

**The WTO's Doha Negotiations:  
An Assessment**

BHAGIRATH LAL DAS

# **The WTO's Doha Negotiations: An Assessment**

BHAGIRATH LAL DAS

**TWN**  
Third World Network

**The WTO's Doha Negotiations: An Assessment**

is published by  
Third World Network  
131 Jalan Macalister,  
10400 Penang, Malaysia.  
Website: [www.twinside.org.sg](http://www.twinside.org.sg)

© Bhagirath Lal Das, 2008

Printed by Jutaprint  
2 Solok Sungei Pinang 3, Sg. Pinang,  
11600 Penang, Malaysia.

ISBN: 978-983-2729-32-7

# CONTENTS

---

<b>1</b>	<b>Introduction</b>	<i>1</i>
<b>2</b>	<b>The Negotiating Environment</b>	<i>3</i>
<b>3</b>	<b>The Forgotten Development Agenda</b>	<i>9</i>
<b>4</b>	<b>Agriculture</b>	<i>12</i>
<b>5</b>	<b>Non-Agricultural Market Access (NAMA)</b>	<i>35</i>
<b>6</b>	<b>Services</b>	<i>42</i>
<b>7</b>	<b>Some Other Issues</b>	<i>47</i>
<b>8</b>	<b>Conclusion</b>	<i>52</i>
<b>9</b>	<b>Summary of Suggestions</b>	<i>57</i>

## **NOTE**

This is an edited version of a paper presented at the United Nations Development Programme (UNDP) Regional Trade Workshop, “Doha and Beyond: Incorporating Human Development into Trade Negotiations”, held in Penang, Malaysia on 17-18 December 2007. The workshop was organised by the UNDP Regional Centre in Colombo and UNDP Malaysia in partnership with the Third World Network.



# 1

## Introduction

THE Work Programme of the World Trade Organisation (WTO) launched in Doha in November 2001 (WTO Doha negotiations) is being conducted within the framework of three decisions in the WTO: (i) the Doha Ministerial Declaration of 14 November 2001; (ii) the July 2004 Framework, a decision of the WTO General Council of 1 August 2004; and (iii) the Hong Kong Ministerial Declaration of 18 December 2005.

The negotiations are passing through a difficult phase at present. There have been occasions when it appeared that an agreement on the core issues was within reach. Highly publicised meetings of ministers in small groups have been organised on several occasions, generating enthusiasm and optimism. But talks at these meetings collapsed, with the resulting recriminations and blame game often vitiating the negotiating environment.

The negotiations have had their ups and downs in the course of the last six years, and at present (December 2007) they are almost in a trough. They have slowed down and grave uncertainty surrounds the prospects for further progress. The developing countries have been cooperative and forthcoming in making unilateral concessions on some important issues in the areas of agriculture, NAMA and services, as will be explained in the respective subsequent chapters, but the major developed countries have not reciprocated in any significant way. They continue to insist on more concessions from the developing countries, often without adequate counter-concessions from their own side. The developing countries are, however, now better informed and better prepared. Thus it is not easy for the major developed countries to

hasten them into making commitments that may have an adverse impact on their developmental options and objectives.

The negotiations are comprehensive and complex. The aggressive interest of the major developed countries in expanding their economic space clashes with the vital developmental priorities and survival concerns of the developing countries. All this calls for deliberation and interaction among the participants in a cool atmosphere. The strategy of assembling them in small groups in an atmosphere charged with tension and clashing their heads together to hammer out agreements has not worked. Setting artificial deadlines to hasten the process has failed repeatedly. There is a need for cool thinking at this stage.

The developing countries have to remain ever alert and prepared for engaging in meaningful negotiations in different areas. Issues and positions have been clearly identified. This paper aims at assessing the current status in various areas of the WTO Doha negotiations from the perspective of development and the interests of the developing countries. The chapters that follow examine, first, the emerging environment of the negotiations and then go on to explain in detail the specific issues in important areas. Suggestions for action are given in each area from the development perspective. Finally, for the sake of convenience of use and quick reference, a summary of the suggestions is given at the end.



# 2

## The Negotiating Environment

### **Lapse of US Trade Promotion Authority**

A MAJOR adverse change in the negotiating environment has been the lapse of the US Trade Promotion Authority (TPA, commonly known as the “fast-track authority”) on 1 July 2007. This “fast-track authority” permitted the US executive to conclude a trade agreement and then place it before the US Congress for approval or rejection in its entirety, without the admission of any amendments. This authority has now expired and it is unlikely that the current US administration will get it again from the US Congress. If other countries negotiate trade agreements with the US under these conditions, it will put them under severe handicap and may expose them to grave risk, as explained below.

Other countries will make their own commitments based on the commitments of the US negotiators. All this will form the final result of the negotiations. But the US Congress, when considering these negotiated results, may not find them satisfactory and may ask for more commitments or may find the commitments made by the US negotiators unacceptable. Assuming that the other countries may agree to the new demands, one will still not be sure that the US Congress will approve the deal. It may want something more once the agreement is placed before it for the second time. In this manner, there may be a chain of incremental commitments.

This is precisely what has happened in some bilateral trade talks recently. Peru, Panama, Colombia and the Republic of Korea concluded their bilat-

eral trade agreements with the US. However, the US Congress was not satisfied. It wanted provisions on the environment and social clause in the agreements. The countries had to renegotiate the agreements after they had already been concluded. And even then, doubts are still being expressed as to whether the agreements with Colombia and the Republic of Korea will be approved by the US Congress.

Under normal circumstances in the WTO, the European Commission (EC) would have been opposed to carrying on negotiations when the fast-track authority expired. But the EC has not expressed any such reservation so far. Perhaps it is comfortable with the entire span of positions that the US executive and US Congress may take.

Thus it is the developing countries that are at risk in the current uncertain situation. The negotiations have reached a stage where countries are to make concrete commitments in important areas, particularly agriculture, industrial tariffs (NAMA) and services. And they will be required to make commitments in a situation of complete uncertainty as to whether their commitments will be considered adequate by the US Congress even after the US executive has agreed and also whether the US Congress will agree with the commitments made by the US executive. This will be an extremely risky affair at this critical and near-final stage of the negotiations.

### **Pressures from major developed countries**

As is normally the case in important negotiations in the GATT/WTO forum, the major developed countries, particularly the US and the European Union (EU), have combined to put pressure on the developing countries in various areas. Earlier, they had differences among them, particularly in the area of agriculture where the US wanted deep cuts in the EU's agricultural tariffs while the EU (through the EC) wanted elimination/reduction of the export subsidy measures of the US. But they appear to have patched up their differences as in the past and joined forces to extract concessions from the developing countries. Sensing the importance that the developing countries at-

tach to agricultural liberalisation in the US and EU, these two major partners in the negotiations do not let go any opportunity to emphasise that any such move on their part will be possible only if the developing countries reduce their industrial tariffs substantially and liberalise their services imports significantly. There is great pressure from them on the developing countries in these two areas, as will be explained in detail in later chapters.

Besides, following the past pattern, the major developed countries keep adopting the strategy of trying to split the developing countries. In several subjects, they hint at giving small concessions to various groups of developing countries with special interests, which, they hope, will keep these countries away from siding with the main stream of the developing countries in jointly pursuing their developmental aims and objectives in the negotiations.

### **Developing countries' consolidation**

Undoubtedly there are specific interests of some developing countries and they single these out in their statements to emphasise them; for example, the G33 developing-country grouping lays stress on Special Products (SP) and Special Safeguard Mechanism (SSM) in agriculture, the G20 on reduction of agricultural tariffs and subsidies in the developed countries, the NAMA 11 on rational reduction of industrial tariffs so that the developing countries' development process is not hampered, the Small and Vulnerable Economies (SVEs) on special consideration to them on reduction of industrial tariffs, some developing countries with fairly open industrial sectors want reduction of industrial tariffs all around, etc. Sometimes, large regional groups with some common interests come out with statements and stands of their own, for example, the African Group, the Africa-Caribbean-Pacific (ACP) countries, etc. But it has been noted that at critical times, most of them come together to defend themselves against the aggressive pressures of the major developed countries.

The process of consolidation of developing countries' interests was evident during preparations for the WTO's Seattle Ministerial Conference in 1999.

They came out with common proposals on implementation issues, which will be explained later in detail. Then in the Cancun Ministerial Conference in 2003, a large number of developing countries took a united stand against the moves of the major developed countries and rejected negotiations on any of the “Singapore issues” (viz., investment, competition, government procurement and trade facilitation, issues which had been introduced in the WTO process in the Singapore Ministerial Conference in 1996). More recently, during the current phase of the negotiations, various developing-country groups like the G20, G33, ACP countries and the Least Developed Countries (LDCs) have come together on several occasions and issued joint statements on important issues. Clearly the strategy of the major developed countries to split the developing countries has not succeeded.

### **Transparency: negotiations in small groups**

Though negotiating in small groups has been a common practice in the GATT/WTO system for a long time, it became more firmly embedded in the negotiating process during the WTO Doha negotiations, particularly from the beginning of 2004. A series of mini-ministerial meetings were organised where nearly 20-25 countries were represented. Naturally, those left out felt aggrieved. Afterwards, the process went into an even more restricted mode. A group of six, commonly known as the G6, comprising the EC, the US, Australia, Japan, India and Brazil, started having meetings to sort out their differences on the key issues in the negotiations. Later, the group shrank still further to comprise only four participants, the EC, the US, India and Brazil, commonly called the G4.

This process was viewed by the developing countries in general with dismay as perhaps they thought that the negotiations had been effectively shifted from the multilateral forum to this small group where they had no participation and no say. The objective of the negotiations in the G6/G4 perhaps was to hammer out differences in this small group and then bring the result to a bigger group, and finally to the whole membership of the WTO, for consid-

eration. The proponents may have thought that it would facilitate the negotiating process.

A large proportion of the developing countries, however, were disturbed by this process. They feared that the result cooked up in this small group would be brought to them and they might find it difficult to accept it, and yet, it might be too late then to raise objections. Their concern reached a high pitch in July 2007, while the Potsdam meeting of the G4 was still going on. A large number of the developing countries came out with a declaration in Geneva that they would not be bound by whatever was decided in Potsdam as they would not have been a party to it.

The negotiations in these small groups collapsed repeatedly, which was not totally unexpected. The strategy of pushing the ministers into tight schedules in the expectation that they would hurriedly soften their positions had failed. The stakes and interests involved in the negotiations were too complex and diverse for such tactics to be effective. What was needed was a meeting of minds in a cool atmosphere rather than a clashing of heads in artificially created turmoil.

The meetings of the G6/G4 were covered with high publicity in the international press. Consequently, the failure at each stage also got highly publicised. All this cast a gloom on the negotiating process again and again. Further, it vitiated the atmosphere of negotiation. After each failure, there was a bitter blame game among the participants which widened the gulf between them and made the resumption of negotiations more difficult. Also, it had the serious effect of creating suspicion among the developing countries that were not participating in these talks. This has shaken the GATT/WTO system to its core. The scars will take a long time to heal.

Finally, the participants in the G4 realised the futility and risk of continuing with their exercise and they gave it up. The negotiations were brought back to the multilateral framework in the WTO where they really belonged. Re-

ports indicate that now there is comparatively greater transparency in the negotiations. The chairmen handling various negotiating subjects are convening meetings of larger groups, inviting about 30-40 participants, which, though still not fully representative of the total membership, perhaps cover a large spectrum of interests in the negotiations.

# 3

## The Forgotten Development Agenda

### Implementation issues

THE main reason behind the failure of the talks so far has been that the major developed countries are aggressively pursuing the agenda of expanding their market access in the developing countries without being prepared to give to the latter much in return, as will be made clear in the later chapters. And the important development issues which were put on the agenda in the WTO Doha negotiations at the instance of the developing countries have been pushed into the background and almost forgotten. Four of them need special mention: (i) implementation issues; (ii) special and differential (S&D) treatment of the developing countries; (iii) debt and finance; and (iv) technology.

