decline in the manufacturing sector and in employment. The study on India showed a decline in wages as a proportion of total value added for manufacturing as a whole, because of increased capitalisation and growing casualisation of contracts.

A further study by the Unctad secretariat looked at the implications of tariff liberalisation in developing countries. The study presents the results of ten different liberalising scenarios. It looks at three different formula (Swiss (harmonising) formula, Girard

(harmonising) formula, and a capping formula (across the board tariff reduction)), and for each formula at three different cases: ambitious, moderate and flexible (i.e. with exemptions for developing countries, variations for tariff cuts, sectoral elimination, binding coverage, and low/nuisance tariff reduction). The tenth scenario is a free trade scenario. Keeping in mind that the results have to be taken with caution because of certain shortcomings of the model, the most important outcomes of the study are:

- a. For industrialised countries it is not the choice of the formula but the level of "ambition" (i.e. the extent of coverage and the depth of tariff cuts) that most affects the final tariff schedules.
- b. For developing country economies, it is not the choice of the formula that is most important, but rather the extent to which the agreement addresses high tariff peaks on products of strategic importance. Therefore the modelling of bilateral trade flows can help identify what is important.
- c. The ten scenarios all increase export revenues for developing countries in aggregate, with the ambitious scenarios bringing most revenues. However, the increase in revenues is unevenly distributed, with major beneficiaries (in percentage terms) being China, India, Brazil and the rest of South Asia, whereas gains for Bangladesh and Zambia, for example, are minimal, with gains in some industries and losses in others.
- d. The increase in imports into developing countries is higher for all three ambitious scenarios.
- e. The ambitious Swiss formula leads to a global reduction in tariff revenues for developing countries of 50%. The members would effectively lose some of their "policy space" regarding their choice to use tariffs and non-tariff barriers as an instrument to protect strategic domestic industries and infant industries. The July text requires that countries bind their tariffs. Once tariffs are bound, they cannot be raised anymore above the bound level. Since the level of bindings for some developing countries is very low, even below 5% in some cases, clearly this would make a great difference. Many of these countries have started a process of diversification, away from dependence on a single or few commodities. Substantial tariff reductions would open up these economies to foreign competition and could undermine the diversification process. Furthermore, the tariff reductions are likely to lead to company closures and unemployment if the reductions are implemented too fast for their economic actors to adapt.

In addition to the binding of tariffs, a formula for tariff reduction would be applied to bound tariffs to reduce the tariff levels. It could lead to a reduction of bound rates below applied rates, and will in any case take away the flexibility countries have in applying tariffs in those sectors and industries that need some level of protection.

By reducing tariffs, countries may lose tariff incomes which, for developing countries, often represent a large part of the government budget. Those revenues are often used for government spending in areas such as health and education. Replacing them with other taxes would take time and planning and, for practical and political purposes, may be next to impossible in the short to medium run. It should be noted of course that if total imports increase following a reduction in import tariffs, then to the extent there is an increase, the fall in revenue could be mitigated. On the other hand, such an increase in imports would in many cases create serious difficulties for domestic producers, with negative output and employment consequences as a result.

Another concern is that no impact assessments concerning possible negative effects for employment and development have been made so far.

A general reduction of tariffs will lead to further preference erosion, which will be negative for the many developing countries that receive preferential access (tariffs below the MFN rate) to (mainly) industrialised country markets. To be precise, reductions in tariffs will erode the advantage those developing countries (which are very often LDCs and small and vulnerable economies) have over other developing countries.

NTBs can include any rule or regulation that affects trade. Some of these NTBs may be used as protectionist measures to block developing country access to industrialised country markets. However, many NTBs, such as those relating to environmental and health and safety concerns, are legitimate and should not be included in the negotiations on NTBs. The effort to make concessions in the NTB negotiations risks to lead to governments giving away some policy space for domestic regulation and so having fewer possibilities to take into account social or environmental concerns.

The sectoral approach refers to a number of sectors for which complete trade liberalisation is envisaged, which means a reduction of tariffs to zero or close to zero within a given (and short) time frame. The proposal has been made for seven sectors (in the Girard text), including fish and fish products, textiles and clothing, leather, footwear, stones, gems and precious metals, electronics and electronic goods,

motor vehicle parts and components. Tariffs in many developing countries are among the highest in these sectors, because domestic industries in these sectors tend to contribute substantially to their economies. The sectoral approach does not address the concern that developing countries, in particular LDCs, may firstly lack the capacity to identify their scope for lowest income developing countries have the greatest dependence on tariffs as a source of revenue. Under a capping formula the revenue losses are significantly lower for developing countries.

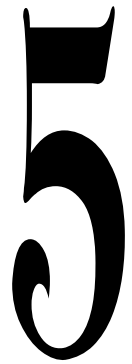
f. Changes in output tend to change in the same direction as changes in labour use. Use of national unskilled labour, which is mostly engaged in liberalisation in these sectors, and secondly that they may therefore make concessions that make it difficult to develop their domestic industrial structure thereafter. Furthermore there are likely to be other proposals that include additional sectors – for example, a proposal by the United Arab Emirates would include all raw materials, such as oil and forest products in the sectoral approach.

The Derbez text contradicts the “less than full reciprocity” principle in the Doha mandate, since the formula will take away policy space for development. Tariff cuts that are based on existing leather, lumber, paper products, apparel, light manufactures and electronics, is positive (i.e. it increases) but small in response to liberalisation. Some sectors are very sensitive to use of labour and changes in the use of labour due to liberalisation. These are textiles, wearing apparel, leather and motor vehicles. Effects on unemployment due to trade liberalisation could be substantial in some cases.

- g. Changes in total employment differ from country to country and from sector to sector, so it is difficult to generalise. A separate approach for each country has to be taken. Looking at the tables on employment, it can be noted that depending on the ambitiousness of the formula, substantial changes in labour use may take place.
- h. The sectoral elimination makes a significant difference for developing countries with regard to average tariffs, trade and welfare.
- i. Reducing tariffs on a non-linear basis rather than linear basis would appear to make little difference to the outcome. A capping formula provides similar effects as the complex harmonising formula.
- j. Adjustment costs have to be taken into account and can be substantial, especially in some sectors.



# The WTO Agreement on Agriculture



## What is the WTO Agreement on Agriculture?

The Agreement on Agriculture (AoA) is one of the two main sectoral agreements in the Uruguay Round Agreements that provides the specific rules in the liberalization of agricultural products. The other one is the Agreement on Textiles. As in all the other multilateral trade agreements that came into effect in 1995, the AoA is binding to all members of the WTO.

Based on its avowed goal of establishing a fair and market-oriented trading system in agriculture, the AoA obliges member nations to increase market access and reduce trade-distorting agricultural subsidies.

The implementation period is different for developed and developing countries, with the former given six years or until 2000 to implement their commitments and the latter ten years or until 2004.

However, the agriculture agreement itself is fundamentally flawed and highly iniquitous; and that instead of leveling the playing field in international trade in agriculture, it reinforces the monopoly control of wealthier countries and their transnational corporations over global agriculture production and trade.

## The main elements of the AoA

The agriculture agreement has three main pillars: market access, domestic support, and export competition. Trade liberalization commitments in these three areas are required for all members of the WTO.

The commitments, which had been largely negotiated among countries before the end of the Uruguay Round, are reflected in the country schedules, which are integral parts of the Agreement.

**a. Market Access** - All countries are obliged to eliminate all their non-tariff barriers like import ban, import quota or quantitative restrictions on imports, etc. and convert these to tariffs. This is called, in the WTO, "tariffication." The tariff rate should be

equivalent to the barriers that were imposed in the base reference period of 1986-88. All countries have to bind their tariffs on all agricultural products and progressively reduce all tariffs starting from their initial bound rate in 1995 to their final bound rate at the end of the implementation period. The average reduction for developed countries is 36% within six years and for developing countries, 24% within 10 years.

Exceptions to tariffication are allowed under the Special Safeguard provision and the Special Treatment clause for specific commodities. The Special safeguard can be invoked only for commodities, which have been subjected to tariffication. This provision allows countries to apply additional duties on imports that should not exceed one-third of their existing normal custom duties, in the event of import surges or sudden fall in the world price of the affected commodities. Only one of this condition can be used to justify a safeguard action at any one time. The Special Treatment clause, like the safeguard clause is not a full exemption to tariffication but a mere postponement to allow protection of specific commodities like staple foods. For developed countries, postponement is allowed until at least at the end of their implementation period which is 2000 and for developing countries until the 10th year or 2004.

Another provision for increasing market access is the minimum and current access volumes. However, this is contained only in the modality paper and is therefore legally binding only if it is reflected in the specific commitments and detailed in the members' country schedules. The minimum access obliges a country to provide access opportunities for agricultural products where there have been no significant imports in the past, at lower or minimal tariffs. This lower tariff is referred to as the "within-quota tariff" and the quantity of goods imported at this lower tariff is called the "tariff-rate quota" (TRQ). The TRQs are to be allocated equally to all countries or on what they call the most-favoured nation (MFN) basis.

**b. Domestic Support.** This pertains to government support to domestic producers. The AoA categorizes domestic support measures into three types:

**Amber Box** – These are measures that are considered trade distorting and are therefore subjected to reduction. These are supports that have effect on production like price support and input subsidies.

**Green Box** – These are assumed not to have effects on production and therefore considered not trade distorting. They are acceptable under AoA and are not subjected to reduction. They include support for research, marketing assistance, infrastructure services, domestic food aid, etc.