Implementation issues are those compiled by the developing countries in preparation for the Seattle Ministerial Conference in 1999. These issues had been identified by the developing countries in the process of implementation of the WTO agreements in the preceding four years. Decisions on three of these issues out of nearly 100 were taken by the WTO General Council and later approved by the Doha Ministerial Conference in 2001. The remaining issues formed part of the agenda of the WTO Doha negotiations. The Doha Ministerial Declaration (paragraph 12) attaches “utmost importance” to the outstanding implementation issues and includes them as “an integral part” of the negotiations. It specifies a two-track approach for handling these issues: (i) addressing them under specific mandates of negotiation if they are covered by such mandate; and (ii) addressing the others in

the relevant WTO bodies *as a matter of priority*. Further, the Doha Ministerial Declaration (paragraph 47) says that “the outcome of the negotiations shall be treated as parts of a single undertaking”.

In spite of such a specific and clear decision and resolve, this subject has not come to the centrestage of the ongoing negotiations. The developed countries will naturally not be eager to pursue them. Even the developing countries, having been too preoccupied with other urgent items on the agenda, have not been able to keep this subject in the forefront of the agenda.

### **S&D treatment**

Reaffirming that the provisions on special and differential treatment are an “integral part” of the WTO agreements, the Doha Ministerial Declaration (paragraph 44) has asked for a review of these provisions with two objectives: (i) strengthening them and (ii) making them “more precise, effective and operational”. The review was started but has not progressed. The exercise got bogged down in various technicalities and also got derailed. Rather than exploring how to make S&D provisions more precise, effective and operational, the talks strayed into considering inclusion/exclusion of the developing countries in respect of the special treatment, which is a complex exercise and was not specifically included as a task in the Doha Ministerial Declaration. A constructive approach would have been to first go over each existing provision and find ways of making it more precise, effective and operational. Then, in so far as relevant and necessary, attention could be given to considering whether some developing country(ies) do not need a particular special provision. In any case, the situation now is that this important subject does not occupy the centrestage of the negotiations.

### **Debt and finance**

Paragraph 36 of the Doha Ministerial Declaration, apart from some other aspects, asks for “possible recommendations on steps that might be taken ... to enhance the capacity of the multilateral trading system to contribute to a



durable solution to the problem of external indebtedness” of the developing countries. However, there is no indication yet of useful and practical recommendations in this regard or any concrete moves towards such recommendations.

## **Technology**

Paragraph 37 of the Doha Ministerial Declaration asks for “possible recommendations on steps that might be taken ... to increase flows of technology to developing countries”. Here, again, there is no indication yet of useful and practical recommendations or any concrete moves towards such recommendations.

Thus these subjects of significance for the developing countries which have a direct bearing on development have been languishing. They are almost forgotten. Attention in the negotiations is now entirely focussed on three subjects: agriculture, NAMA and services. Reports indicate that the prime actors are concerned with achieving some form of a balance in the results in these three areas. Thus it is apprehended that the items in the development agenda will not feature in this “balance” and may continue to remain on the margins.

# 4

## Agriculture

### Issues and trends

AGRICULTURE is at the very centre of the negotiations. And within this area, three issues – tariffs, domestic subsidies (domestic support) and export subsidies – have been taken up for intense negotiation. Little attention has been paid to another important subject in this sector: the non-tariff barriers (NTBs).

The developed countries are on the defensive in the agriculture negotiations as they provide huge domestic subsidies to their agriculture sectors, in striking contrast to their loudly announced open-market and free-competition principles in production and trade. In defence, they have adopted an aggressive posture and asked for concessions from the developing countries to enable them to lower their agricultural subsidies.

Though both subsidies and tariffs are instruments of protection, subsidies, unlike tariffs, have never been an accepted form of protection in the multi-lateral framework, particularly for the developed countries. [There was an exception for the developing countries in the Tokyo Round Code on Subsidies which says: “Signatories recognise that subsidies are an integral part of economic development programmes of developing countries ... Accordingly, this Agreement shall not prevent developing country signatories from adopting measures and policies to assist their industries, including those in the export sector...”]

Subsidies have been tolerated, but never considered a right, unlike tariffs within bound levels. And yet, the major developed countries have been insisting on counter-concessions from the developing countries as a price for removing the unfair practice of subsidising their agriculture. The developing countries, now more informed about the subsidy measures of the developed countries and the consequent impact on their own agriculture, have generally remained firm in their demands. Naturally, the negotiations have been difficult and complex.

In the area of export subsidies, there was a decision in the 2005 Hong Kong Ministerial Conference which was very much retrogressive from the perspective of the developing countries. In the area of domestic support, there is positive movement, though some major escape routes are not being plugged. And in the area of market access, there is a risk of creating a wide escape route. All this is explained below.

### **Export subsidies**

Export subsidies in agriculture come in various forms. The EU takes the route of direct payment of export subsidies, while the US mostly adopts other equivalent measures in the form of export credits, export credit guarantees, insurance programmes, food aid, etc. The July 2004 Framework decided to eliminate most of these direct payments and equivalent measures by “a credible end date”. Following this decision, the Hong Kong Ministerial Declaration has decided that the “end date” will be the end of 2013, thus permitting the developed countries to continue with their export subsidies, though at reduced level, until then. While there may be some argument in support of the domestic subsidies in agriculture in the developed countries, there is absolutely no justification or rationale for them to pay export subsidies. Their subsidised exports put the survival of the farmers of the developing countries at grave risk. It is tragic that the practice will continue until the end of 2013.

Within the framework of the Hong Kong Ministerial Declaration, it is advisable for the developing countries to work out means of alleviating the danger. While prescribing this end date, the Hong Kong Ministerial Declaration lays down that a substantial part of the elimination of export subsidies should be “realised by the end of the first half of the implementation period”. The Chairman of the committee handling the agriculture negotiations issued a paper on 17 July 2007 (the Chairman’s paper) in which he suggests the elimination of 50 percent of budgetary outlays by 2010. If one anticipates that the WTO Doha negotiations will be over in 2008, there can be a reasonable expectation of the implementation period for the developed countries extending up to 2013. If that be the case, the Chairman’s proposal would result in 50 percent reduction in the first half, which is simply a linear reduction. The spirit of the Hong Kong Ministerial Declaration calls for an accelerated and front-loaded reduction, and that is what is needed considering the irrationality and unfairness in continuing with the export subsidies. Thus one has to go much beyond what the Chairman’s paper suggests.

It may be prudent for the developing countries to work for the elimination of about 90 percent of export subsidies and equivalent measures in the developed countries by 2010.

### **Domestic subsidies**

#### *Overall trade-distorting domestic support (OTDS)*

Domestic subsidies in agriculture have been by far the most difficult issue in the WTO Doha negotiations. High domestic subsidies of the major developed countries put the developing countries’ agriculture at a severe competitive disadvantage and even threaten its survival. At the same time, beneficiaries of these subsidies in the major developed countries, though comprising only a small percentage of the population, have high political leverage. Hence governments find it difficult to do away with the subsidies. Here lies the root of the complexity in this issue. And the developed countries are naturally on the defensive in this area. A particular embarrassment they face

is that the bulk of the subsidies goes to a small percentage of farmers and there is a heavy concentration of payments in a small number of crops.

A July 2007 report in the *Washington Post* (by George F. Will) says: “The largest 8 percent of farms receive 58 percent of the payments. Farms with revenue of \$250,000 or more receive payments averaging \$70,000 ... five commodities – corn, soybeans, cotton, rice and wheat – got about 90 percent of last year’s \$19 billion in subsidies.” An Oxfam report released in Madrid on 18 March 2005 said that seven leading beneficiaries in the EU were rich people, each receiving amounts ranging from 1.88 million euros (US\$2.5 million) to 3.6 million euros (US\$4.7 million) in a year. On that occasion, it was further pointed out that according to the European Commission’s statistics, 18 percent of the recipients accounted for 76 percent of payments.

Thus, while the rich farmers get huge financial support from the governments of the major developed countries, the farmers in the developing countries suffering from multiple handicaps have to fight for their survival. The trend in the WTO negotiations, though positive, does not encourage confidence that the iniquity and unfairness will be eliminated or even substantially reduced.

The Chairman’s paper opens a new window of the Blue Box subsidies. One can guess that it is to cover the US counter-cyclical payments to farmers under the definition of the Blue Box. This contradicts the basic objective of the exercise in agriculture, which, as reconfirmed in the Doha Ministerial Declaration (paragraph 13), is “to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets”. One would expect that the scope and options for subsidies would be curtailed. It is ironical that in the face of this clear assertion in the declaration, the proposal expands the scope and option of the Blue Box subsidies. It appears to be totally out of step with the spirit of the objective, in spite of the fact that there is a proposal to cap the Blue Box.

The rational course will be to cap the current Blue Box instead of first expanding the scope of the Blue Box and then capping it. Hence there is a good case for the developing countries to have this new window of the Blue Box removed altogether.

In the exercise of subsidy reduction, the attention has been rightly focussed on reducing the total or overall trade-distorting domestic support (OTDS), rather than its individual components: the Amber Box subsidies, the Blue Box subsidies and the *de minimis* subsidies. Often the major developed countries have juggled their subsidy payments into these diverse boxes, a practice commonly called “box-shifting”; hence it will not effectively serve the purpose if only one or another of these boxes is tightened, leaving the others loose. The G20 (a coalition of developing countries with the active participation of India and Brazil) proposed final reduced annual OTDS levels of US\$12 billion and 22 billion euros for the US and EU respectively. Though the EU, represented by the EC, suggested a somewhat higher level for itself, it appeared amenable to the G20 suggestion. The US has been rather hard. It started with its offer of US\$23 billion in July 2006. Later indications have been that it may come down to about US\$18 billion. On some occasions during the G6/G4 negotiations, there were reports of a possible level of US\$15 billion.

There has been a trend towards convergence on this issue and yet there has been no agreement. The possible reason is that this area does not explain the highly publicised collapse of talks in critical times. Perhaps the failure has been more strategic than substantive in nature or perhaps there has been a serious hitch elsewhere, for example, in the area of industrial tariffs, as explained later.

The real problem, however, is that even with an agreement on any levels of OTDS within the range currently under consideration, the developing countries’ farmers will still remain under grave risk because of two broad escape routes, the Green Box subsidies and concentration of subsidies on specific products, as discussed below.

## *Green Box subsidies*

The danger of the Green Box subsidies in the major developed countries has not been properly appreciated by the developing countries, going by their weak proposals on this issue. It is therefore useful to go a little deeper into this subject.

The Green Box is currently immune from the obligation of reduction, on the presumption and stipulation that it is non-trade-distorting or minimally trade-distorting. It is wrong to think that all Green Box subsidies fulfil this condition. Those given as decoupled income support, insurance against income loss and investment aid (covered respectively by paragraphs 6, 7 and 11 of Annex 2 to the WTO Agreement on Agriculture (AoA)) in particular cannot be held to be non-trade-distorting. These payments are not in the nature of a general welfare programme of the country; they go exclusively to the pockets of farmers. Even though there is no direct market intervention through this type of subsidy, such exclusive payments to farmers do enhance their capacity to continue with otherwise-non-viable agriculture production. The payments enhance production by their wealth effect and also by supporting and encouraging farmers to take risks. In this manner, unviable production is encouraged and supported and thus trade is distorted. It is relevant to recall in this connection the findings of three recent studies, given below.

A recent analytical and quantitative study done by the United Nations Conference on Trade and Development (UNCTAD) India office<sup>1</sup> has come out with the conclusion that without the Green Box subsidies:

- agricultural exports of the US and EU will decrease by 39 percent and 45 percent respectively, while the exports of the developing countries will increase by 22 percent;

---

<sup>1</sup> UNCTAD India, "Green Box Subsidies: A Theoretical and Empirical Assessment", available on the website [www.unctadindia.org](http://www.unctadindia.org). Also see: Martin Khor, *South-North Development Monitor (SUNS)*, Geneva, issues 6177, 6178 and 6179 of 28, 29 and 30 January 2007 respectively.