**Blue Box** – These are measures such as direct payments to farmers that are intended to limit production. These are considered acceptable and are not subject to reduction, too.

Subsidies categorized under the Amber Box are calculated using the Aggregate Measure of Support (AMS) and are reduced in each year of the implementation period. This means that the annual reduction is computed based on the over-all support in terms of the annual amounts and not on product-specific subsidies. A country is free to choose the product and the rates of subsidy subjected to reduction discipline within the over-all limit of the total amount of subsidy during that year.

This provision stipulates for a general de minimis exclusion from subsidy reduction, which is 5% of the value of production of a product for product-specific subsidies and 5% of the value of total agricultural production for non-product specific subsidies for developed countries and 10% for both subsidies for developing countries.

Subsidies above those levels are subjected to reduction from the base period 1986-1988 level by 20 percent for developed countries over six years (1995-2000) and by 13 percent for developing countries over 10 years (1995-2004).

**c. Export Subsidy.** Countries providing direct export subsidies are obliged to reduce these subsidies from their 1988-1990 average level by 36% percent in value and 21 percent in volume for developed countries over 6 years and by 24% in value and 14% in volume for developing countries over 10 years. Countries, which do not have any export subsidy and therefore did not reflect these in their schedule, are not allowed to provide export subsidies in the future.

### **Why is the AoA highly iniquitous?**

The agreement is basically skewed in favor of

developed countries' interests. The discipline on market access, domestic support and export subsidies couched numerous provisions that basically enhance measures used by developed countries to protect their markets and agriculture. While developing countries are accorded what they call special and differential treatment, in the form of slightly lower tariff and subsidy reduction and longer implementation period, it remains grossly negligible compared to the huge concessions and exemptions that are made available to developed countries to protect their existing trade-distorting subsidies and agricultural dumping practices.

- The principle of free trade, which underpins the trade liberalization commitments in the AoA inherently, works against the development and food security needs of developing countries. Under free trade, countries should produce only the goods which they can produce cheaply or with which they have comparative advantage and import those including the food crops which they produce domestically, from others who can produce them cheaper and more efficiently. The implication is that developed countries, which by virtue of their huge subsidies can dump food products in the international market, should continue supplying developing countries with their highly subsidized agricultural surplus and developing countries should focus on exporting crops that will earn them the foreign exchange to buy food from rich countries. Thus, developing countries end up becoming more dependent on imports that continually drain their scarce foreign reserves, stunt the growth of their agriculture and economies and weaken their capacity to feed their own population in the long-term.
- AoA focuses merely on further liberalizing markets of poorer countries even as it continues protecting the subsidies and protectionist measures such as tariff peaks and other trade barriers employed by rich countries. Reciprocity, which is a core principle of the WTO and which supposedly directs the trade liberalization commitments of members has been rendered meaningless. It has, in fact misled many developing countries to rapidly open up their markets to dumped imports from the North in order to gain access to the latter's huge markets. But their actions were not "reciprocated" by equally aggressive steps in the North. Instead, developed countries put up higher tariff walls called tariff peaks and tariff escalation upon tariffication that effectively discriminated against developing countries' exports. Worse, the subsidies employed by developed countries to



protect their agriculture, expand their production and gain monopoly control in the international market are accorded more protection with the exemptions introduced in the AoA's subsidy reduction. The categorization of subsidies into trade-distorting, which are subject to reduction discipline and into non-trade distorting, which are not, allows the developed countries to shift their existing grossly huge subsidies into acceptable boxes or categories that are exempted for subsidy reduction (e.g. green box and blue box). Meanwhile, the exemptions that apply to developing countries are often of not much use given the long-running negative fiscal position of many of these countries. In the end, with such gaping loopholes, the AoA clearly serves only to legitimize and strengthen the trade-distorting practices of developed countries.

- Developing countries are prohibited from using the same tools that enable developed countries to pursue their development and food security goals in the past decades. While developed countries are allowed to retain and even expand their huge agriculture subsidies, developing countries are prohibited from raising their subsidies beyond the de minimis level. They are not also allowed to use any export subsidy in the future.
- Many important provisions in the AoA allow developed countries to circumvent their trade liberalization obligation thus ensuring that their agriculture remains protected. The Due Restraint Clause under Article 13 protects those subsidies that have been exempted from reduction from being challenged. The Special Safeguard provision, which applies only to those products, which have been tariffied, has benefited mostly developed countries.
- The AOA exacerbates the inequalities existing between the highly industrial agriculture of the North and the predominantly subsistence and backward agriculture of the South. In many developing countries, agriculture is dominated by small-scale producers tilling very small plots of land, with very little access to capital and productive resources, and is perennially indebted to landlords and moneylenders. Because of their marginal existence, small-scale farmers are not in a position to compete in the international markets. Thus, as the small-scale and traditional farming of the South lose out in a clearly unfair competition with the industrial North, millions of small farmers are displaced and the livelihoods of the majority of agricultural producers in these

countries are put to increasing risks. This condition worsens the deepening income inequalities between and within nations.

- The AoA and its inherent bias for commercial agriculture production devastates not only the livelihood of poor farmers but also the food security of many developing countries. The dismantling of protection and support to agriculture in developing countries creates not only gross disincentives against domestic food production, but wipes out its viability and sustainability. Since the mid-90's developing countries have faced declining growth rates in food production output which seriously threatens their capacity to meet domestic food consumption.

### **AoA Undermines Food Security of Developing Countries**

Since the implementation of the AoA in 1995, the capacity of developing countries to ensure their long-term food security has been increasingly eroded. Two patterns that have direct impact on food security and agriculture in the South have clearly emerged. One is the increasing agriculture subsidies in the North, despite the avowed goal of the AoA to curb trade-distorting subsidies. Another is the massive flooding of artificially cheap food imports in developing countries' markets that continues to displace domestic food production.

### **Rising Subsidies in Developed Countries**

Although the AoA is supposedly designed to discipline domestic support and export subsidies in developed countries, the years following the enforcement of the AoA ironically saw the uncharacteristic rise of these subsidies. A result of AoA's categorization of subsidies into trade distorting and non-trade distorting, developed countries shifted their existing trade-distorting subsidies into acceptable boxes that are exempted for reduction such as the green and blue boxes. Thus, while subsidies under the AMS (Amber Box) decreased, there was a corresponding increase in subsidies under the Green and Blue Boxes. In the US, for instance, Green Box subsidies totaled US\$50 billion in 1998, compared to a total of \$10 billion Amber Box subsidies. (Khor, 2002). The largest component of these exempted subsidies was food aid. The introduction of the US Farm Bill in 2002 provided an additional support of US \$ 180 billion in the next ten years to its domestic producers. The same trend can be seen in the EU. Its AMS support under the amber box is being shifted to direct payments (blue box), which are supposedly less trade distorting as they are tied to production limiting programmes. The current CAP reforms are in the direction of further moving

subsidies in the form of direct payments to decoupled payments, which essentially is shifting again from the blue to the green boxes (categorized as non-trade distorting). In effect, the AoA has legitimized the trade-distorting subsidies and dumping practices of developed countries by allowing the shifting of directly price-related subsidies to direct payments or decoupled payments that are protected and even allowed to increase under the AoA.

As world prices continue to fall, export subsidies of developed countries like the EU inversely rise to offset possible losses of domestic producers. The EU continues to provide export subsidies while the US hide its export support under export credits and food aid. For both, domestic spending has increased to support their producers, although most of the beneficiaries are the big producers and traders. The EU and US continue to dump agricultural products in the world market, which means the selling of products at less than the cost of production. Their massive subsidies in agriculture –both for domestic producers and exporters lead to dumping which continue to wreak havoc on small farmer's livelihoods in developing countries.

A noted Indian food policy analyst, pointed out the gross injustice of this system when he compared the amount of subsidy a cow in Europe and America receives daily, which is about US \$ 2.70 per cow. As compared to that a small and marginal farmer in the Third World, earns less than half of this amount.

### **Rising Food Imports in Developing Countries**

The other disastrous consequence of a flawed agreement is the massive penetration of highly subsidized food imports into developing countries' domestic markets. As a result of tariffication and the progressive reduction of tariffs stipulated in the AoA, developing countries now have very low tariffs with bound rates averaging at 30-40% and at a much lower applied rates, at 7-15% in the case of the Philippines. Logically, such low rates could not provide protection to domestic producers long saddled by depressed farm gate prices, spiraling costs of production and lack of access to scarce capital and resources. Food imports and sudden import surges have led to the displacement of small farmers and the erosion of food security in many developing countries.

A study conducted by the Food and Agriculture Organization (FAO) on the impact of AoA on 14 developing countries in 2001 revealed that AoA's liberalization policy significantly increased food importation in these countries, with many registering sudden increases in the value of their food imports in the years following their accession to the AoA. The food import bill more than doubled in countries that

are significant food producers and exporters such as Brazil and India and increased 50-100% in countries like Bangladesh, Pakistan and Thailand. In fact, many agricultural exporting countries in the 70's and 80's like the Philippine have been transformed into net food importers as a result of import liberalization under AoA. As there were no corresponding dramatic increases in developing countries' agricultural exports after their accession to the WTO, the massive food imports and import surges contributed to the huge trade deficits in agriculture they incurred during this period.

The study also pointed to the general trend towards land concentration as small-scale farms were edged out in the competition. This has led to displacement of small farmers and food-insecure groups, further exacerbating hunger and food insecurity among rural households.

### **While AoA allows protection of agriculture by developed countries, it promotes market**

Liberalization in developing countries that have seriously undermined rural livelihoods and food security. Agriculture subsidies by developing countries have been significantly reduced and in many cases withdrawn resulting in increased indebtedness of poor farmers. Fertilizer subsidies were removed in countries like Indonesia and Zambia. State procurement and public food distribution programs have been scaled down while in some countries; procurement centers that are strategically located in farming villages were shut down like in Pakistan. These policies have left poor farmers at the mercy of traders and moneylenders who exact huge profits from under pricing farmer's produce and raising loan interests exorbitantly. In many cases, government stopped procuring from their own farmers and relied upon cheap food imports to replenish their stocks.

The very same tools that developed countries generously employed to achieve food security and food self-sufficiency such as imports controls and higher tariffs are now being denied to developing countries as they are now considered trade barriers under AoA. Subsidies that could have provided support to subsistence and cash-strapped farmers are being withdrawn as these are also considered trade distorting under the AoA. Indeed in a short span of time, AoA has actually succeeded in reversing policies and measures used by developing countries to achieve food security. In fact, the WTO has succeeded in redefining food security from one of having increased production capacity to meet domestic food consumption to having mere access to food imports supplied by countries, which can produce them

cheaply. The US, which instigated the launching of the Uruguay Round to capture greater market for its agriculture exports, has exactly this concept in mind. This was echoed by no less than John Black, the US Agriculture Secretary at that time, when he said at the start of the Uruguay Round negotiations in 1986 that the “ idea that developing countries should feed themselves is an anachronism from a bygone era. They

could better ensure their food security by relying on US agricultural products, which are available, in most cases, at much lower cost.” (IFG, 2002).

But as the implementation experience of developing countries would attest, trade liberalization in agriculture in fact has led to increased hunger, starvation and poverty among the rural poor.





# Why we should oppose the WTO ?

# 6

*“Political language...is designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind...The first step in liquidating a people is to erase its memory.”*

*- George Orwell*

## **I. The WTO Is Fundamentally Undemocratic and undermines Local Level Decision-Making and National Sovereignty**

The policies of the WTO impact all aspects of society and the planet, but it is not a democratic, transparent institution. The WTO rules are written by and for corporations with inside access to the negotiations. For example, the US Trade Representative gets heavy input for negotiations from 17 “Industry Sector Advisory Committees.”

The approval of the WTO required entire sections of U.S. laws to be rewritten to conform with the WTO rules, similar to the way that treaties often redefine how the U.S. will interact with other states. Had the agreement been voted on as a treaty, requiring a two-thirds majority in the Senate, it would have been defeated.

The WTO supposedly operates on a consensus basis, with equal decision-making power for all. In reality, many important decisions get made in a process whereby poor countries’ negotiators are not even invited to closed door meetings — and then ‘agreements’ are announced that poor countries didn’t even know were being discussed. Many countries do not even have enough trade personnel to participate in all the negotiations or to even have a permanent representative at the WTO. This severely disadvantages poor countries from representing their interests. Likewise, many countries are too poor to defend themselves from WTO challenges from the rich countries, and change their laws rather than pay for their own defense.

The WTO’s “most favored nation” provision requires all WTO member countries to treat each other equally

and to treat all corporations from these countries equally regardless of their track record. Local policies aimed at rewarding companies who hire local residents, use domestic materials, or adopt environmentally sound practices are essentially illegal under the WTO. Developing countries are prohibited from creating local laws that developed countries once pursued, such as protecting new, domestic industries until they can be internationally competitive. Conforming to the WTO requires entire sections of laws to be rewritten and many countries are even changing their laws and constitutions in anticipation of potential future WTO rulings and negotiations.

The WTO limits governments’ ability to use their purchasing dollars for human rights, environmental, worker rights, and other non-commercial purposes. The WTO requires that governments make purchases based only on quality and cost considerations. Not only most corporations operate with an open eye regarding profits and a blind eye to everything else, so must governments and thus whole populations.

The WTO blocks countries from acting in response to potential risk by impeding governments from moving to resolve harms to human health or the environment, much less imposing preventive precautions.

The WTO would like you to believe that creating a world of “free trade” will promote global understanding and peace. On the contrary, the domination of international trade by rich countries for the benefit of their individual interests fuels anger and resentment that make us less safe. To build real global security, we need international agreements that respect people’s rights to democracy and trade systems that promote global justice.

## **2. The WTO only serves the interests of multinational corporations.**

The policies of the WTO impact all aspects of society and the planet, yet the WTO rules are written by and for corporations with inside access to the negotiations. Citizen input by consumer, environmental, human rights and labor organizations is consistently ignored. Even requests for information are denied, and the proceedings are held in secret.

The WTO rules permit and, in some cases, require patents or similar exclusive protections for life forms. Thus promoting the interests of huge multinationals—there are no principles at work, only power and greed.

WTO rules put the “rights” of corporations to profit over human and labor rights. The WTO encourages a ‘race to the bottom’ in wages by pitting workers against each other rather than promoting internationally recognized labor standards. The WTO has ruled that it is illegal for a government to ban a product based on the way it is produced, such as with child labor. It has also ruled that governments cannot take into account “non commercial values” such as human rights, workers exposed to toxins or species protection, or the behavior of companies that do business with vicious dictatorships such as Burma when making purchasing decisions.

The WTO’s fanatical obsession with free trade means that goods must be produced as cheaply as possible in order to compete in the global market. Toward this end, workers’ rights are being steadily eroded, real wages are declining, & many jobs are moving to overseas free trade zones, another brainchild of the Bretton Woods institutions. Here there are few costly environmental or job safety standards, a laughable minimum wage, and a no-strike policy. CEO salaries, however, are climbing.

It’s mainly women who are working in the free trade zones, as they can be paid less than men. They work as many as 18 hours a day, earn pennies an hour, suffer sexual harassment from their male overseers, may be forcibly sterilized, and then are fired when they become too sick from the toxic job environments to work anymore.

## **3. The WTO encourages privatization of Essential Services including health**

The WTO is seeking to privatize essential public services such as education, health care, energy and water. Privatization means the selling off of public assets - such as radio airwaves or schools - to private (usually foreign) corporations, to run for profit rather than the public good. The WTO’s General Agreement

on Trade in Services, or GATS, includes a list of about 160 threatened services including elder and childcare, sewage, garbage, park maintenance, telecommunications, construction, banking, insurance, transportation, shipping, postal services, and tourism. In some countries, privatization is already occurring. Those least able to pay for vital services - working class communities and communities of color - are the ones who suffer the most.

The WTO’s fierce defense of ‘Trade Related Intellectual Property’ rights (TRIPs)—patents, copyrights and trademarks—comes at the expense of health and human lives. The WTO has protected for pharmaceutical companies’ ‘right to profit’ against governments seeking to protect their people’s health by providing lifesaving medicines in countries in areas like sub-saharan Africa, where thousands die every day from HIV/AIDS.

## **4. The WTO is Increasing Inequality, Hunger and Poverty**

Free trade is not working for the majority of the world. During the most recent period of rapid growth in global trade and investment (1960 to 1998) inequality worsened both internationally and within countries. The UNDP reports that the richest 20 percent of the world’s population consume 86 percent of the world’s resources while the poorest 80 percent consume just 14 percent. WTO rules have hastened these trends by opening up countries to foreign investment and thereby making it easier for production to go where the labor is cheap and most easily exploited and environmental costs are low.

Farmers produce enough food in the world to feed everyone — yet because of corporate control of food distribution, as many as 800 million people worldwide suffer from chronic malnutrition. According to the Universal Declaration of Human Rights, food is a human right. In developing countries, as many as four out of every five people make their living from the land. But the leading principle in the WTO’s Agreement on Agriculture is that market forces should control agricultural policies—rather than a national commitment to guarantee food security and maintain decent family farmer incomes. WTO policies have allowed dumping of heavily subsidized industrially produced food into poor countries, undermining local production and increasing hunger.

The numbers of people living on less than \$2 per day has risen by almost 50% since 1980, to 2.8 billion—almost half the world’s population. And this is precisely the period that has been most heavily liberalized. (World Bank, Global Economic Outlook 2000).

Recent evidence suggests that the numbers of people living on less than \$1 per day is growing in most regions of the world (with the notable exception of China). (World Bank, Global Economic Outlook 2000).

The world's poorest countries' share of world trade has declined by more than 40 per cent since 1980 to a mere 0.4 per cent. The poorest 49 countries make up 10% of the world's population, but account for only 0.4% of world trade. This disparity has been growing. (UNCTAD, Conference on Least Developed Countries 2001).

51 of the 100 largest economies in the world are corporations. The Top 500 multinational corporations account for nearly 70 percent of the worldwide trade; this percentage has steadily increased over the past twenty years. (CorpWatch) The U.N. estimates that poor countries lose about US\$2 billion per day because of unjust trade rules. (UNCTAD, Conference on Least Developed Countries 2001) In 59 countries, average income is lower today than 20 years ago. (United Nations Human Development Report, 1999).

In 1980-1996 only 33 of 130 developing countries increased growth by more than 3% per capita, while the GNP per capita of 59 countries declined. Around 1.6 billion people are economically worse off today than 15 years ago. (United Nations Human Development Report, 1999, p. 31.)