- agricultural production of the US and EU will decrease by US\$20.9 billion and US\$53.8 billion respectively, while the production in the developing countries will increase by US\$41.9 billion;
- agricultural employment will decrease in the US and EU respectively by 2.4 percent and 5.8 percent, while it will increase by 4 percent in the developing countries;
- the cost of production will rise in the US by 15 percent and in the EU by 17 percent.

A paper, “Green But Not Clean”, prepared by ActionAid, CIDSE and Oxfam and released in Madrid in November 2005, says that the US and EU are using the Green Box to continue to give support that is manifestly trade-distorting. This paper estimates that “at least \$40 billion of Green Box payments annually are likely to be trade-distorting”. It further observes: “...by supporting farmers to keep growing more than they would otherwise be able to sell, much Green Box money encourages farmers to overproduce. This leads to ... selling of produce on world markets at prices lower than the cost of production.” On the investment-aid component of the Green Box, it says: “Investment aid not only reduces current expenses, but also increases productivity and thereby reduces the costs of production, because the money is used to buy more modern and more efficient equipment.”

A recent paper by Berlin-based researcher Marita Wiggerthale<sup>2</sup> says that the EU “allotted 15.97 billion euros of decoupled payments for the financial year 2006 and 30.19 billion euros for ... 2007”. For investment aid, the paper says that it was 6.8 billion euros in 2003/2004. While describing the impact of the investment-aid component of the Green Box subsidies, the paper says: “According to the EU’s Mid-Term Evaluation, there is strong evidence that supported (subsidised) investments contribute positively in terms of reducing production costs through the more efficient use of labour

---

<sup>2</sup> Marita Wiggerthale, “Surveys show EU’s Green Box subsidies are trade-distorting”, *South-North Development Monitor (SUNS)*, Geneva, issue 6316 of 17 August 2007.



resulting in positive impacts on income.” Citing some data from surveys conducted in 2005 by the Federal Agricultural Research Centre of Germany, the paper says: “The survey results show that productivity in supported (subsidised) farms increased by 40-73%, milking performance per cow increased by 6-10%, the number of cows increased by 7-47% and milk production rose by 30-59%. Of the total farms interviewed, 30-42% reported that they would not have realised the investments without the aid given by the state.” The paper makes a definite conclusion that: “The above analysis of EU investment aids does show that there are considerable production effects ... Investments are first and foremost used to increase international competitiveness.”

These studies clearly give the lie to the myth that the Green Box subsidies are not trade-distorting. That calls for close attention to it in the current negotiations. Though there is no direct decision to eliminate or reduce the Green Box subsidies, the July 2004 Framework mandates a review and clarification of their criteria with a view to ensuring that “they have no, or at most minimal, trade-distorting effects or effects on production”. That is enough of a mandate for presenting effective proposals to curtail the Green Box subsidies distorting trade.

However, the Chairman’s paper, drawing heavily on the G20’s proposal, falls far short of meeting the need. It is relevant to examine the proposal in some detail.

The G20 has rightly given special emphasis in its proposal to having a “fixed and unchanging reference period” for payments. If the base period for payment keeps on changing, farmers will have the incentive to increase production with the expectation of a higher future payment based on this enhanced production. A frozen base period will remove this incentive. The Chairman’s paper includes this concept in its Annex A but there are many exceptions and qualifications. In any case, this proposal does not tackle the problem of the Green Box subsidies distorting trade. There is a faint attempt in the Chairman’s paper, again drawing heavily on the G20’s proposal, to restrict

payments. It calls for “clearly defined criteria such as income...” in the case of decoupled payments and investment assistance. This proposal is too vague to have any operational effect. There is a need for much more specific proposals to ensure that Green Box subsidies do not distort trade.

One notices a sharp contrast between the G20’s proposal on the Green Box and its proposals on tariffs and OTDS in terms of specificity and focus. The G20 has proposed specific quantitative targets for the reduction of tariffs and OTDS. There is no such specificity in its proposal in respect of the Green Box criteria in order to make it non-trade-distortive or minimally trade-distortive. Besides, the G20 has not insisted that Green Box criteria should be at the centre stage of the negotiations in agriculture, on a par with tariffs and OTDS. Consequently, there is a clear apprehension that Green Box subsidies may continue to function as a huge escape route for the major developed countries to circumvent the disciplines on OTDS.

It is not too late to act, however. Considering that some components of Green Box subsidies, particularly the decoupled payments, insurance against income loss and investment aid, help and encourage farmers to continue with unviable production and thus distort trade, the most effective way to stop the distortion is to stop these payments altogether. If that is not possible, there should at least be proposals for effectively curtailing them so that the distortion is kept to a minimum. For example, the income criterion of eligibility could specify that payment will be limited to farmers who have an annual income from all sources of up to 10 percent of the average annual income in the country. There should also be an annual ceiling of payments to a farmer. Further, payment should be limited to individual farmers, thus excluding corporate entities.

### *Product concentration of OTDS*

Concentration of OTDS in the major developed countries on a small number of products is another point of grave concern. Even a reduced level of OTDS can be potentially dangerous for the developing countries’ agriculture if it is

all concentrated on a few selected products. After all, competition from imports is on a product-by-product basis; hence even a reduced level of OTDS can cause significant damage to an agricultural product in the developing countries if it is highly concentrated on that particular product. And product concentration is quite common in the major developed countries. For example, almost the entire OTDS in the US is concentrated on five major products: rice, wheat, corn, soybean and cotton. And often, the subsidy is very high in comparison to the product value, thus artificially boosting competitiveness to a great extent.

It is therefore as important to limit the product concentration of the OTDS as it is to limit the OTDS itself. While this problem has been well appreciated in the negotiations, the current trend in the negotiations on this subject is not encouraging. The subsidy on a product is currently envisaged to be capped on the basis of a historical level. For example, the formula suggested in the Chairman's paper puts the product-specific ceiling for Amber Box and Blue Box subsidies at the average of the level of the period 1995-2000. [For the US, there is a special dispensation of a longer period for Amber Box subsidies (paragraph 22) and higher percentage for the Blue Box subsidies (paragraph 37). Moreover, the language is not clear. It is important that the obligation of the US is not any lighter than the obligations of the other major developed countries. Besides, it is necessary that the language is made perfectly clear, even with the help of some illustrations if necessary. A major deficiency in the current AoA has been its unclear formulations. The real implications thereof became clear only after some years of implementation.]

Prescribing a historical level as the ceiling will mean that the subsidies on some specific product could continue to remain high. Some of these historical levels have been really high. For example, a study by the US Congressional Research Service indicates that, in 2000, subsidies on rice and cotton were 174 percent of the cash receipts of the farmers, while those on sorghum, wheat and corn were respectively 110 percent, 101 percent and 66 percent of the cash receipts. The estimates in 2000 for the 10-year average subsidies for rice, sorghum, wheat, barley, corn, sunflower seed and canola

were 72 percent, 45 percent, 34 percent, 30 percent, 25 percent, 21 percent and 20 percent respectively.<sup>3</sup> An article appearing in 2002 in the *Financial Times* of London, while commenting on an ActionAid report on the implications of subsidies, says that the cost of production of wheat in the UK in 2000 was £113 per tonne but the selling price was £70 per tonne.<sup>4</sup> This implied a huge subsidy on UK wheat.

In view of the very high levels of subsidies on specific products in the major developed countries in the past, it is not correct to prescribe product-specific limits/ceilings based on the past levels in the current negotiations. It may defeat the very purpose of reducing the overall subsidies. One must not assume that reduction of overall subsidies will automatically get reflected in the reduction of product-specific subsidies. A country will determine the product-specific subsidy in a particular year based on its perceived needs within the overall subsidy level for that year. And the subsidy on a particular product may be kept high, which will be dangerous for those producing that product in the developing countries.

In fact, there is no rationale at all in using a historical level of subsidy for the product-specific ceiling when the overall subsidy is going to be reduced by 70-80 percent. This reduction in the OTDS should be reflected in the product-specific ceilings too. It can be done in two alternative ways: (i) the subsidy (in either the Amber Box or the Blue Box) on a product shall not be more than 20-25 percent of the average subsidy on that product during 1995-2000, or (ii) the annual OTDS on a product shall not exceed 10-15 percent of the average annual value of that product during 1995-2000.

---

<sup>3</sup> Schnepf and Womach (2007), "Potential Challenges to US Farm Subsidies in the WTO", quoted by Aileen Kwa in the *South-North Development Monitor (SUNS)*, Geneva.

<sup>4</sup> John Madeley (2002), "ActionAid report: Agricultural subsidies lead to dumping and over-production", *Financial Times*, 24 September.

## **Market access**

### *Tariffs*

In the area of market access, there is a broad convergence of positions of countries on tariff reduction. The problem is in working out the exceptions to this tariff reduction by designating some products as “sensitive”. Also, subjects of particular interest to the developing countries, Special Products (SP) and Special Safeguard Mechanism (SSM), are being dragged into difficulties by the developed countries even though these concepts have been agreed and are firmly placed as important areas of the negotiations.

The Chairman’s paper proposes tariff reduction of 48-73 percent by the developed countries through a tiered approach of higher reduction for higher tariffs. The developing countries’ reduction is broadly to be two-thirds of the reduction to be undertaken by the developed countries. The situation in the negotiations eased considerably after the EC’s indication of flexibility beyond its earlier offer of 39 percent reduction.

There is no serious opposition to the levels suggested in the Chairman’s paper, though the specific percentages within the various ranges have to be worked out. It does not appear to be a difficult task.

### *Sensitive products*

Even though the facility of designating “sensitive products” for less rigorous treatment in terms of tariff reduction will be available to all countries, this subject is of particular interest to the developed countries. The Chairman’s paper proposes that 4-6 percent, and in specific situations 6-8 percent, of the tariff lines be designated by the developed countries as their sensitive products. The developing countries can designate one-third more lines as sensitive products. The sensitive products of the developed countries will benefit from one-third to two-thirds deviation from reduction, while the developing countries can have two-thirds deviation. There will be expansion of the cur-

rent tariff rate quotas (TRQ) (quantities based on a specified percentage of annual domestic consumption set aside for import at low tariffs). It is proposed that the TRQ expansion in the developed countries will be by 4-6 percent of domestic consumption in products having two-thirds deviation and by 3-5 percent in those having one-third deviation. It is significant to note that the Chairman's paper does not mention at all the need to have any criteria for the selection of sensitive products.

The developing countries view this facility for the developed countries as constraining their export prospects into these countries. If the developed countries have the facility to designate a large number of products as sensitive, it is feared that the developing countries' export prospects in many of the products of interest to them may get effectively curtailed. The G20 has been suggesting 1-4 percent of tariff lines for designation as sensitive products, one-third deviation from reduction and 5-6 percent of consumption as TRQ expansion.

The various positions are not too far apart for reconciliation in this area. The main concern for the developing countries should be to ensure that the developed countries do not shut out the export prospects in the major products in which the developing countries have export interest. It is likely that the developed countries may consider many such products as sensitive from their domestic angle. One safeguard could be to lay down some quantitative limits (in terms of value of annual production) on products to be designated as sensitive products. Besides, there must be some criteria on the basis of which a country will designate its sensitive products.

### *Special Products*

A significant positive move in the Doha negotiations has been the recognition of the special role of agriculture in the developing countries' economies. Food security, livelihood security and rural development have been recognised as legitimate and important concerns for the developing coun-

tries. In support of these objectives, it has been agreed that the developing countries may designate some products as Special Products (SP) for which there will be lesser tariff reduction.

The main problem that has emerged in the negotiations in this area revolves around how these products will be designated. The Hong Kong Ministerial Declaration (paragraph 7) has decided that “Developing country Members will have the flexibility to self-designate an appropriate number of tariff lines as Special Products guided by indicators based on the criteria of food security, livelihood security and rural development”. Following this decision, it would appear that the task now is to determine what should be “an appropriate number” and also perhaps what would be the indicators that would guide the countries in the selection of the products.

But the major developed countries have tried to divert the negotiations into defining quantitative criteria and quantitative triggers in terms of the indicators. This will clearly be a complex exercise and agreement may be very difficult to achieve. If this course continues to be followed, the very purpose of incorporating these significant objectives of food security, livelihood security and rural development in the framework of agriculture may be defeated.