Poor are getting poorer in both relative and absolute

terms, as one UNICEF study has commented: "A new face of 'apartheid' is spreading across the globe.... as millions of people live in wretched conditions side-by-side with those who enjoy unprecedented prosperity." (UNICEF figures based on World Bank "World Development Indicators 1997")

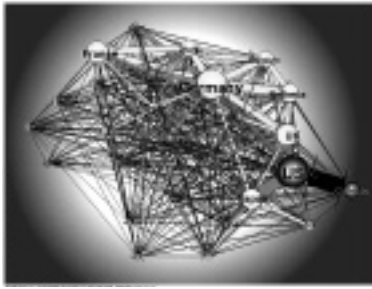
UNCTAD estimates that LDCs will lose between \$163 and \$265 million in export earnings as a result of implementation of Uruguay Round agreements, while paying \$146 - 292 million more for their imports. (UNCTAD) In 1999, outstanding external debt of LDCs was 89% of their aggregate GDP. This has been increasing steadily. (UNCTAD)

## **5. The WTO Is Destroying the Environment**

The WTO is being used by corporations to dismantle hard-won local and national environmental protections, which are attacked as "barriers to trade." The very first WTO panel ruled that a provision of the US Clean Air Act, requiring both domestic and foreign producers alike to produce cleaner gasoline, was illegal. The WTO declared illegal a provision of the Endangered Species Act that requires shrimp sold in the US to be caught with an inexpensive device allowing endangered sea turtles to escape. The WTO is attempting to deregulate industries including logging, fishing, water utilities, and energy distribution, which will lead to further exploitation of these natural resources.







# Institutional Colossus of the WTO



The entire world wants TVs, stereos, cars, nice homes, and all else they see in movies and on TV screens. So globalization is going to happen. The problem is not globalization per se; it is corporations structuring world property rights to their advantage, a continual expansion of inequality structured in law through privatization of the commons.

Structuring inequality into law (restricting rights to the commons for some and expanding the rights of others) has been an integral part of the formation of civilizations. The first person powerful enough to claim title to a piece of valuable and productive land could claim the wealth produced while sitting in idleness and splendor.

Anyone claiming such rights in a primitive culture would be immediately challenged. Communal rights were established so each could claim their share of the fruits of the earth. But claims of private ownership were eventually made by powerful people and the taking away of others' rights to the commons began. Powerful people (those first idle people eventually called aristocrats) over the centuries, piece by piece, claimed title to the land and at the peak of aristocratic power there was no common-use land left. Excessive rights for the powerful to the wealth produced by money and technology were also structured in law.

The origin of today's private property system of exclusive title to nature's wealth was feudalism. The revolts of the common people (the America Revolution, the French Revolution, and many internal political battles) slowly eroded feudal rights. Due to the threat of more revolts, some of the rights of the commons were returned to the people through the common people being permitted *residual-feudal exclusive* title to land.

The next gain in rights for the common people was the broad expanse of America, Australia, and parts of Africa. Although powerbrokers attempted to establish exclusive rights to land for themselves, they could not do it. Though it worked well to exclude the natives who had no political rights, so long as white immigrants

could go over the next hill and squat on unclaimed land, there was no one available to work those openly-monopolized lands. As rights to land in America spreading to the common people became known, the threat of revolution expanded those same rights in Europe.

To assure loyalty from the diverse populations within the German empire, Bismarck introduced a form of Social Security. Then labor took over Russia in 1917 and promised full blown social security to all their citizens from birth to death. Labor throughout the world took notice. Thus, to prevent a ballot box revolution during the Great Depression of the 1930s, powerbrokers within the imperial centers had no choice but to grant more rights to the masses. Social Security, unemployment insurance, and welfare rights became the norm (not only in fascist countries but especially in those nations).

Overthrowing governments controlled by labor (the Soviet Union) was an essential part of the war plans of both the Axis powers and the entire West. After WWII, those plans were in shatters. Soviet influence now extended across half of Europe.

The rapid rebuilding of the shattered Eastern Europeans under labor governments, the much less damaged Western nations failing to rebuild their economies under Adam Smith philosophy, and the rapid expansion of governments by labor in Asia, frightened the managers of Western states. Adam Smith philosophy was totally abandoned and Friedrich List philosophy was fully embraced; financial and technological support was poured into Western Europe and the periphery countries of Asia, Japan, Taiwan, and South Korea. With the possible exception of the masses granted rights to land and technology as Europeans settled America, this was the greatest gain of rights for the common people.

The powerful were frightened that communism (those communal property rights where the struggle started) was going to replace capitalism as the governments of choice throughout the world. Under that threat, countries on the borders of fast expanding socialism

(all Western Europe, Japan, Taiwan, and South Korea) were given access to technology, finance capital, and American markets. Equally important was the unwritten contract with labor within the imperial centers that they would be well paid in this massive struggle between capitalism and communism (private property and communal property). It is that unwritten contract, and the massive funds spent in that struggle, that provided the high standard of living that has become common in America, Europe, Japan, Taiwan, and the Asian tigers.

For 40 years the buying power of both the imperial centers and the periphery of empire were based upon money expended to fight the Cold War. Without the massive expenditure of money protecting emerging industries (Friedrich List philosophy) in nations that bordered fast expanding socialism, there would have been no prosperous imperial center.

Citizens of the resource-poor imperial centers are unaware that their society is an empire nor do they realize that their good living is based upon the expenditure of money on arms (the *multiplier factor* as that money is spent and respent) to control the resource-rich periphery of empire and lay claim to their wealth.

The massive wealth distributed is only a small part of what could have been produced and distributed under *democratic-cooperative-(superefficient)-capitalism* (a modern legal structure for all to receive their share of the wealth of a modern commons even as they retain individualism, competition, and their private property use-rights). The excessive rights of subtle monopolies claim too great a share of the wealth produced and too much is wasted in capital destroying capital and more is wasted in wars.

Subtle monopolies are non-productive because they lower production far below society's potential and they lower distribution efficiency. Under *democratic-cooperative-(superefficient)-capitalism*, there would be instant distribution of wealth to all relative to their contribution to the production of that wealth. The massive increase in wealth produced and distributed under full and equal rights proves that monopoly capitalism is inefficient to the extreme. Powerbroker's claims to wealth are through the excessive rights of monopolization subtly structured into law by their predecessors.

A large share of laws passed gives more rights to some and less to others. This is the continual struggle over who will receive the wealth produced from the gains in efficiency of the *wealth-producing-process*. The shrinkage in the buying power of non-supervisory American labor and the broad expansion of the buying power of the owners of capital ever since 1973 (even

though much perfectly good industrial capital is destroyed by other industrial capital) and the same process in other countries of the *allied imperial-centers-of-capital* over the past 10 years proves that greater inequality (further subtle monopolization of the *wealth-producing-process*) is still being structured in law. Capital has not only received all the efficiency gains from improved technology, they are now claiming a part of what once went to labor.

Structuring inequality in law is ongoing as the *imperial-centers-of-capital* establish the rules of world trade. "The heart of the GATT—Bretton Woods system is what is known as MFN—most favored nation." GATT, NAFTA, WTO, MAI, GATS, and FTAA, though supposedly defining equality, bend the will of weak nations to that of powerful nations. That process determines which nations will industrialize and which nations will remain as providers of resources for those *imperial-centers-of-capital*. Those permitted to industrialize will accumulate capital and those consigned to provide the natural resources to feed those industrial nations will remain poor and in debt.

Many people learned for the first time at Seattle of the existence of the QUAD, the Quadrilateral Group of Trade Ministers, which was formed in 1981 and acts as an informal committee guiding the global trade regime. Before public meetings of the WTO, members of the Quad—the United States, The European Union, Japan, and Canada [all CEOs of, or closely connected with, global corporations]—meet privately, making key decisions without the participation of other representatives of the world community. Once the QUAD reaches agreement, a larger, select group of twenty to thirty countries are invited to come together in informal meetings. Only after that do the 148 members of the WTO discuss and vote on proposals that are typically, by this point, faits accomplis. The poor countries of the world are forced to fall in line by the pressure of the economic and political muscle arrayed against them.

Howard Wachtel understood this process well: When the WTO replaced GATT on January 1, 1995, all of the GATT rules and its 47 years of precedents were folded into the WTO.... The WTO is an organization of some 500 highly paid professionals, mostly lawyers... [which] make significant decisions about international trade out of the public's view. It has no written bylaws, makes decisions by consensus, and has never taken a vote on any issue. It holds no public hearings, and in fact has never opened its processes to the public.... Its court-like rulings are not made by U.S.-style due process. Yet WTO today [because it has a dispute settlement mechanism with enforcement powers] rivals the World Bank and International Monetary Fund in global importance.... Three minimalist GATT principles

continue to operate through the WTO. The first is the famous most-favored-nation status (MFN): Products traded among GATT members must receive the best terms that exist in any bilateral trading agreement.... [The second:] Goods produced domestically and abroad must receive the same "national treatment"—equal access to markets.... [The third] is "transparency," which requires that any trade protection be obvious and quantifiable—like a tariff. ... The WTO has the authority to resolve disputes and to issue penalties and sanctions.