The process in fact became so complex that there was even a suggestion at some stage that the developing countries should give up the path of SP and, instead, follow the course of the Uruguay Round model for tariff reduction (reduction of the average tariff by 24 percent from the base rate). This is clearly not a good alternative. The developing countries have worked persistently over the years to underline in the GATT/WTO framework the special nature of agriculture in their economy. Now that they have achieved this, they should hold on to it firmly and get it imprinted deeper in the framework. It has a long-term significance and value in as much as it recognises the non-commercial and non-market aspects of developing-country agriculture. It will not be in the developing countries’ long-term interest to ex-

change it for the Uruguay Round model of tariff reduction. The developing countries should certainly stick firmly with the concept of SP and pursue it in the negotiations even if they enter a complex phase.

The Chairman's paper (paragraph 90) says that the subject is "not yet developed well enough to go to precise text". Apparently the Chairman considers the other subjects like domestic support, tariffs, sensitive products, etc. to be sufficiently developed for him to mention the parameters in specific terms. This exposes a degree of weakness in the negotiating strategy of the developing countries as presumably they have let the other subjects proceed ahead without the negotiating process devoting adequate attention to SP. The Chairman's paper further hints (paragraph 94) that there is a need to "quantify operationally" the concepts like "significant proportion", "relatively low proportion", etc. as mentioned in the G33 proposal in respect of designation of SP. This is likely to lead the negotiations into engaging in defining quantitative criteria and triggers, which may be a dangerous course.

An insistence on multilaterally agreed quantitative criteria and triggers for designating SP may work as an obstacle to implementing the decisions on SP. There are two likely problems. Firstly, quantitative thresholds and triggers, even if it is possible to establish them, may be difficult to operate in actual practice because of data problems and the related possibility of challenges. Secondly, the negotiations on quantitative thresholds and triggers may get hopelessly complicated and the talks on this issue may drag on. In the meantime, there may be some acceptable positions on other issues in agriculture like tariffs and OTDS. Then there may be pressure for getting on with the agreement without finalising workable and effective provisions for SP. This will be a dangerous situation for the developing countries.

Also, it does not appear quite reasonable to insist on quantitative criteria and triggers for SP. At several places in the GATT/WTO framework, significant actions are taken on the basis of factors that are listed as indicative without strict quantitative parameters being defined. Three such examples can be readily cited where the indicators are given in terms of qualitative guide-



lines without putting them in the straitjacket of quantitative criteria. Firstly, in the determination of injury from suspected dumped imports, the WTO Agreement on Anti-dumping lists the factors to be considered: “decline in output, sale, market share, profits, productivity, return on investments, (or) utilisation of capacity, factors affecting domestic prices, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments...” Secondly, there are similar provisions in the WTO Subsidies Agreement for determining injury from suspected subsidised imports. Thirdly, in determining injury in investigations for safeguard action, the factors stipulated in the WTO Agreement on Safeguards are: “the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment”. In all these cases, no specific quantitative parameters or criteria have been laid down. The provisions are listed as indicative and in the nature of a guideline.

Thus it is advisable for the developing countries to keep the negotiations concentrated on determining the “appropriate number” of products to be designated as SP in terms of percentage of tariff lines, and on listing the indicators that would work as guidelines in conformity with the requirements of food security, livelihood security and rural development. An individual country may, of course, work out its own quantitative criteria involving the indicators if it so decides, without it being subject to any multilateral scrutiny or approval.

The next issue concerning SP is the special treatment to be given to these products. The G33, in its proposal of 6 June 2006, proposes that 50 percent of the SP (additional 15 percent to address special situations) should be free from tariff reduction and the rest may have reduction of 5-10 percent. On this subject, the Chairman’s paper refers back to his earlier “challenge paper” of 30 April 2007 which hints at 10-20 percent flexibility, thus not taking the proposal of the G33 on board.

Clearly, the developing countries will have to continue with their persistence in pursuing this subject in the negotiations. They have already emphasised time and again that the subject of SP should not be approached from the commercial angle or market angle; its inclusion in the negotiating framework has come with development objectives. They have also rightly stressed the difference in concept between sensitive products and SP. The former has a “protection” angle which is related to commercial and market considerations, while the latter is linked with livelihood and food security, which are aspects of development and survival.

The developing countries must continue to insist on indicators remaining in qualitative terms and acting as guidelines. There must not be any quantitative criteria and triggers for designation of SP. In respect of the special treatment to be accorded SP, any inclination of the developed countries to think of parity with sensitive products should be completely ruled out. Special treatment to the SP should be in consonance with the objectives of forming this special category and thus must be adequate for the SP to cater to the needs of food security, livelihood security and rural development. The proposal of the G33 appears quite rational in this context and there is really no need to dilute it further.

### *Special Safeguard Mechanism*

This is another subject on which the developing countries have worked persistently for some years. The Hong Kong Ministerial Declaration (paragraph 7) has decided: “Developing country Members will ... have the right to have recourse to a Special Safeguard Mechanism based on import quantity and price triggers, with precise arrangements to be further defined.” This is, in fact, a correction of the gross inequity in the AoA that permits the use of a Special Safeguard in agriculture under conditions that made the developing countries, with very few exceptions, ineligible to use it, as explained below.

The condition for the use of the existing Special Safeguard in the AoA is that it can be used only by those countries that had maintained non-tariff mea-

asures in agriculture earlier and converted these measures into equivalent tariffs before the end of the Uruguay Round of negotiations. The developing countries, save for a very small number, did not have such non-tariff measures. Thus they were denied the use of the Special Safeguard. It is ironical that those that had distorted agricultural trade earlier by using non-tariff measures were allowed this safeguard mechanism in the AoA while others which did not engage in distortion were denied this special protection.

In the WTO Doha negotiations, the developing countries have been pursuing a proposal for establishing a Special Safeguard Mechanism (SSM) in agriculture for the developing countries which, while removing the existing inequity, is also expected to instil a development dimension into the agriculture framework of the WTO. Currently, two aspects of the SSM are being negotiated: the conditions, in the form of price trigger and (import) quantity trigger, for having recourse to the SSM; and the nature of relief afforded by the SSM to the domestic production.

Like in the case of SP, here too the Chairman's paper (paragraph 98) says that the subject is "not yet developed well enough to go to precise text". But the paper goes on to specify that the SSM "is not to be set in such a way as would permit this mechanism to be literally triggered hundreds or scores of times by developing country Members", and then suggests that "this mechanism is meant to be used as its name implies: in 'special' situations".

It is difficult to understand the rationale behind expressions of anxiety about the frequency of application of SSM measures at this stage. Further, the elucidation of the qualification "special" as associated with the SSM is not well founded. It is "special" not because the measures will be applied in "special situations", but because it is different from the "general" safeguard of the GATT/WTO system as given in Article XIX of the General Agreement on Tariffs and Trade (GATT) 1994 and the WTO Agreement on Safeguards. It is also "special" as it is applied to a particular sector, agriculture, and not for general application across sectors as in the case of the general safeguard.

It is almost settled by now that there will be a price trigger so that the SSM may be applied when the price falls below a certain level and there will be a volume trigger permitting use of the SSM when the volume of imports exceeds a certain level. What is being negotiated is what these price and volume levels should be. The settlement of this issue may not pose much of a problem.

The next point under negotiation is what the measures in the form of relief to be adopted by a developing country should be when the trigger condition is reached. The G33 had started with the initial suggestion that the relief should be in the form of a quantitative restriction (QR) on imports and/or the application of additional duty beyond the bound level. However, when the G33 placed their formal proposal in the negotiations, QR was left out and the relief was limited to the application of additional duty. Thus now the negotiations are about how high the additional duty can be.

Here the major developed countries have introduced a complexity by suggesting a restriction that the total duty after the application of the SSM should not exceed the Uruguay Round level of duty. The Chairman's paper (paragraph 110) says: "It does not seem likely that we will easily reach agreement that this measure can be applied in such a way that existing Uruguay Round bound rates can also be exceeded." Further, it observes that "such a condition would have the effect of going backwards".

This suggestion of the major developed countries and the indication of the Chairman's paper are puzzling. The SSM is meant to be applied to check the rise in imports when there are dangers because of a fall in price or rise in imports beyond specified levels. In such a situation the relief should be aimed at offsetting these negative features. The past duty levels, including those in the Uruguay Round, are totally irrelevant in this regard. The concern in the Chairman's paper about "going backwards" is also inexplicable. Past and historical duty levels have never acted as a constraint in safeguard measures, either in the general safeguard provision or in the Special Safeguard in the AoA. It is not reasonable at all to impose this totally new restriction in

the case of the SSM. It introduces unnecessary complexity and obstacles in the negotiations.

Then there is the issue as to whether the SSM will be used against all imports, including from countries with which the importing country has a preferential trading arrangement. The Chairman's paper (paragraph 101) suggests keeping out preferential trade both from the calculation of the trigger and from the application of relief. It appears rational to keep preferential trade out of trigger calculation if such trade is to be kept out of the scope of relief. But the question is whether preferential trade should necessarily be kept immune from the SSM relief.

It is not unusual in the multilateral rule-making process to come across situations where multiple conflicting objectives have to be reconciled through a proper balance. Here the two conflicting objectives are: preferential market access among countries that are participants in a special trading arrangement, and protection of agriculture in a participant country. The correct and practical approach in such situations of dilemma would be to first identify the core concern and core objective and then to work out how the other elements, which may seemingly be in conflict with them, can be positioned properly.

In the case of the SSM in agriculture, the core concern is the sustainability of agriculture in the developing countries and the core objective is to give protection to it from imports in difficult times.

Imports of an agricultural product from any country can contribute to damage to local production. Thus it will not be rational and realistic to exclude imports from "special relation countries", for example, from countries having preferential trading arrangements with the importing country. [Of course, the situation is somewhat different when a set of countries have totally merged their trade and production economy, for example, the EU countries. In that case, the damage is to be assessed in this integrated unit "as a whole". And the relief is also for the integrated unit "as a whole". ]

So long as a country is a separate trade and production unit for agriculture, the damage to the country's agriculture in the context of the SSM should be assessed with respect to imports from all sources and, similarly, the relief should also be targeted at imports from all sources, irrespective of whether the country has a special bilateral or plurilateral agreement of any type, for example, through a free trade agreement (FTA). Considering the basic objective of the SSM, it is rational that all imports, including those from the FTA countries, should count both for the trigger and for the relief.

Of course, if the FTA has a provision expressly excluding the application of the SSM, then neither the trigger nor the relief will be applicable to imports from the partner countries. If the FTA is silent on this point, the multilateral agreement on the SSM will be fully applicable as between the members of the FTA. Thus what is important to note is that the FTA does not have to include an express provision for the SSM to be applicable among the partners. If, however, the intention is to exclude the application of the SSM, such exclusion has to be expressly provided for in the FTA.

Reverting to the negotiations on the SSM, the path may not be quite as straight as one would have expected earlier, considering that the SSM is primarily needed for redressing a gross inequity of the past. It is important for the developing countries to ensure that the triggers, in terms of either price fall or import rise, are simple to work on. A rise or fall by a simple percentage in comparison to the previous year's level or in comparison to the average level of the previous two years could be an example of a simple trigger. For the relief, a rise over the bound duty by a simple percentage may be appropriate, without putting any further constraint on the level. There should be no restriction on the number of times SSM action is taken. If the trigger conditions are fulfilled, the action may be taken irrespective of the number of times it has been taken previously. Also, it is desirable that the developing countries think over again whether relief through enhanced duty will be adequate. A quantitative restriction on imports is a quicker and more direct form of relief in situations when the SSM is called for, whereas an increase

in duty has a delayed effect and is also indirect. Hence the developing countries should consider putting forward proposals for QR as relief. Preferential trade should be included in both the trigger and the relief. However, if it is not included in the relief, it should be excluded from the trigger too.

### **Peace clause**

Article 13 of the AoA (commonly called “the peace clause”) puts a limitation on action against subsidy measures in agriculture. The operation of this provision expired at the end of 2003. It is likely that the developed countries may bring a proposal at some stage in the current negotiations, perhaps at the very end, to revive this provision. It is necessary for the developing countries to remain prepared for such a proposal. It will not be desirable to reintroduce the peace clause, as explained below.

There are separate provisions in Article 13 of the AoA in respect of the Green Box, the Amber Box and export subsidies. The Green Box subsidies which satisfy the conditions of Annex 2 of the AoA were exempted from countervailing duty and dispute settlement process. The Amber Box subsidy was not exempted from countervailing duty, though “due restraint” was to be shown in initiating investigations for countervailing duty. They were, however, immune from the dispute settlement process if the subsidy to a product did not exceed a specified level. Export subsidies had similar treatment as the Amber Box subsidies in respect of countervailing duty and were fully exempted from the dispute settlement process.

There was some logic in having such a peace clause in the immediate period after the Uruguay Round agreements came into force. Agriculture had newly come under specific discipline and it might have been considered prudent to observe the operation of these disciplines for some time. Perhaps it was apprehended that early initiation of the dispute settlement process or countervailing duty investigations might create uncertainty and confusion. There was certainly no inherent systemic rationale for having this exemp-

tion, however, as otherwise it would have been made a permanent feature and expiry after nine years of implementation of the AoA would not have been stipulated.

Now that the AoA has operated for nearly 13 years, there is no rationale for reintroducing the peace clause. The consequence is that relief through the countervailing duty process/dispute settlement process will be available to countries in case of injury and serious prejudice to their agriculture. There is no reason to deny this normally applicable relief to agriculture. Hence, the developing countries should not agree to the reintroduction of the peace clause in the AoA.

### **Balance in agriculture**

Currently the negotiations in the area of agriculture are not balanced. Subjects like tariffs, sensitive products, domestic subsidies and export subsidies have moved ahead, while SP and SSM have lagged far behind. The Hong Kong Ministerial Declaration (paragraph 7) says: “Special Products and the Special Safeguard Mechanism shall be an integral part of the modalities and the outcome of negotiations in agriculture.” Lack of progress in these two areas may act as a brake, as they are accepted to be integral parts of the package. In the interest of smooth progress in the negotiations, it is necessary that these two areas be attended to with as much care, concern and sincerity as have been devoted to the other areas. There is a special responsibility and role for the developing countries in this regard as they were the ones which placed these subjects on the agenda.



# 5

## Non-Agricultural Market Access (NAMA)

### Issues and context

THE negotiations in the area of industrial tariffs, more formally called “non-agricultural market access” (NAMA), are mainly on three issues: (i) reduction of industrial tariffs from the bound levels; (ii) increasing the binding coverage through commitments of binding on the current unbound levels of tariffs; and (iii) non-tariff barriers.

While considering the issues of tariff reduction and increasing the binding coverage, it is important to take into account the current structure of tariffs across the range of countries. The developed countries generally have full binding coverage. A large number of the developing countries have comparatively lower binding coverage and some of them have much lower binding coverage.

Developed countries have generally low levels of tariffs, their average tariff being about 5 percent, though their tariffs on the products of export interest to the developing countries are high compared to their average tariff. The developing countries have generally high levels of tariffs, their average being 28-30 percent.

The bound rates of tariffs and the binding coverage are part of the current rights and obligations of the countries in the GATT/WTO framework. Over the various rounds of negotiations in the past, countries lowered their bound tariffs and enhanced their binding coverage in the course of exchanging con-

cessions with each other. Those countries which undertook the obligation of increasing the binding coverage and reducing their bound tariffs in the past may be presumed to have done so while getting counter-concessions from other countries. The others continued to retain a low binding coverage and high levels of bound tariffs by foregoing the counter-concessions they would have got had they also undertaken this obligation. In this manner, the present tariff structure of the countries reflects the current balance of the emerging rights and obligations in the GATT/WTO framework.

In this background, the developing countries need not feel apologetic just because they have comparatively higher average tariffs or lower binding coverage at present. Of course, they may agree to increase their binding coverage and reduce their bound tariffs in exchange for concessions given by others. The course of the ongoing negotiations should be viewed in this context.

## **Trends and positions in the negotiations**

### *Framework*

The Hong Kong Ministerial Declaration (paragraph 14) has decided to adopt a “Swiss formula” for tariff reduction. In this formula, the initial tariff and the final tariff are linked by a coefficient. A lower coefficient leads to greater reduction. All final tariffs will be lower than the coefficient; thus the coefficient acts as the ceiling for the tariff. An initial tariff equal to the coefficient will be halved upon reduction. For the same coefficient, a higher initial tariff will be subjected to a comparatively higher percentage of reduction. The choice of coefficient in this formula is thus critical in determining the tariff ceiling and the extent of reduction in the tariff.

The Doha Ministerial Declaration (paragraph 16) lays down the principle that there will be less than full reciprocity from the developing countries in tariff reduction commitments. The Hong Kong Ministerial Declaration (paragraph 14) reiterates this principle.

The developing countries have made two major concessions in respect of industrial tariffs by accepting the Hong Kong Ministerial Declaration. Firstly, they have agreed to have reduction in each bound tariff. Never in the past had the developing countries undertaken such an obligation. Previously, their obligation was limited to reducing the average tariff, and they thus retained the option to spread the average over the entire range of products. Secondly, they have agreed to have full binding coverage. As explained above, their current partial binding coverage is part of the current rights and obligations. They have now given up this right.

In fact, the concessions from the developing countries started with the proposal of Argentina, Brazil and India (ABI) given in April 2005 and later endorsed by a number of other developing countries. They proposed the adoption of the Swiss formula with a coefficient that is dependent on the average tariff. Perhaps they thought their tariff reduction would be lower in this manner since their average tariff was high. However, only the adverse part of their proposal (tariff reduction by means of the Swiss formula) was accepted in Hong Kong, while the positive part (a coefficient dependent on the average tariff) was ignored.

### *Tariff reduction*

So now the negotiations are about selecting suitable coefficients in the Swiss formula. The Chairman of the NAMA negotiating group has given a paper on 17 July 2007 (the Chairman's paper) proposing coefficients of 8-9 for the developed countries and 19-23 for the developing countries (paragraph 5). The NAMA 11, a group of developing countries that have come together on the subject of NAMA, has proposed that the differential between the coefficients for the developing countries and the developed countries should be at least 25. Some developed countries had earlier proposed coefficients of 10-15 for the developing countries.

The assessment of the implication of these coefficients is complex as different countries will have different levels of reduction for different tariffs. There

will thus be differentials as between the countries and also as between the products within a country. However, for the sake of some comparison, we may simplify the problem by calculating the impact of the formula on a tariff of a country which is near its average tariff level. The average tariff of the developed countries is about 5 percent and that of the developing countries about 30 percent.

For this comparison, let us take the most favourable (from the angle of the developing countries) ends of the Chairman's ranges given above. Recalling that a smaller coefficient results in larger reduction, we may thus take 8 for the developed countries and 23 for the developing countries as the best possible alternative in the Chairman's proposal from the angle of the developing countries.

Under a Swiss formula that uses these coefficients, a tariff of 5 percent in the developed countries, which is near their average tariff, will be reduced to 3, resulting in a reduction of 38 percent. A tariff of 30 percent in the developing countries, which is near their average tariff, will be reduced to 13, resulting in a reduction of 56 percent. This difference in reduction is totally unfair and iniquitous and violates the principle of "less than full reciprocity" for the developing countries. In fact, it puts on the developing countries a burden that is nearly one-and-a-half times heavier compared to that on the developed countries. The developing countries have rightly criticised the Chairman's proposal and rejected it.

The irony is that even the proposal of the NAMA 11, that there should be a differential of at least 25 between the coefficients applicable to the developed countries and the developing countries, does not fare much better. If we assign the coefficients of 8 and 33 (i.e., a differential of 25) to the developed countries and the developing countries respectively, the 30 percent tariff of the developing countries will be reduced to 16 percent, resulting in a reduction of 47 percent, which is still much higher than the reduction level of 38 percent for the developed countries as given above.

This problem arises because the negotiations have centred around the coefficient to be used in the Swiss formula. The negotiations need to be reoriented. A practical and correct approach would be to focus the negotiations on the required reduction of tariffs respectively by the developed countries and the developing countries, and then work out the coefficients in the Swiss formula that will bring about those levels of reduction. The focus of the negotiations should thus be turned around from the coefficient to the tariff reduction.

For example, the required level of tariff reduction by the developed countries and the developing countries may be 60 percent and 40 percent respectively, keeping in mind the principle of less than full reciprocity (there are precedents in the Uruguay Round of a two-thirds burden on the developing countries compared to that on the developed countries, in consonance with the principle of less than full reciprocity). In order to have such reduction in their respective tariffs of 5 and 30 (which are near their respective average industrial-tariff levels), the coefficients for the developed countries and the developing countries respectively should be 3.3 and 45. These calculations indicate that the coefficients currently under consideration fall far short of fulfilling the principle of less than full reciprocity for the developing countries.

### *Binding coverage*

Similarly, there are basic problems of principle and reciprocity in the current proposals on the binding coverage. The exercise has centred around adding a number to the currently unbound tariff level as applied on a particular date. The applied tariff plus this number will become the presumed bound level of tariff and reduction will operate on that level. The Chairman's paper (paragraph 6) proposes a mark-up of 20 over the unbound tariff rate as applied on a specified date.

This proposal has missed out on the basic point that the unbound tariffs are a part of the current rights and obligations in the GATT/WTO framework, as

explained earlier. A country can raise these tariffs to any level; thus, binding them at some level is itself already a major concession, as the country commits thereby not to raise these tariffs beyond the newly bound levels. It would appear that this right of the developing countries is being taken away in a rather light and casual manner. This needs serious consideration. Further, a mark-up of 20-30 to the applied rate is wholly inadequate, as these tariffs can be raised to any levels at present. Of course, the NAMA 11 has itself suggested a mark-up of 30, which is a huge concession, presumably in a spirit of cooperation and flexibility in the negotiations. But it is like giving up a major right in the GATT/WTO framework without a commensurate return. These suggestions need to be reconsidered.

It is necessary to give due weightage in the negotiations to the commitment of binding of the current unbound tariffs. There are two components in the concessions to be made by the developing countries in respect of their currently unbound tariffs: (i) binding their unbound tariffs; and (ii) reducing their bound tariffs. These two components should be combined to assess the developing countries' contribution in the negotiations. Then this combined concession should be matched with the concession of tariff reduction of the developed countries with due regard to the principle of less than full reciprocity. A simple mark-up of 20-30 points to the applicable tariffs, presuming them bound at those levels and then subjecting all these old and new bound levels to a reduction formula does not appear to be fair and balanced at all.

A totally new approach is needed on unbound tariffs. One way may be to evolve a "joint tariff indicator" that quantitatively combines four parameters: the current binding coverage, the average of the current bound tariffs, the percentage of unbound tariff lines and some notional figure for the possible average of the unbound tariffs (assuming they are raised at the discretion of the country to some realistic levels). This "joint tariff indicator" will represent the current rights of a country in respect of its tariffs. In the exercise of reduction, this indicator may be reduced by a stipulated percentage.

Thereafter, the reduced “joint tariff indicator” may be split by the country at its own discretion into a combination of its new binding coverage and new average bound tariff.

If there is a rush to conclude the tariff negotiations and any such new approach appears impractical at this stage, it will be appropriate to leave the unbound levels as they are and tackle them sometime later.

### *Non-tariff barriers*

The Doha Ministerial Declaration (paragraph 16) has included non-tariff barriers (NTBs) in the negotiating agenda. The July 2004 Framework (Annex B, paragraph 14) recognises NTBs as an integral part and important constituent of the negotiations. The Chairman’s paper (paragraph 44) says that the negotiations on NTBs are not yet sufficiently advanced for modalities to be proposed. Thus the negotiations on this subject have lagged behind those on tariffs. NTBs are particularly important for the developing countries as their exports often get constrained by these barriers in the developed countries. The negotiations got bogged down initially in procedural technicalities. It took a long time to decide on the forum where the negotiations would take place. The progress has been slow.