The plan was to give GATT a "legal personality," known as the Multilateral Trading Organization (MTO) [later organized as the World Trade Organization or WTO], that could strictly enforce global trading laws.... MTO [now WTO] will have the power to pry open markets throughout the world.... The proposed agreement would also extend GATT oversight from "goods" (machinery for instance) to "services" (insurance, banking). In order to protect trade in services, GATT would guarantee intellectual property rights—granting protection for patents and copyrights.... MTO would have the authority to restrict a developing nation's trade in natural resources (goods) if it didn't allow a first world country's financial service company sufficient access to its markets.... GATT panels may some day rule on the trade consequences of municipal recycling laws or state and local minority set-aside programs. In any trade dispute, the nation whose law is challenged must prove its law is not a trade barrier in secret hearings. The new GATT says plainly, "Panel deliberations shall be secret." Under this system, newly elected federal executives could allow the trade or environmental laws of their predecessors to be overturned by mounting a lackluster defense of the laws. And since the defense would occur in secret, without transcripts, interest groups and the public would never know the quality and vigor of the defense. Environmental or health and safety laws (and possibly labor rights and human rights laws) affecting another nation's commerce, no matter how well intended, will be more easily challenged. Again, the executive branch from the challenged nation would defend the law in star-chamber proceedings in Geneva—out of view of media and interest groups back home.

David C. Korten points out, the burden of proof is on the defendant to prove the law in question is not a restriction of trade as defined by the GATT.... Countries that fail to make the recommended change within a prescribed period face financial penalties, trade sanctions, or both.... The WTO is, in effect, a global parliament composed of unelected bureaucrats with the power to amend its own charter without referral

to legislative bodies.... [It] will become the highest court and most powerful legislative body, to which the judgments and authority of all other courts and legislatures will be subordinated.

After WWII, the U.S. State Department "devoted a great deal of time and energy formulating the legal structure" to limit others' rights to place conditions on trade within their country:

[A]ny member can challenge, through the WTO, any law of another member country that it believes deprives it of benefits it is expected to receive from the new trade rules. This includes virtually any law that requires import goods to meet local or national health, safety, labor, or environmental standards that exceed WTO accepted international standards.... [Both national and local governments] must bring its laws into line with the lower international standard or be subject to perpetual fines or trade sanctions.... Conservation practices that restrict the export of a country's own resources—such as forestry products, minerals, and fish products—could be ruled unfair trade practices, as could requirements that locally harvested timber and other resources be processed locally to provide local employment.

The equality and transparency in world trade supposedly guaranteed by GATT, NAFTA, The WTO, MAI, GATS, or FTAA are fraudulent. While weak nations are forced to open their markets, legal structures, and financial institutions, tariffs between the organized and *allied imperial-centers-of-capital* remain one-quarter that between the developing world and those imperial centers. And the buying power of developing world export commodities and labor continue to fall as the imperial nations continue to tighten the screws of financial, economic, diplomatic, covert, and overt warfare.

Those structural adjustment rules get ever tighter. MAI was described by Business Week as, "The Explosive Trade Deal You've Never Heard Of." The then Director General of the WTO called the secretive MAI rules as, a "Constitution for a single global economy."

Under IMF/World Bank/ GATT/NAFTA/WTO/MAI/GATS/FTAA structural adjustment rules, governments of the developing world could not provide supports to their industry and severely restricted supports to education and health care.

Cuba was able to develop an education and health system equal to America precisely because she escaped the clutches of the IMF/World Bank and the structural adjustments they would have imposed. When former World Bank Chief Economist Joseph Stiglitz was forced out of the World Bank for suggesting relaxing

structural adjustment rules he was asked by interviewer Greg Palast of the London Observer if any nation avoided the fate of structural adjustments. Stiglitz replied, "Yes! Botswana. Their trick? They told the IMF to go packing."

That 90-minute interview on BBC Television's Newsnight went much further and confirmed everything about these imposed structural adjustments: A reading of Palast's *The Best Democracy that Money can Buy: The Truth about Corporate Cons, Globalization, and High-Finance Fraudsters* (2003) will confirm that the purpose of this unspoken economic warfare through imposed structural adjustments is specifically to hold down the price of developing world resources and labor and to transfer that wealth, natural and processed, to the imperial centers. Joseph Stiglitz was awarded a Nobel Prize in economics in 1991 for his courageous stand.

There is the secret of resource-rich impoverished countries and resource-poor wealthy nations. Weak nations are forced to participate in the world economy under exactly the opposite rules under which every powerful nation developed. All wealthy nations provide enormous subsidies to their industries and agriculture, they all placed, and some still place, high tariffs on manufactured imports and low or no tariffs on raw material imports. They all provided, and still provide, subsidies to exports. There are also land donations, tax breaks, and below cost services in bidding wars to gain or retain industry as well as wage subsidies, and outright cash incentives.

## **INSTITUTIONS / ORGANISATIONS AFFILIATED WITH THE WTO**

*International Electrotechnical Commission (IEC)*  
The International Electrotechnical Commission is the international standards and conformity assessment body for all fields of electrotechnology.

*International Policy Council on Agriculture Food and Trade (IPC)* is dedicated to developing and advocating policies that support an efficient and open global food and agricultural system - one that promotes the production and distribution of food supplies adequate to meet the needs of the world's growing population, while supporting sound environmental standards.

*International Organization for Standardization (ISO)*  
The mission of ISO is to promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services, and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity.

### *Joint Vienna Institute (JVI)*

The JVI is an international training institute located in

Vienna, Austria. It was launched in 1992 by five international organizations and the Austrian authorities to respond rapidly to the large demand from economies in transition to train officials in market economics and the free enterprise system. The JVI status was changed in 2003 from a temporary into a permanent training institute in which the WTO is together with the IMF the most active member. The JVI is currently supported by six international organizations: the IMF, the Bank for International Settlements, the European Bank for Reconstruction and Development, the International Bank for Reconstruction and Development, the OECD and the WTO as well as the Austrian Authorities (Oesterreichische National bank and the Ministry of Finance).

### *Office international des épizooties*

As the world organisation for animal health, the main objectives of the OIE are to: inform Governments of the occurrence and course of animal diseases throughout the world, and of ways to control these diseases coordinate, at the international level, studies devoted to the surveillance and control of animal diseases harmonise regulations for trade in animals and animal products among Member Countries.

### *Organization for Economic Co-Operation and Development (OECD)*

A forum permitting governments of the industrialised democracies to study and formulate the best policies possible in all economic and social spheres.

### *World Customs Organization (WCO)*

The WCO, established in 1952 as the Customs Co-operation Council, is an independent intergovernmental body with world-wide membership whose mission is to enhance the effectiveness and efficiency of Customs administrations.

## **Coherence Partners**

*United Nations Conference on Trade and Development*

*World Trade Point Federation*

*International Trade Centre*

*World Bank*

*International Monetary Fund*

*Development Gateway*

## **United Nations Organizations**

### *Food and Agricultural Organization*

The mandate of FAO is to raise levels of nutrition and standards of living, to improve agricultural productivity, and to better the condition of rural populations.

### *International Labour Organization (ILO)*

The ILO is the UN specialized agency which seeks the promotion of social justice and internationally recognized human and labour rights.

*United Nations Industrial Development Organization (UNIDO)*

The specialist agency of the UN dedicated to promoting sustainable industrial development in countries with developing and transition economies.

*The World Intellectual Property Organization (WIPO)*

WIPO is responsible for the promotion of the protection of intellectual property throughout the world through cooperation among States, and for the administration of various multilateral treaties dealing with the legal and administrative aspects of intellectual property.

**International Monetary Fund**

Statutory purposes: to promote international monetary cooperation; to facilitate the expansion and balanced growth of international trade; to promote exchange

stability; to assist in the establishment of a multilateral system of payments.

**World Bank Group**

*International Bank for Reconstruction and Development (IBRD)*

*International Development Association (IDA)*

*International Finance Corporation (IFC)*

*Multilateral Investment Guarantee Agency (MIGA)*

*International Center for Settlement of Investment Disputes (ICSID)*

*IPAnet*

IPAnet is an initiative of the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group to harness the functionalities and information resources of the Internet for promotion of international investment.





# From Doha to Hong Kong: Issues for South Asia



Multilateral trade negotiations under Doha Development Agenda (DDA), which resumed after the collapse of the Fifth Ministerial of the World Trade Organisation (WTO) in Cancún in September 2003, culminated in the General Council (GC) meeting in July 2004 that adopted 'July Package' (JP). Subsequent meetings have met with little success as far as reaching agreements on various issues under DDA is concerned. JP has set end July 2005 as the deadline to arrive at 'first approximations', i.e., broad consensus on five issues: agriculture, non-agricultural market access (NAMA), services, trade facilitation and development dimension. The success of the Sixth WTO Ministerial in Hong Kong to be held from 13-18 December 2005 depends on successful talks among members. Developing countries, including those in South Asia, have a high stake on the successful completion of the Ministerial.

## **Background**

The Fourth Ministerial in Doha in November 2001 made a breakthrough in the WTO talks with the launch of DDA under a new round of multilateral trade negotiations. Four years later, talks on concluding the Doha Round remain tenuous and are the priority of the Hong Kong Ministerial. The Fifth Ministerial in Cancún was supposed to provide a platform for a mid-term review of the progress made in DDA. However, not only a sharp division complicated talks over the agricultural and Singapore issues but also multiple groupings with entrenched positions were formed. Though the Cancún Ministerial failed amidst these irreconcilable differences, a Ministerial Statement was issued, making it clear that in those areas where a high level of convergence was reached, members would continue to work for an acceptable overall outcome.

## **July Package**

In the Ministerial Statement at Cancún, it was agreed to resume negotiations in Geneva by 15 December 2003. They resumed only in March/April 2004 and culminated in the adoption of the 1 August GC

Decision (WT/ L/579) JP which sets the stage for negotiations among members during the run-up to the Hong Kong Ministerial and beyond. It identified five priority areas for further negotiations: agriculture, NAMA, services, trade facilitation and development dimension.

## **Agriculture**

After being virtually neglected through decades of rapid trade liberalization, agricultural trade policy, market access, domestic support and export subsidies has become the most contentious topic in trade negotiations. In fact, the lack of progress in agricultural reform has led to several missed deadlines in the latest round of negotiations promoted by the WTO, putting DDA at risk. Agriculture remains a deal maker or deal breaker; unless there is a significant progress on agricultural negotiations, discussions on other issues are not likely to make any headway. Annex A of JP contains modalities for negotiations on agriculture, the contours of which are discussed below.

## **Market Access**

Market access refers to gradual reduction and elimination of tariffs on internationally traded goods. Members agreed to use a tiered formula, classifying tariffs into various bands for subsequent reduction from bound rates, with higher tariffs being cut more than lower ones. The actual modalities, the number of bands, threshold for defining bands and type of tariff reductions within each band remain subject to negotiations which must lead to 'substantial improvement' in market access for all products.<sup>3</sup> Annex A also addresses the issues of tariff rate quota, tariff escalation, and tariff simplification and exceptions to them are given in Box 1.

Upon initiatives by 'five interested parties', viz., Australia, Brazil, the European Union (EU), India and the United States (US), key WTO members agreed on the modalities of agricultural tariffs during the Paris 'mini-ministerial' in May 2005. They reached a preliminary compromise on how to convert 'specific'

**Box 1:**  
**Specific Issues on Agricultural Market Access**

In order to address other concerns decisions were also made on the following three issues.

- Sensitive Products Developed as well as developing countries can designate an appropriate number of tariff lines to be treated as sensitive without under-mining the overall objective of the tiered approach.
- Special Products (SPs) Only developing countries will be able to designate SPs for more flexible treatment, based on criteria of food security, livelihood security and rural development needs.
- Special Safeguard Mechanism (SSM) Developing countries will also have recourse to SSM to take measures against sudden import surges.

agricultural tariffs based on quantities imported into ad valorem equivalents, i.e., tariffs mentioned in percentage and based on the price of the product. Members had been caught up in disagreement over the conversion process for months; settling the matter was essential for agricultural negotiations to proceed. However, the tariffication modality still needs to be agreed to by the WTO's full membership.

### ***Domestic Support***

JP included targets for the reduction of domestic support and specified that 'Blue Box levels' will be capped. In the first year of implementing the Agreement on Agriculture (AoA), it is required for members to reduce their overall trade-distorting support by 20 percent, comprising the final bound total aggregate measure of support (AMS), the permitted de minimis levels and the permitted 'Blue Box levels'. The reduction will be made under a tiered formula that cuts subsidies progressively: higher levels of trade-distorting domestic support are subject to greater reduction.

The Annex also caps product-specific AMS at average levels, based on a methodology to be agreed, for preventing circumvention of obligations through transfer of subsidies between different support categories. However, even the 20 percent reduction would not change the existing levels of support significantly as the reduction would be made from bound rather than applied levels.

### ***Export Competition***

Members reached an agreement to establish detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on export measures with equivalent effect by a credible end date.

JP also includes, within its ambit, export credits and credit guarantees or insurance programmes. Trade-distorting practices of exporting public enterprises and the provision of food aid, not in conformity with operationally effective disciplines to be agreed in order to prevent commercial displacement, are also to be disciplined.

### ***Non-Agricultural Market Access***

NAMA negotiations are being conducted under the background of high overall tariffs prevailing in developing countries on industrial products and high tariffs on developing country exports in developed countries. The NAMA framework sets the stage for the pursuit of tariff cuts according to a non-linear formula and the reduction or elimination of non-tariff barriers (NTBs). Its level of specificity, however, is low reflecting many issues where progress in the negotiations has been limited.

Annex B of JP asks WTO members to continue working on a non-linear formula applied on a 'line-by-line basis' on nonagricultural products. However, it emphasizes the 'special needs and interests' of developing countries, including through less than full reciprocity in reduction commitments, and provision of leeway to insist on only linear cuts for certain tariffs lines and perhaps none for others.

The Annex also specifies that flexibilities for developing countries will include applying 'less than formula cuts' to up to a certain percentage of tariff lines, or keeping "as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a member's imports". The bracketed figures are open to negotiations. The NAMA framework 'contains the initial elements for future work on modalities' leaving the formula for tariff reduction, the issues concerning the treatment of unbound tariffs, the flexibilities for developing country participants, the issue of participation in the sectoral tariff component and the preferences for future negotiations. It has also addressed the issues of NTBs and requested members to make notifications of NTBs by 31 October 2004.

It is stipulated that the non- ad valorem duty should be converted into ad valorem ones. This is expected to make tariff protection transparent for exporting countries, which face higher level of protection when prices of their exports fall. Since most developing countries still have a substantial portion of their industrial tariffs unbound, they are expected to bind substantial portion of their tariff lines. Annex B also appears to suggest that newly acceded countries may not be required to undertake any major tariff cuts as



they have already made extensive market opening commitments.

Similar to the agricultural text (though not mentioned in the agricultural section), duty free and quota free market access to least developed country (LDC) products have been left at the discretion of the developed country participants and 'other' participants, without any agreed deadline. Developed countries maintain around an average of 3.8 percent tariff on manufactured products and developing countries either maintain very high bound tariffs or have not bound a significant portion of their tariff lines at all. For example, some developing countries and LDCs in Africa have bound less than 1 percent of their industrial tariffs. While binding coverage for industrial products in Cameroon and Tanzania is 0.1 percent, the corresponding figures for Mozambique and Togo are 0.5 percent and 0.9 percent respectively. Among South Asian countries, Bangladesh has bound only 3 percent of its industrial tariffs, Sri Lanka has bound 28.3 percent and the corresponding figure for Pakistan is 37 percent.

### **Services**

When the General Agreement on Trade in Services (GATS) was prepared during the Uruguay Round (UR), members of the General Agreement on Tariffs and Trade (GATT) were allowed to choose the sectors for liberalization. They also agreed that there would be further liberalization in this sector in a progressive manner, like in agriculture. In the run-up to the Doha Ministerial, the notion of reciprocal commitments emerged. While developed countries wanted to see hitherto protected sectors in the developing countries liberalized, the latter wanted to see hitherto protected mode of service delivery liberalized.

Accordingly, DDA mandated negotiations on trade in services with a view to promoting the economic growth in all trading partner countries. Following this mandate, the focus of services negotiations has been on bilateral request-offers. JP, too, supports this mandate and aims to achieve progressively higher levels of liberalization with no a priori exclusion of any services or mode of supply. Since the offers submitted, so far, had not been upto the expectations of the members, JP set the deadline to submit revised offers as May 2005, which passed without members making satisfactory offers.

### **Trade Facilitation**

Despite the potential benefits, developing countries are unable to independently undertake trade facilitation measures that could help them overcome supply side bottlenecks and enhance efficiency. The inclusion of this issue for negotiations in DDA, "subject to explicit

consensus on the modalities of negotiations", had created a sharp division between the North and the South in the run-up to Cancún Ministerial. Within JP, it is the only Singapore issue in which members reached an agreement to conclude negotiations as a part of Single Undertaking under DDA. Annex D of JP states that negotiations "shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit."

Substantive negotiations have started with several submissions made on Articles VIII and X by WTO members. The debate, so far, focuses on the scope of transparency requirements, the scope for special and differential (S&D) treatment, the costs of trade facilitation and the required technical assistance in the case of developing countries.

### **Development Dimension**

Implementation related problems in relation to the WTO agreements and S&D treatment have been discussed ever since DDA was launched. Box 2 highlights some development dimension issues as set forth by the Doha Declaration. However, there has not been significant progress in most issues. JP calls for the review of all outstanding agreement specific proposals and reporting to the GC for clear recommendations on decisions. The Committee on Trade and Development was instructed to report to the GC "as appropriate" on all other outstanding works, such as a mechanism to monitor the implementation of S&D obligations and the incorporation of S&D treatment into the architecture of WTO rules.

Among the issues agreed for negotiations by JP, trade facilitation is the only issue that provides a leeway to developing countries not to implement their part of commitments in the absence of technical assistance. On agriculture, S&D provisions are mostly related to

**Box 2:  
Development dimension issues in the Doha Declaration**

- Mainstreaming trade into the national development and poverty reduction strategies.
- Implementation of WTO commitments.
- Coordinated delivery of technical assistance.
- Long term funding for WTO technical assistance.
- Market access and export diversification and
- Endorsement of integrated Framework for Trade Related Technical Assistance as a viable model for LDCs.

*Note: Adapted from the Doha Declaration (between paragraphs 38 and 43)*

higher transition period and lower level of reduction coefficients. The language on S&D provisions is non-binding and depicts best endeavour nature. Moreover, though the LDCs are not required to participate in any reduction commitment, the non-binding language relating to duty free and quota free access<sup>13</sup> has further weakened their bargaining position in their efforts to obtain such facility from the developed countries. According to Annex C of JP titled Recommendations of the Special Session of the Council for Trade in Services: "Members shall strive to ensure a high quality of offers, particularly in sectors and modes of supply of export interest to developing countries, with special attention to be given to LDCs". This language is meaningless to the developing and least developed countries as there is a vast difference between "shall strive to ensure" (existing text) which is not mandatory and "shall ensure" which would have been mandatory. As far as services are concerned, members, as per the text, "note the interest of developing countries as well as other members on Mode 4, i.e. movement of natural persons". However, noting the interest and actually making a commitment to liberalize the same are two entirely different things.