It is in the interest of the developing countries to insist on parity in the speed of negotiations between tariffs and NTBs. In any case, nothing on tariffs should be considered as finally agreed until an agreement on NTBs is finalised.

# 6

## Services

### **Issues and negotiating formats**

THE negotiations in this area are going on in multiple formats. There are bilateral negotiations on the basis of requests and offers among countries for specific commitments on market access and national treatment in specific services sectors. Certain sectors have been taken up in the plurilateral track where more than two countries negotiate jointly, mainly aimed at liberalisation on the basis of some formula. In both these formats, the resulting obligations will be on the countries negotiating and agreeing, but the results can be availed of by all WTO Members based on the MFN principle (principle of non-discrimination). Besides, negotiations are also going on to work out rules on subsidies, safeguards and government procurement, disciplines on measures relating to qualification requirements and procedures, technical standards and licensing requirements as well as on the effective implementation of some important provisions relating to the developing countries in the WTO General Agreement on Trade in Services (GATS).

The negotiations are being conducted within the broad framework of a decision adopted on 28 March 2001, called “Guidelines and Procedures for the Negotiations on Trade in Services”, which was later endorsed by the Doha Ministerial Declaration. The Hong Kong Ministerial Declaration (Annex C) has decided on some specifics of the process and even of the obligations, as explained below.



On the process, it has specified the adoption of the plurilateral track as complementary to the bilateral track, though it does not make the plurilateral track compulsory for a Member to join, as had been proposed by some developed countries. On obligations, it stipulates “commitments at existing levels of market access” in Mode 1 (supply of service by the service provider of a country to a consumer located in another country) and Mode 2 (supply of service in a country to a consumer coming from another country). In respect of Mode 3 (supply of service through commercial presence of a foreign firm), it stipulates “commitments on enhanced levels of foreign equity participation” and the “removal or substantial reduction of economic needs tests”.

The information on commitments in the bilateral and plurilateral negotiations is restricted to the respective participants. Hence the progress of negotiations in these tracks cannot be assessed at this stage. The progress in the format covering rules, disciplines, etc. is slow. In the rush of the bilateral and plurilateral tracks for liberalisation in specific sectors, this third format appears to have been pushed into the background.

### **Pressures and problems**

The major developed countries have spearheaded a special thrust on services in the GATT/WTO framework with the objective of opening up markets for their services sectors in the developing countries. They have persisted in their thrust with mutual coordination among themselves and great determination in negotiations, building from one advantage to another. Consequently, this area has seen a steady progress in its status within the GATT/WTO framework, from its modest entry in 1982 as the subject of national studies and exchange of information among governments, to the formation of a Working Group in the GATT, and then to formal negotiations in 1986 (Punta del Este), which finally resulted in a services agreement (i.e., the GATS) in 1994 (Marrakesh). Now services forms a part of the comprehensive agenda of the Doha negotiations where the major developed countries are trying time and again to expand the scope of obligations and commitments of the developing countries.

The developing countries do, however, have a strong leverage of defence in the GATS. The agreement allows the countries to choose the sectors for liberalisation on their own. And the developing countries have the flexibility to liberalise fewer sectors and fewer transactions. As a large number of the developing countries do not have much supply capacity in the services sectors, they are not enthusiastic in the negotiations for liberalisation as they do not perceive much export prospect, particularly in the developed countries. And they are within their rights under the GATS not to proceed with liberalisation which may be inconsistent with their development interests.

The developed countries tried to change the architecture of the GATS during the negotiations in 2001 that resulted in the Guidelines mentioned earlier. The GATS has adopted what is called the “positive list” approach in liberalisation, in the sense that a country chooses the sectors for liberalisation, keeping to itself total flexibility of measures in respect of the remaining sectors. The developed countries tried to change this system to the “negative list” approach whereby all sectors, except those put in the list, would be covered by liberalisation. The developing countries resisted this effectively and the developed countries could not succeed in their attempts.

A somewhat similar attempt was made again by the developed countries in the Hong Kong Ministerial Conference in 2005. They proposed to change the rules on the negotiating format in order to make it compulsory for a developing country to engage in the negotiations for liberalisation in specific sectors. If agreed, it would have denied the developing countries the flexibility to choose on their own the sectors which they wish to liberalise for imports. Because of stiff resistance from the developing countries, this effort of the developed countries did not succeed.

Attempts at curtailing the flexibility and options of the developing countries had been made through other proposals advanced during the preparations for the Hong Kong Ministerial Conference as well. Several developed countries worked out proposals for establishing some minimum level of commitments for countries. The proposals envisaged various forms of benchmarking

of commitments and minimum levels of commitments. For example, they called for fixing the minimum number of sub-sectors for commitments, the minimum percentages of sub-sectors to be covered by commitments, numerical indexing system for a country's commitments, etc. Clearly these proposals had been motivated by the objective of curtailing the flexibility of the developing countries in the current framework. The developing countries strongly opposed these proposals and they did not find a place in the Hong Kong Ministerial Declaration.

Recently pressures have started building up again. The US has given a proposal for a possible text along the lines of the Chairman's texts in agriculture and NAMA. The proposal expects the market access in services to be comparable to the ambition in agriculture and NAMA. In response, some developing countries have given their own proposals, perhaps to ensure that their ideas are properly reflected in case a Chairman's text comes out in this area too. There is apprehension that there may be a further thrust on eroding the flexibility the developing countries have in the current framework.

### **Suggestions**

It is important that the developing countries protect their flexibility in liberalising fewer sectors and fewer transactions, as permitted in the GATS. This flexibility has come under repeated onslaughts in the past and more may be forthcoming. The developing countries' requests and offers in the bilateral format of the negotiations are already on the table. They should enter into and continue with the bilateral negotiations while fully guarding their permitted flexibility.

If a developing country is invited to join plurilateral negotiations on a particular sector, it should assess whether it has adequate export supply capacity in that sector. If it does, it may join the plurilateral group; otherwise, it may keep out of it. The Hong Kong Ministerial Declaration permits a country to keep out of a plurilateral negotiation, as the only obligation on the country is to "consider" the request for joining in the negotiation. It may

consider the request and then decide not to join it and send the response accordingly.

A developing country may also use the plurilateral route to its own advantage if it has adequate supply capacity and possibility of export in some sectors or modes of supply. It should then join with some other developing countries with similar interest, prepare requests and give them to the countries where they perceive prospects for export. It should utilise the opportunity of possible give-and-take across various plurilateral groups.

A developing country may also identify the policies and practices in other countries, particularly the major developed countries, which hamper its export of services to these countries, for example, the standards and criteria for qualification and experience for service providers in these countries. Several developing countries may have common interest in having these standards and criteria lowered without affecting the quality of service. They may join together, prepare specific requests and send them to the developed countries concerned, requesting them to join plurilateral negotiations on this matter.

# 7

## Some Other Issues

### **Recent surprises**

THREE new issues have emerged which may cause concern to the developing countries. The Chairman of the negotiating group on rules has given a paper on 30 November 2007 (the Chairman's paper) suggesting possible courses of action on the points under negotiation in this area. This paper has several problems from the angle of the developing countries, out of which two need urgent attention. These are on the subjects commonly known as "zeroing" and "lesser-duty rule". In addition, seizing the opportunity presented by the recent UN conference on climate change in Bali, the major developed countries have given a proposal for duty-free entry of products which, they say, will reduce global warming. The implications of these three issues are explained below.

### **"Zeroing" in anti-dumping cases**

While calculating the margin of dumping in anti-dumping investigations, the designated authority in the importing country compares the export price of the product concerned and its normal value (for example, the sale price in the exporting country, the cost of production plus some reasonable additions, etc.). Dumping is established if the former is lower than the latter. The amount by which the export price is lower than the normal value is taken to be the margin of dumping. Normally, this determination is done after examining a number of import transactions.

The US has the practice of adding up the differences only in cases where the export price is lower than the normal value while ignoring the differences where the export price is higher than the normal value. Thus the US effectively considers the differences in the latter cases as being zero, hence the name for the practice. “Zeroing” has been challenged in the dispute settlement process in the WTO and has been declared to be inconsistent with the current WTO rules.

This matter is being considered in the negotiating group on rules. Some developing countries have given a proposal that there should be an express provision in the rules prohibiting the practice of “zeroing”. It is still under negotiation, but the Chairman’s paper includes a clear provision allowing the practice of “zeroing”.

The Chairman’s paper ignores completely the very rationale of imposing anti-dumping duties, which is included in the GATT/WTO framework in order to protect the domestic industry against the effects of the unfair practice of dumping in international trade.

The occasion of “zeroing” arises during the combined consideration of multiple transactions. If there had been only one transaction, clearly this occasion would not arise as dumping (and margin of dumping) would exist only when the export price is lower than the normal value in respect of that particular transaction. The process of combined consideration of multiple transactions has the inherent presumption that injury is not caused by a single transaction, but by an ensemble of transactions. Therefore the effect of multiple transactions on the domestic industry is assessed. Once the whole ensemble of transactions is brought into consideration while assessing injury, it is wholly irrational to “pick and choose” among them. However, this is precisely what happens in “zeroing”, in which transactions where the export price is lower than the normal value are picked and those where it is higher are left out. Once it is decided to assess injury and dumping on the basis of an ensemble of transactions, it is only rational to take account of all transactions in the ensemble. Picking up only “positive” dumping and leaving out

“negative” dumping from the ensemble is clearly an irrational, biased and unfair method of protecting the domestic industry against unfair trade. Expressly permitting it in the multilateral framework, as proposed in the Chairman’s paper, would be a retrograde step.

The developing countries have been placed in a position of negotiating handicap on this issue by the Chairman’s paper. They are reported to have strongly expressed their disapproval when this paper came up for consideration in the WTO recently. They should continue to press for prohibition of the practice of “zeroing”.

### **“Lesser-duty rule”**

Article 9.1 of the WTO Anti-dumping Agreement and Article 19.2 of the WTO Subsidies Agreement have the provision on the “lesser-duty rule”, which suggests that it is desirable to have anti-dumping duty/countervailing duty at a rate lower than the dumping/subsidy margin if such lower duty is adequate to offset injury. Thus there is a suggestion of imposing the “lesser” of the two levels of duty: the one that offsets dumping/subsidy and the other that offsets the injury arising from dumping/subsidy. Some major developed countries do not follow this practice. They impose duty equal to the margin of dumping/subsidy without examining whether a lesser duty will offset injury.

The current provision in the respective agreements makes it “desirable” that the duty should be less than the dumping/subsidy margin if “such lesser duty would be adequate to remove the injury to the domestic industry”. The current agreements make it “desirable”, but not mandatory. Some developing countries have given a proposal in the negotiations for making this provision mandatory. The Chairman’s paper removes this provision altogether, thus eliminating even the suggestion of desirability.

The Chairman’s paper ignores the rationale of anti-dumping and countervailing duty by removing the provision instead of making it manda-

tory. Imposition of a duty higher than the injury margin results in a situation where at least part of the duty (the difference between the imposed duty and the injury margin) is operational without the existence of injury. This is contrary to the basic rationale of the duty, which is to protect the domestic industry against dumping and subsidy. Where the domestic industry no longer suffers from injury (as a portion of the dumping/subsidy margin will suffice to remove injury), there is absolutely no reason to charge this additional part of the duty. It is grossly unfair for the exporters to carry this additional burden when they are not causing injury to the domestic industry. It is only logical and fair to make the “lesser-duty rule” mandatory.

The Chairman’s paper places the developing countries in a position of negotiating handicap here too. They will have to press strongly for making the “lesser-duty rule” mandatory.

### **Environmental goods**

Recently the major developed countries have given a proposal for duty-free import of some machines and some other goods on the plea that this will facilitate environmental protection. This proposal was cleverly timed to coincide with the UN conference on climate change which took place in Bali in December 2007.