### **Other Issues**

The exclusion of some other issues by JP does not negate their importance. Therefore, these issues are briefly dealt with in the following paragraphs.

### **TRIPS Agreement**

The issue as to whether countries with Trade Related Aspects of Intellectual Property Rights (TRIPS) compliant patent regime can export generic drugs manufactured by using compulsory license to countries without sufficient manufacturing capacity still begs clarifications. Also, members are divided on whether to include a mandatory requirement to disclose the source of origin of genetic resources and associated traditional knowledge while applying for patent. Should the members decide to include such a requirement, what should be the modalities for prior informed consent and benefit sharing is also being discussed in the TRIPS Council.

Another vital issue is the possibility of initiation of trade dispute even if there has been no violation of the TRIPS Agreement. While the Dispute Settlement Understanding (DSU) allows initiation of such complaints in the case of other 'covered' agreements, Article 64.3 of TRIPS has provided initial exception to this rule. This exception was extended for two years by DDA. Due to the failure to reach consensus on it during Cancún, its future remained uncertain. JP then laid all speculations to rest by explicitly extending the moratorium until the Sixth Ministerial.

### **Trade and Environment**

Though the demandeurs would have liked to initiate negotiations on trade and environment issues, trade ministers agreed to conduct negotiations on only three areas: a) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs); b) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status; and c) the reduction or, as appropriate, elimination of tariff barriers and NTBs on environmental goods and services.

Ministers also instructed the Committee on Trade and Environment in pursuing their work to give particular attention to: a) the effect of environmental measures on market access issues; b) the relationship with the relevant provisions on the TRIPS Agreement; and c) labeling requirements for environmental purposes.

Since a majority of WTO members were not keen on pursuing negotiations on these issues, it is not likely to reach too far. Only the negotiations on environmental goods have seen some movement with few countries proposing lists of environmental goods although many developing countries have yet to put forward their positions. JP also made a passing remark on environmental issues by reaffirming members' commitment to continue negotiations in line with the Doha mandate.

### **Trade, Debt and Finance**

Developing countries are concerned about the access to trade finance for enhancing their trade performance. The demandeurs for examining this relationship between trade, debt and finance are countries seeking ways to reduce their external debt burden and those that have experienced financial crises.

Ministers agreed in Doha to examine this relationship and of any possible recommendations on steps to be taken within the WTO mandate in order to contribute to a curable solution regarding external indebtedness of developing countries. The main objective was to strengthen the coherence of international trade and financial policies with a view to safeguarding the multilateral trading system from financial and monetary instability. It was also agreed that the GC should report to the Cancún Ministerial on progress in the examination. However, the GC could not prepare any recommendation. Neither has JP mentioned anything other than urging the GC and other relevant bodies to "report in line with their Doha mandate to the Sixth Ministerial Conference".

### ***Trade and Technology Transfer***

Since developing countries felt that technology transfer provisions contained in various WTO agreements have not materialized, they demanded negotiations on this issue. The Doha Declaration stipulated: "We agree to an examination, in a Working Group under the auspices of the GC, of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. The GC shall report to the Fifth Session of the Ministerial Conference on progress in the examination".

Besides, the Declaration on Implementation Related Issues and Concerns contained a language to reinforce the mandatory nature of Article 66.2 of TRIPS (dealing with technology transfer) and urged the developed countries to submit the progress made. The Working Group on Trade and Technology Transfer (WGTTT) will now have to present its recommendations during the Hong Kong Ministerial.

### ***Dispute Settlement***

Problems were encountered in relation to time taken to settle the dispute and implementation of remedies proposed by the Dispute Settlement Body. Though it was decided during the UR that the review of DSU would be conducted from 1999, this could not take place. Therefore, DDA agreed to negotiations on improvements and clarifications of the DSU. It was also decided that the DSU review and negotiations on this issue would not form a part of single undertaking. However, two deadlines post Doha Ministerial have been already missed. Although no new deadline for the settlement of this issue exists, there are a number of proposals.

### ***Technical Assistance and Capacity Building***

A majority of developing countries, in particular LDCs, encounter problems in implementing WTO commitments. Therefore, these countries demanded that the issue of technical assistance and capacity building be discussed under DDA.

The Director General was supposed to report to the Cancún Ministerial regarding the implementation and adequacy of technical assistance and capacity building commitments. The December 2002 deadline for the submission of the interim report to the GC was missed. Technical assistance is now limited to organizing regional trade policy courses for training government officials under what is known as Technical Assistance and Training Plan. However, developing countries require resources not only to implement WTO obligations but also enhance supply side capacities.

### ***Towards a common position***

All the six WTO members of the region namely Bangladesh, India, the Maldives, Nepal, Pakistan and Sri Lanka realise that DDA offers tremendous prospects for them to achieve their overarching objective of sustainable development and poverty alleviation. All of them thus have a high stake on the successful completion of DDA. Therefore, it is necessary for them to forge an alliance for the achievement of their common goals.

However, impediments are hindering the prospects of cooperation among South Asian countries to form a common position prior to the Hong Kong Ministerial. First, while larger economies like India and Pakistan are in a position to make reciprocal commitments, LDCs like Bangladesh, the Maldives and Nepal hope to benefit from S&D provisions. Developing countries also feel that the LDCs would be gaining incremental market access at their cost. Second, there are sector specific concerns such as in the case of AoA.

Despite these problems, South Asian WTO members can and should identify the areas of common interest, articulate a common approach and strategy to be pursued in negotiations, and in the process, resolve conflicting interest vis-à-vis regional cooperation. What is the likelihood of common positions on the issues being discussed as part of JP and other issues under DDA?

Since a majority of South Asian populations depend on agriculture, their interest lies in protecting the agricultural sector from the import of subsidized products of developed countries. While India would gain tremendously from the removal of agricultural subsidies in industrialized nations, Bangladesh, the Maldives and Nepal are likely to lose because of increased food import bill. Tariff and subsidy reduction in India would result in the entire South Asia region making gains. It might thus be in the regional interest to have a common position on the elimination of subsidies in developed countries but maintaining the most favoured nation tariff protection. They could then liberalize tariffs on agricultural products among themselves under South Asian Free Trade Area negotiations.

Similarly, South Asian countries need to develop common positions on reducing tariffs and designating sensitive products, SPs and preparing the modalities for SSM through consultations when submitting proposal in alliance with other groups. A meeting of South Asian Association for Regional Cooperation (SAARC) trade and commerce ministers in August 2001 in New Delhi had also emphasized closer collaboration and consultation amongst the SAARC

policymakers and ambassadors to the WTO Secretariat. They were also asked to keep each other abreast of country positions, and interact and discuss pertinent issues.

On NAMA, India and Pakistan both of which maintain high industrial tariffs will have to undertake higher tariff cuts due to non-linear formula for tariff reduction proposed under the Swiss formula. NAMA negotiations may have some impact on Bangladesh and the Maldives despite their LDC status because they will be asked to bind more than 90 percent of their industrial tariffs. The negotiations may not be relevant for Nepal as it is an LDC and has also bound 99.3 percent of its industrial tariffs at the time of WTO accession. Despite the differences in country positions, South Asian countries should collectively demand for actualization of “less than full reciprocity principle”.

A liberal services regime along with sufficient infrastructure needs to be complemented by facilitated and favourable access to market, technology, information network and distribution channels and market information. South Asian countries need to raise the issue under JP in the negotiation on rules. Given the role of remittances, tremendous gains could accrue to all these countries from the liberalization of Mode 4 of GATS. Similarly, they should also press for the liberalization of outsourcing services, covered under Mode 1 (cross-border supply of services using information and communication technology) of GATS.

On trade facilitation negotiations, Nepal may be the only South Asian WTO member with a different approach. Given its landlocked status, the negotiation on transit freedom is crucial to secure transit rights. All South Asian countries should be careful to ensure that they need sufficient and targeted technical assistance from their development partners to implement the measures to be agreed. At the domestic level, it is worthwhile for them to conduct studies to map out their technical assistance requirements.

On negotiations relating to implementation related issues and S&D treatment, South Asian countries should have a common position to ensure that these issues are expeditiously settled otherwise they should join hands with other countries to block negotiations on other issues. After all, DDA is a single undertaking and nothing can be considered as agreed unless there is an agreement on everything, including development related issues.

South Asian countries should make a sincere effort for common positions on other issues as well. On TRIPS, they should first aim at clarifying the spirit of the Doha Declaration so that countries with limited

manufacturing capacity on pharmaceutical products are free to import generic medicines from other countries in order to address their public health concerns. Second, they should develop a position that prevents piracy of their genetic resources and associated traditional knowledge by emphasizing on the disclosure, prior informed consent and benefit sharing as pre-conditions for patenting of invention based on genetic resources and/or traditional knowledge. Third, they should insist on extending the moratorium on non-violation complaints under the TRIPS Agreement.

On trade and environment, priority should be given to ensure that environmental standards are not legitimized within the WTO framework as this could be used for protectionist purpose by developed countries. On trade, development and finance, South Asian countries may not have major interest because of their relatively sound macroeconomic fundamentals. Trade and technology transfer is a major issue for South Asian countries as they are net importers of technologies. Therefore, they should make informed intervention at the WGTTT such that their concerns are reflected in the Working Group’s submission to the Hong Kong Ministerial.