The Doha Ministerial Declaration (paragraph 31) envisages negotiations on reduction/elimination of tariffs on “environmental goods”. If one defines these goods as the machines, equipment, chemicals, etc., it has to be kept in mind that most of these goods are produced in the developed countries. Duty-free entry for these goods will thus bring direct benefit to these countries.

The best forum to negotiate on the reduction/elimination of duties on goods, including environmental goods, is the negotiating group handling NAMA. Picking out some products like environmental goods to be negotiated separately in some other forum may disturb the negotiating balance.



If the concern for environmental protection, particularly climate change, is taken up in the WTO framework, it may be more appropriate to consider a comprehensive programme covering: exclusion of the relevant goods, services and technologies from intellectual property rights protection under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); encouraging large-scale production and supply of these goods and services in the developing countries; easier market access for these goods and services, etc.

# 8

## Conclusion

### Prospects

THE course of the WTO Doha negotiations over the last six years has been rough. Many lessons have been learnt in this process. One important lesson is that agreements do not get facilitated by creating a veil of secrecy and mystique; there has to be an inclusive and transparent process. Another lesson is that the major developed countries cannot achieve their objectives merely by push and pressure; they have to negotiate in a spirit of give-and-take leading to mutual advantage. Further, the developing countries have realised the need for and importance of intensive technical preparation and mutual cooperation in these negotiations.

Henceforth, it is uncertain whether the negotiations will lapse into a pause or enter an intensive phase. In any case, it is important for the developing countries to encourage extensive examination and discussion on these issues so that there is further clarification of ideas and options and consolidation of positions. Some basic points on which preparation and caution are necessary are given below.

### Agreement not at any cost

The developing countries should guard against pressures and persuasion for “agreement at any cost”. Two lines of arguments are given to warn them against failure of the WTO Doha negotiations. It is said that they will be foregoing vast gains that would accrue to them if the negotiations succeed.

Simultaneously, there is a threat that a failure in the multilateral forum may boost enthusiasm for a spate of bilateral and regional trade agreements that may be more disadvantageous for the developing countries. Both these arguments are flawed, as explained below.

Past estimates of various quantitative gains from trade agreements have not been borne out in practice. There were multiple, varying projections following the Uruguay Round of negotiations, brought out by several multilateral institutions and research institutions, proclaiming large global gains in income, particularly for the developing countries. These projected gains were not realised in practice. The developing countries which had been led to see merits in the Uruguay Round results through these attractive forecasts were deeply disappointed. To be fair, similar quantitative projections of gloom, for example, of vast unemployment in the agricultural sector in China following its accession to the WTO, also did not prove to be right. These quantitative exercises are often based on doubtful assumptions and shaky parameters. In view of these past experiences, the developing countries should not fall for the rosy pictures of gains projected for them in the current negotiations.

A quantitative assessment of benefits is, no doubt, essential for a country to come to a final opinion on the results of the negotiations. But such assessment should preferably be done by the country itself. If a country does not have adequate internal expertise and needs the help of outside experts, it should itself select, employ and pay for such experts.

With regard to the second argument, the adverse effects of bilateral and regional trade agreements are more real, but the point to note is that these agreements do not emerge as a consequence of failure of multilateral negotiations. The major developed countries use them as parallel instruments for expanding their economic space in the developing countries. The thrust for these agreements will not wane even if the multilateral negotiations succeed. The major developed countries generally try to obtain from the developing countries in these agreements concessions which go beyond what the

latter have already made in the multilateral WTO agreements. There is a wave of demands for what are called “WTO-plus” commitments in various fields like market access in goods and services, intellectual property rights protection, investment, competition, government procurement, etc.

The strategy of the major developed countries is to seek concessions from the developing countries simultaneously through the bilateral, regional and multilateral routes. Successful multilateral negotiations do not necessarily create an environment for less pressures in the bilateral and regional agreements, as past experience has shown. After all, the regional economic integration of Western Europe through the European Economic Community (EEC) was further deepened in the late 1970s when the Tokyo Round of multilateral trade negotiations was at its peak. The regional trading arrangement in North America, the North American Free Trade Agreement (NAFTA), was put into place in the early 1990s when the Uruguay Round was in its final stages.

It would thus appear that the lure of big benefits from the conclusion of the multilateral negotiations and the risks of bilateral and regional routes if these negotiations fail should not be taken by the developing countries as determining factors in their moves in the current WTO Doha negotiations.

### **Some essentials**

The negotiations are about “give” and “take”, but there must be a balance between them for a country. While deciding on undertaking a commitment, certain important considerations need to be taken into account and caution is necessary. Elements which are vital for survival and those vital for a dynamic growth path must not be given up. For the developing countries, an example of the former is protection of small farmers while an example of the latter is retaining options for critical tariff protection for products at higher stages in technological chains.

It is also necessary to hold on firmly to favourable and positive elements of systemic and structural value. The SP and SSM are examples of such elements.

These “essential elements” have to be worked out by a developing country through a process of critical studies and wide consultations within the country. Towards this end, it is necessary for a developing country to build institutions and structures that will facilitate such studies and consultations.

### **Strength of mutual cooperation**

The biggest strength of the developing countries lies in their mutual cooperation. Detractors often point to the diversity of interests among the developing countries. Sometimes, they even doubt the relevance and reality of common and united developing-country interests. It is true that the developing countries have differing interests in various areas, but that should not inhibit them from forging common positions and strategies in many areas when wider and deeper stakes are involved.

In this process, they may draw some lessons from the cooperation among the major developed countries. After all, these developed countries have widely differing interests in many areas, but that does not prevent them from forging common positions and presenting united proposals when their objective is to extract concessions from the developing countries. They patch up their differences quickly through mutual compromises, following a process of mutual adjustments.

We should appreciate that even within a country there are diverse interests and opinions on a specific issue. Almost all subjects under negotiation in the WTO framework impact differently on different economic sectors in a country. A country’s position and strategy evolves out of this diversity through a process of evaluation and assessment based on the best balance for the country as a whole. Thus the national interest and national position on an issue gets

filtered out of this diversity of impacts and opinions. In a similar manner, it is possible to evolve a common position among a large number of developing countries on several issues through a process of mutual understanding and adjustment of mutual interests.

Some developing countries or a small group of developing countries having some specific interest may sometimes rush into thinking that their special interest may be better served by championing their cause with single-minded attention without seeking the help of the wider group of developing countries. Often the major developed countries also try to encourage them to think that way. But such strategy does not generally yield much result. Very often such small groups of developing countries do not have much to offer to the major developed countries in terms of positive concessions. Thus they cannot engage the major developed countries in serious negotiations for exchange of concessions on their own strength. They have a better chance of getting higher benefits in overall terms if they remain firmly with the main stream of the developing countries.

Cohesion of strength and strategy can be built up on the basis of mutual trust and recognition of various interests among the developing countries. Should there be conflicting interests sometimes, there will be a need for rational adjustment. Total transparency among the developing countries and being continuously on guard against mutual suspicion are important preconditions for deepening their cooperation and consolidation in multilateral negotiations.

# 9

## Summary of Suggestions

### **Agriculture**

#### *Export subsidies:*

It may be prudent for the developing countries to work for the elimination of about 90 percent of export subsidies and equivalent measures in the developed countries by 2010.

#### *Blue Box:*

The rational course will be to cap the current Blue Box instead of first expanding its scope and options and then capping it. Hence there is a good case for the developing countries to have the new window of the Blue Box removed altogether.

#### *Green Box:*

Considering that some components of Green Box subsidies, particularly decoupled payments, insurance against income loss and investment aid, help and encourage farmers to continue with unviable production and thus distort trade, the most effective way to stop the distortion is to stop these payments altogether. If that is not possible, there should at least be proposals for effectively curtailing them so that distortion is kept to a minimum. For example, the income criterion of eligibility could specify that payment will be limited to farmers who have an annual income from all sources of up to 10 percent of the average annual income in the country. There should also be an annual

ceiling of payments to a farmer. Further, payment should be limited to individual farmers, thus excluding corporate entities.

*Sensitive products:*

The main concern for the developing countries should be to ensure that the developed countries do not shut out the export prospects in the major products in which the developing countries have export interest. It is likely that the developed countries may consider many such products as sensitive from their domestic angle. One safeguard could be to lay down some quantitative limits (in terms of value of annual production) on products to be designated as sensitive products. Besides, there must be some criteria on the basis of which a country will designate its sensitive products.

*Special Products:*

It is advisable for the developing countries to keep the negotiations on SP concentrated on determining the “appropriate number” of products to be designated SP in terms of percentage of tariff lines, and on listing the indicators that would work as guidelines for designating SP in conformity with the requirements of food security, livelihood security and rural development. An individual country may, of course, work out its own quantitative criteria involving the indicators if it so decides, without its being subject to any multilateral scrutiny or approval.

*Special Safeguard Mechanism:*

It is important for the developing countries to ensure that the triggers for activating the SSM, in terms of either price fall or import rise, are simple to work on. A rise or fall by a simple percentage in comparison to the previous year’s level or in comparison to the average level of the previous two years could be an example of a simple trigger. For the relief available under the SSM, a rise over the bound duty by a simple percentage may be appropriate, without any further constraint being put on the level. There should be no restriction on the number of times SSM action is taken. If the trigger conditions are fulfilled, the action may be taken irrespective of the number of times it has been taken previously. Also, it is desirable that the developing



countries think over again whether relief through enhanced duty will be adequate. A quantitative restriction on imports is a quicker and more direct form of relief in situations where the SSM is called for, whereas an increase in duty has a delayed effect and is also indirect. Hence the developing countries should consider putting forward proposals for QR as relief. Preferential trade should be included in both the trigger and the relief. However, if it is not included in the relief, it should be excluded from the trigger too.

*Peace clause:*

Now that the AoA has operated for nearly 13 years, there is no rationale for reintroducing the peace clause. The consequence is that relief through the countervailing duty process/dispute settlement process will be available to countries in case of injury and serious prejudice to their agriculture caused by another country's subsidies. There is no reason to deny this normally applicable relief to agriculture. Hence, the developing countries should not agree to the reintroduction of the peace clause in the AoA.

*Balance in agriculture:*

In the interest of smooth progress in the negotiations, it is necessary that the subjects of SP and SSM are attended to with as much care, concern and sincerity as have been devoted to the other areas. There is a special responsibility and role for the developing countries in this regard as they were the ones which placed these subjects on the agenda. They have to insist on a balance in the negotiations so that SP and SSM move in step with the other subjects at least from now on.

## **NAMA**

*Tariff reduction:*

The negotiations, which have so far centred around the coefficient in the Swiss formula, need to be reoriented. A practical and correct approach would be to focus the negotiations on the required reduction of tariffs respectively by the developed countries and the developing countries, and to then work out the coefficients in the Swiss formula that will bring about those levels of

reduction. The focus of the negotiations should thus be turned around from the coefficient to the tariff reduction.

For example, the required level of tariff reduction by the developed countries and the developing countries may be 60 percent and 40 percent respectively, keeping in mind the principle of less than full reciprocity (there are precedents in the Uruguay Round of a two-thirds burden on the developing countries compared to that on the developed countries, in consonance with the principle of less than full reciprocity). In order to have such reduction in their respective tariffs of 5 and 30 (which are near their respective average industrial-tariff levels), the coefficients for the developed countries and the developing countries respectively should be 3.3 and 45. These calculations indicate that the coefficients currently under consideration fall far short of fulfilling the principle of less than full reciprocity for the developing countries.

*Binding coverage:*

It is necessary to give due weightage in the negotiations to the commitment of binding of the current unbound tariffs. There are two components in the concessions to be made by the developing countries in respect of their currently unbound tariffs: (i) binding their unbound tariffs; and (ii) reducing their bound tariffs. These two components should be combined to assess their contribution in the negotiations. Then this combined concession should be matched with the concession of tariff reduction of the developed countries with due regard to the principle of less than full reciprocity. A simple mark-up of 20-30 points over the applicable tariffs, presuming them bound at those levels and then subjecting all these old and new bound levels to a reduction formula does not appear to be fair and balanced at all.

A totally new approach is needed on unbound tariffs. One way may be to evolve a “joint tariff indicator” that quantitatively combines four parameters: the current binding coverage, the average of the current bound tariffs, the percentage of unbound tariff lines and some notional figure for the possible average of the unbound tariffs (assuming they are raised at the discre-

tion of the country to some realistic levels). This “joint tariff indicator” will represent the current rights of a country in respect of its tariffs. In the exercise of reduction, this indicator may be reduced by a stipulated percentage. Thereafter, the reduced “joint tariff indicator” may be split by the country at its own discretion into a combination of its new binding coverage and new average bound tariff.

If there is a rush to conclude the tariff negotiations and any such new approach appears impractical at this stage, it will be appropriate to leave the unbound levels as they are and tackle them sometime later.

*Non-tariff barriers:*

It is in the interest of the developing countries to insist on parity in speed between the negotiations on tariffs and those on NTBs. In any case, nothing on tariffs should be considered as finally agreed until an agreement on NTBs is finalised.

## **Services**

It is important that the developing countries protect their flexibility of liberalising fewer sectors and fewer transactions, as permitted in the GATS. There have been repeated onslaughts on this flexibility in the past and more may be forthcoming. The developing countries’ requests and offers in the bilateral format of the negotiations are already on the table. They should enter into and continue with the bilateral negotiations while fully guarding their permitted flexibility.

If a developing country is invited to join a plurilateral sectoral negotiation, it should assess whether it has adequate export supply capacity in that sector. If it does, it may join the plurilateral group; otherwise, it may keep out of it. The Hong Kong Ministerial Declaration permits a country to keep out of a plurilateral negotiation, as the only obligation on the country is to “consider” the request for joining in the negotiation. It may consider the request and then decide not to join it and send the response accordingly.

A developing country may also use the plurilateral route to its own advantage if it has adequate supply capacity and possibility of export in some sectors or modes of supply. It should then join with some other developing countries with similar interest, prepare requests and give them to the countries where they perceive prospects for export. It should utilise the opportunity of possible give-and-take across various plurilateral groups.

A developing country may also identify the policies and practices in other countries, particularly the major developed countries, which hamper its export of services to these countries, for example, the standards and criteria for qualification and experience for service providers in these countries. Several developing countries may have a common interest in having these standards and criteria lowered without affecting the quality of service. They may join together, prepare specific requests and send them to the developed countries concerned, requesting them to join plurilateral negotiations on this matter.

### **Other issues**

#### *“Zeroing” in anti-dumping:*

The developing countries have been placed in a position of negotiating handicap on this issue by the Chairman’s paper. They are reported to have strongly expressed their disapproval when this paper came up for consideration in the WTO recently. They should continue to press for prohibition of the practice of “zeroing”.

#### *“Lesser-duty rule”:*

The Chairman’s paper places the developing countries in a position of negotiating handicap here too. They will have to press strongly for making the “lesser-duty rule” mandatory.

#### *Environmental goods:*

The best forum to negotiate on the reduction/elimination of duties on goods, including environmental goods, is the negotiating group handling NAMA.

Picking out some products like environmental goods to be negotiated separately in some other forum may disturb the negotiating balance.

If the concern for environmental protection, particularly climate change, is taken up in the WTO framework, it may be more appropriate to consider a comprehensive programme covering: exclusion of the relevant goods, services and technologies from intellectual property rights protection under the WTO TRIPS Agreement; encouraging large-scale production and supply of these goods and services in the developing countries; easier market access for these goods and services, etc.

## **Conclusion**

The lure of big benefits from successful conclusion of the multilateral negotiations and the risks of bilateral and regional routes if these negotiations fail should not be taken by the developing countries as determining factors in their moves in the current WTO Doha negotiations.

Elements which are vital for survival and for a dynamic growth path must not be given up. For the developing countries, an example of the former is protection of small farmers, while an example of the latter is retaining options for critical tariff protection for products at higher stages in technological chains. It is also necessary to hold on firmly to favourable and positive elements of systemic and structural value. The SP and SSM are examples of such elements.

The “essential elements” have to be worked out by a developing country through a process of critical studies and wide consultations within the country. Towards this end, it is necessary for a developing country to build institutions and structures that will facilitate such studies and consultations.

Working together, the developing countries have much greater negotiating strength than if they were to form small interest groups and negotiate with the major developed countries separately. Such cohesion of strength and

strategy can be built up on the basis of mutual trust and recognition of various interests among them. If there are conflicting interests sometimes, there would be a need for rational adjustment. Total transparency among the developing countries and being continuously on guard against mutual suspicion are important preconditions for deepening their cooperation and consolidation in multilateral negotiations.

## Titles in the TWN Trade & Development Series

- No. 1 From Marrakesh to Singapore: The WTO and Developing Countries  
*by Magda Shahin* (48 pages)
- No. 2 The WTO and the Proposed Multilateral Investment Agreement: Implications  
for Developing Countries and Proposed Positions *by Martin Khor* (40 pages)
- No. 3 Some Key Issues Relating to the WTO *by Bhagirath Lal Das* (40 pages)
- No. 4 The New Issues and Developing Countries *by Chakravarthi Raghavan*  
(48 pages)
- No. 5 Trade and Environment in the WTO: A Review of its Initial Work and Future  
Prospects *by Magda Shahin* (68 pages)
- No. 6 Globalisation: The Past in our Present *by Deepak Nayyar* (40 pages)
- No. 7 The Implementation of the WTO Multilateral Trade Agreements, the 'Built-  
In' Agenda, New Issues, and the Developing Countries *by Xiaobing Tang* (68  
pages)
- No. 8 Strengthening Developing Countries in the WTO *by Bhagirath Lal Das*  
(48 pages)
- No. 9 The World Trade Organization and its Dispute Settlement System: Tilting the  
Balance Against the South *by Chakravarthi Raghavan* (48 pages)
- No. 10 Negotiations on Agriculture and Services in the WTO: Suggestions for  
Modalities/Guidelines *by Bhagirath Lal Das* (24 pages)
- No. 11 The Implications of the New Issues in the WTO *by Bhagirath Lal Das*  
(20 pages)
- No. 12 Developing Countries, the WTO and a New Round: A Perspective  
*by Ransford Smith* (40 pages)
- No. 13 Review of the TRIPS Agreement: Fostering the Transfer of Technology to  
Developing Countries *by Carlos Correa* (48 pages)
- No. 14 The Proposed New Issues in the WTO and the Interests of Developing  
Countries *by Martin Khor* (32 pages)
- No. 15 WTO: Challenges for Developing Countries in the Near Future  
*by Bhagirath Lal Das* (24 pages)
- No. 16 Dangers of Negotiating Investment and Competition Rules in the WTO  
*by Bhagirath Lal Das* (32 pages)
- No. 17 WTO Agreement on Agriculture: Deficiencies and Proposals for Change  
*by Bhagirath Lal Das* (28 pages)
- No. 18 Some Suggestions for Modalities in Agriculture Negotiations  
*by Bhagirath Lal Das* (24 pages)
- No. 19 The WTO Agriculture Agreement: Features, Effects, Negotiations, and  
Suggested Changes *by Martin Khor* (48 pages)
- No. 20 Market Access for Non-Agricultural Products: A Development View of the  
Principles and Modalities *by Martin Khor & Goh Chien Yen* (32 pages)
- No. 21 Financial Effects of Foreign Direct Investment in the Context of a Possible  
WTO Agreement on Investment *by David Woodward* (28 pages)

- No. 22 Implementation Issues Again Off WTO Radar Screens?  
*by Chakravarthi Raghavan* (28 pages)
- No. 23 Effects of Agricultural Liberalisation: Experiences of Rural Producers in Developing Countries *by Meenakshi Raman* (40 pages)
- No. 24 The WTO Negotiations on Industrial Tariffs: What is at Stake for Developing Countries *by Yilmaz Akyüz* (68 pages)
- No. 25 The Commodities Crisis and the Global Trade in Agriculture: Problems and Proposals *by Martin Khor* (44 pages)
- No. 26 Implications of Some WTO Rules on the Realisation of the MDGs  
*by Martin Khor* (48 pages)
- No. 27 Development Issues in the WTO in the Post-July Package Period: Myth or Reality? *by Bonapas Onguglo* (72 pages)
- No. 28 Trade, Growth and Industrialisation: Issues, Experience and Policy Challenges *by Yilmaz Akyüz* (52 pages)
- No. 29 The WTO Negotiations on Non-Agricultural Market Access: A Development Perspective *by Martin Khor and Goh Chien Yen* (80 pages)
- No. 30 Towards an Alternative Perspective on Trade and Industrial Policies  
*by S M Shafaeddin* (36 pages)
- No. 31 Does Trade Openness Favour or Hinder Industrialization and Development?  
*by Mehdi Shafaeddin* (84 pages)
- No. 32 The WTO's Doha Negotiations and Impasse: A Development Perspective  
*by Martin Khor* (40 pages)
- No. 33 The "Singapore Issues" in the WTO: Evolution and Implications for Developing Countries *by Martin Khor* (72 pages)
- No. 34 Globalisation, Liberalisation, and Protectionism: The Global Framework Affecting Rural Producers in Developing Countries *by Martin Khor* (64 pages)
- No. 35 The WTO's Doha Negotiations: An Assessment *by Bhagirath Lal Das* (72 pages)



# THE WTO'S DOHA NEGOTIATIONS: AN ASSESSMENT

The ongoing Doha negotiations in the World Trade Organisation (WTO) are now delicately poised at a stage where WTO member states are discussing concrete reforms to the rules and practices of international trade.

This paper examines the current state of play at this critical juncture of the talks from the perspective of development and developing countries' interests. It looks at key areas of agreement – and disagreement – in the main subjects on the negotiating agenda: agriculture, industrial tariffs, services, the “development issues”, and some important recent developments pertaining to subsidy and anti-dumping rules and to “environmental goods”.

The author, a leading authority on international trade negotiations, also provides specific suggestions on the stand the developing countries could take in the various negotiating areas to better safeguard their economic growth prospects. More generally, he calls for enhanced cooperation among the countries of the South in forging collective negotiating positions that will protect and advance their common development interests.

**BHAGIRATH LAL DAS** *was formerly Director of International Trade Programmes at the United Nations Conference on Trade and Development (UNCTAD) and India's Ambassador to the General Agreement on Tariffs and Trade (GATT) forum.*

## TWN TRADE & DEVELOPMENT SERIES

is a series of papers published by **Third World Network** on trade and development issues that are of public concern, particularly in the South. The series is aimed at generating discussion and contributing to the advancement of appropriate development policies oriented towards fulfilling human needs, social equity and environmental sustainability.

**TWN** Third World Network

ISBN 978-983-2729-32-7



9789832729327

# THE WTO'S DOHA NEGOTIATIONS: AN ASSESSMENT

The ongoing Doha negotiations in the World Trade Organisation (WTO) are now delicately poised at a stage where WTO member states are discussing concrete reforms to the rules and practices of international trade.

This paper examines the current state of play at this critical juncture of the talks from the perspective of development and developing countries' interests. It looks at key areas of agreement – and disagreement – in the main subjects on the negotiating agenda: agriculture, industrial tariffs, services, the “development issues”, and some important recent developments pertaining to subsidy and anti-dumping rules and to “environmental goods”.

The author, a leading authority on international trade negotiations, also provides specific suggestions on the stand the developing countries could take in the various negotiating areas to better safeguard their economic growth prospects. More generally, he calls for enhanced cooperation among the countries of the South in forging collective negotiating positions that will protect and advance their common development interests.

**BHAGIRATH LAL DAS** *was formerly Director of International Trade Programmes at the United Nations Conference on Trade and Development (UNCTAD) and India's Ambassador to the General Agreement on Tariffs and Trade (GATT) forum.*

## TWN TRADE & DEVELOPMENT SERIES

is a series of papers published by **Third World Network** on trade and development issues that are of public concern, particularly in the South. The series is aimed at generating discussion and contributing to the advancement of appropriate development policies oriented towards fulfilling human needs, social equity and environmental sustainability.