DSU review might not be a current priority for South Asian countries because of the limited number of disputes these countries are involved in. Technical assistance and capacity building are major issues and they should collectively bargain for binding commitment to particularly help the LDCs in the region. In this regard, the twin priorities are investment in upgrading infrastructure and customs administration.

## **Conclusion**

The success of the Hong Kong Ministerial is vital to complete current multilateral trade negotiations under DDA, in which developing countries have a high stake. Despite the failure of the Cancún Ministerial, the agreement reached among members on JP has raised hope. The successful completion of DDA is bound to be a tenuous process. South Asian countries have divergent interests on some issues but that does not preclude the possibility of arriving at common positions on others. Given the limited negotiating resources, there is a need to prioritize the issues on the basis of their importance so as to create better impact on making trade work for people, especially the poor of South Asia. It is also necessary for all the countries to be proactively engaged in the WTO discussions so as to ensure that issues that have not received much prominence in JP, but can affect them, be also addressed.



# Are WTO Trade Negotiations: A Tool for Poverty Reduction?



What are the risks and benefits developing countries face with and without the launch of a new round? Would it contribute to poverty reduction in the poorest countries?

## Economic gains for developing countries

Recently, many economists have attempted to quantify the welfare gains to be had from a new round of trade negotiations. The estimates for global welfare gain from a new round vary greatly, as one can see from Table 1.

What accounts for such a large variation? First, the inclusion or exclusion of services from the calculation can make a big difference, as modeling in this sector is still in its infancy, i.e. the methods on how to quantify reduction of protection are still not agreed upon. Therefore, according to Stern and al. (2001), services liberalization accounts for most of the welfare gains, whereas for Hertel (2000), it contributes modestly. Moreover, differences in the features of each model will explain some of the variation.

There are a number of issues to keep in mind while considering these numbers. First, these models do not include the dynamic efficiency gains from liberalization. Dynamic gains are the long-term impacts on growth, including the benefits in technological improvements through contacts with foreign technologies (through imports or FDI). The relationship between trade policy and economic growth is a complex one. For instance, Rodrik (1999) highlighted how many conditions, such as macro-economic stability and good governance, are needed to ensure that developing countries can actually take advantage of these potential long-term benefits. Nevertheless, many economists believe that

the dynamic gains from trade liberalization are much larger than the static ones, econometric models hence underestimating the positive impact of trade liberalization.

On the other hand, it is often overlooked that these are not net gains, i.e. that there are several costs linked to trade liberalization to be subtracted from the gross figures (Ciuriak, 2001). "Insofar as liberalization changes the economic parameters under which existing investment was put in place, it leads to early write-down of investment, a dead-weight loss that needs to be subtracted from the efficiency gains made elsewhere" (Ciuriak, 2001, p.232). The costs for the environment, the risks of destabilization, the opportunity costs of public officials focusing on trade reforms instead of investment or technological strategy (both strong drivers of growth) are all elements to include in an evaluation of the net value of further trade liberalization. Furthermore, we should note that the models in Table 1 are based on the complete elimination of all protection in the new round. These assumptions are clearly too optimistic.

Welfare gains from trade liberalization are determined by two main factors: efficiency gains and terms of trade effects. Efficiency gains highlight the importance of imports; indeed, the usual focus on exports often makes us forget that we export to be able to pay for our imports. If lower tariffs make these imports cheaper, domestic producers and consumers benefit. Within each country, producers and workers in protected industries will lose, but the general welfare will increase. However, some countries whose net imports are very concentrated in particular sectors can lose overall, if the worsening of its terms of trade

**Table 1:**  
Comparison of estimated static welfare gains from complete liberalization (in billions US dollars)

	Computable general equilibrium (CGE) models			
	Stern and al.	Hertel	Anderson and al	Dessus and al.
Total gains	1857	350	254	84
Of which: gains from services	1167	50	Not included in model	Not included in model
Gains for developing countries.	272	147	108	18*

\* Defined as non-oecd countries

swamps these efficiency gains. For example, the increase in food prices caused by the reduction of export and production subsidies in agriculture created welfare loss for net-food importing countries.

For the sake of the argument, let's look at the results of the model predicting that the total gains from a reduction of 33 per cent of barriers in agriculture, industrial goods and services will amount to 613 billion USD, including 90 billion USD for developing countries (Stern and al. 2001). These are certainly appreciable resources that could be used for development purposes. In comparison, the total official donor assistance (ODA) to developing countries amounts to 56 billion annually. However, as just mentioned, these are only gross gains; we do not have estimates of the costs of adjustments and other costs linked to trade liberalization. Trade reforms now entail much more than simply removing tariffs at the border. The last round of trade negotiations led to the adoption of trade agreements that involved expensive domestic policy changes. Based on project budgets from the World Bank, Finger and Schuler (1999) calculated that the costs of implementing three of these agreements (customs valuation, Sanitary and Phyto-sanitary (SPS) and TRIPS) can easily cost 130 million USD per country. It is not clear that the static gains from trade liberalization are sufficient to compensate for all the costs inherent to such changes. Moreover, these gains will not be distributed equally among developing nations; the actual benefit for the Least-Developed Countries (LDCs) is yet to be assessed.

How about the dynamic gains? As mentioned above, empirical evidence tends to show that openness to international trade accelerates economic growth, i.e. that countries that increase their international trade will experience a higher rate of economic growth in the long-run (10 years lag) than countries that are not liberalizing (see Dollar and Kray, 2001). The measurement of the causal link between trade and growth is subject to serious debate among economists. Many stress how other factors such as investment and technological innovation, are stronger drivers of growth (Levin and Renelt, 1992, Rodriguez and Rodrik, 2000). Nevertheless, most economists would certainly support the idea that trade liberalization when barriers to imports are very high can create stronger economic growth when the right domestic conditions such as macro-economic stability, economic and social infrastructures, tax reform, strong financial sector and social safety nets are already in place. But if these conditions are not present, should a country liberalize and lift barriers to imports anyway? This is a crucial question, as speedy liberalization can lead to economic

and political disruptions. Economists are only beginning to examine in detail the institutional context in which trade reforms take place.

Even if we agreed that trade would in the long run lead to stronger economic growth, the question remains: How does trade liberalization affect the poor? The relationship between trade liberalization and poverty reduction is even more complex. First, trade reforms will affect the price of goods and services consumed by the poor and their income. The farm household model used by Alan Winters (1999) is a useful tool to examine the impact of trade reforms through three main channels of transmission: the enterprise (change in wages/employment), the distribution channel (change in prices of good and services consumed and produced by the household) and the government (transfers, government spending). There are many analytical steps necessary to evaluate the impact of trade reforms on poor households. For instance, elimination of protection on certain crops mainly produced by small farmers can have a very strong immediate negative impact on poor households, if they can't compete with the cheaper imports. The next step is to examine the capacity of the small producers to switch to other crops. On the other hand, the entry of these foreign agricultural products could translate into lower prices, which could be especially beneficial for the poor if it represents an important part of their spending. Given the multiple transmission channels between trade liberalization and poor household, the poverty reduction effect of such reforms has to be evaluated on a case-by-case basis.

Trade liberalization will also affect poverty reduction through its effects on growth. Indeed, if trade reform leads to strong economic growth, it could mean higher income for the poor, if economic growth is to benefit all income groups equally. There is evidence showing, generally, that there is no tendency for trade to be associated with an increase in inequality (Dollar and Kraay, 2000). The evidence from the East Asian economies in the 1960s and 1970s supports the view that trade leads to increase in income for all. However, the experience in Latin America in the 1980s and 1990s of rising wage inequalities during a time of trade reforms and economic growth challenges the universality of such a link (Wood, 1997).

Therefore can developing countries truly benefit from a new round? Econometric models, on their own, do not offer answers to these questions. They tell us a bit about the potential benefits of trade liberalization, but largely fail to calculate the costs. Economists tell us that trade liberalization is often associated with higher economic growth, and can lead to poverty reduction. But experience tells us that several economic and

political conditions are needed to enable the poor to benefit from trade. At the most general level, one could argue that a prudent and gradual reduction of tariffs in a new round, which would include increased access to northern markets and duty-free access for the Least-Developed Countries, would benefit developing countries.

However, trade agreements are not only about the reduction of tariffs and protection at the border anymore. The new agreements are in the process of creating a new global trade regime. These numerous new agreements and rules are revealed to be very problematic for developing countries. If negotiated on the same terms as earlier, the risks are great that the results of a new round will be similarly poor, i.e. limited improvement in market access and large costs of implementation of new agreements. The initial conditions need to be different in order to achieve different results. What is really needed right now is not another round of broad trade negotiations. Rather, the WTO needs to transform itself and recognize itself as a development institution.

A global trade regime geared toward development objectives instead of global rules for friction-less economic transactions and market harmonization requires important changes (Helleiner, 2000).

The first steps of this transformation would be

- to assess the development impact of the current agreements and to remedy to the most urgent problems;
- to address the governance issues facing the WTO in terms of greater involvement of developing country governments and participation of citizen groups and representatives; and
- to tackle the most pressing implementation issues. Not engaging in a new round of trade negotiations is not synonymous with status quo. Many reforms are needed, and the permanent institutional structure of the WTO created in 1994 is a forum where they can be discussed and adopted.

We should keep one fundamental question in mind when considering current and future agreements: Would this policy help reach the development objectives? By adopting such a mindset, the traditional system where developing countries would have to accept costly new rules on investment and competition policy in exchange for market access concessions has to be replaced. In the past, the system of exchange of concessions led to the adoption of new agreements that do little to contribute to poverty reduction and other development objectives.