

**WTO: Challenges for Developing
Countries in the Near Future**

BHAGIRATH LAL DAS

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Third World Network

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INTRODUCTION AND BACKGROUND

The World Trade Organisation (WTO) has become an important instrument of globalisation in the world today. The major developed countries have put their full weight behind it. They have already used the multilateral financial institutions, viz., the World Bank and the International Monetary Fund (IMF), to influence the economic policies of the developing countries in the past. These two organisations have considerable clout as a large number of the developing countries have to depend on them for financial support for development and for tiding over their foreign-exchange problems. These institutions are mainly guided by the developed countries in the formulation of their policies and prescriptions, since the decision-making therein is through a weighted system of voting, in which the countries with higher financial contributions have been assigned more votes.

The system of decision-making in the WTO, however, is different. Here each country has one vote, and there is a provision for decision-making by majority voting if it is not possible to reach consensus. The developing countries outnumber the developed countries in the WTO by nearly four to one. And yet, despite all this, it is the developed countries which are the main engines of the work in the WTO, while the developing countries are almost always on the margins.

The developed countries initiate the subjects for negotiation and take the lead and initiative in the course of negotiations. The developing countries, on the other hand, are almost always on the defensive, trying to minimise the damage arising from the negotiated agreements. It is important for the developing countries to reverse this process, lest their progress on the development path continues to be constrained. They

have to be particularly careful now, in the context of the pressures being exerted to launch a new round of negotiations in the WTO.

The main driving force behind the major developed countries in the WTO is their interest in expanding the space for their economic entities, particularly in the developing countries. The doors are already quite open in the developed countries; hence they do not have to worry about entry there. But the developing countries which present vast opportunities are still very much untapped. Hence these areas are sought to be pried open for their operation. The economic entities in the major developed countries exert considerable pressure on their governments to take effective steps in this direction. And the WTO is considered to be the natural instrument for this purpose.

The major developed countries have found, through their experience, that they can conveniently achieve their objectives in the WTO. Moreover, the organization has an effective enforcement mechanism in the form of its integrated dispute settlement system, within which perceived obligations under the various WTO agreements can be enforced with the threat of restrictions on the import of goods. This is an effective threat to the developing countries as such punitive moves can disrupt their exports in the few sectors where they are competitive.

The main reason why the developed countries are able to get the desired results in the WTO is that they are clear about their objectives, have good coordination among themselves to achieve those objectives and use their full strength in this process. The political and economic clout of their governments as well as the technological and economic muscle of their firms join together to push ahead to get the benefits they seek. Differences do sometimes arise among themselves on some issues, but when it comes to getting concessions from the developing countries, the major developed countries always combine together.

The Uruguay Round of negotiations is an important recent example, where the major developed countries moved together and gained big concessions from the developing countries, despite there being mutual differences among themselves on some issues. The latest example of their joint pressure is the current call for a new round of negotiations, under which they expect to start negotiations on new subjects with the main aim of obtaining further concessions from the developing countries, as will be explained in some detail later.

Two decades ago, the developing countries were not exposed to much risk from the developed countries' acting as the prime movers in the General Agreement on Tariffs and Trade (GATT) forum, which was the predecessor of the WTO. The developed countries did not expect much concessions from the developing countries in those days; the negotiations were mainly about concessions among the developed countries. But the discussions and negotiations during the last two decades have been focussed mainly on getting concessions from the developing countries.

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SAD EXPERIENCE OF DEVELOPING COUNTRIES

Because of extreme pressures exerted by the developed countries, the Uruguay Round ended with highly imbalanced results, with the developing countries making most of the concessions and the developed countries hardly making any significant concessions to them. It is by now quite clear that the WTO agreements, which came out of the Uruguay Round, are full of imbalances, inequities and deficiencies. The developing countries have repeatedly been drawing attention to these adverse features over the last four to five years.

Grave Disappointment in Some Areas

The most positive features of the WTO agreements for the developing countries appeared to be in the areas of agriculture, textiles and dispute settlement. Many developing countries were persuaded to accept the agreements mainly because of the presumed benefits in these areas. However, these expectations have not been realised in practice, nor is there any hope of much benefit flowing to the developing countries in these areas in the near future. In fact, in the areas of agriculture and textiles, the developing countries have good reason to feel cheated.

In agriculture, the developing countries had expected that their market-access prospects would improve. But the Uruguay Round commitments and their implementation by the developed countries have belied all such hope. The developed countries put prohibitive tariffs on many products and enhanced their domestic subsidies. Even in their export subsidies, there was only a small reduction, even though these subsidies directly

distort international agricultural trade in a big way. It is useful to go into some detail as to how this situation has come about.

The WTO Agreement on Agriculture required all countries to remove their non-tariff barriers, for example direct quantitative restrictions on imports, and enabled the countries to convert them into equivalent tariffs. The developed countries utilised this provision to have very high tariffs on a number of items. Some studies have shown that many of them imposed tariffs at levels much higher than would have been required by the equivalence with their non-tariff measures.

Another facility which they obtained was the ability of a country taking to such conversion to apply “special safeguard measures” to protect its farmers. This has enabled them to apply restrictive measures when imports exceed a certain limit or the import price falls below a particular level. What is important here is that the determination of injury to domestic production would not be a precondition for applying such safeguard measures, unlike the requirement under the general safeguard provision of the WTO.

Now the developing countries, save for a very few exceptions, did not have such non-tariff measures earlier which could be converted to equivalent tariffs. Hence they were denied the twin facility of applying high equivalent tariffs and protecting their farmers in a comparatively easier way. Thus, it is those that were distorting agricultural trade which were given these benefits, benefits denied to those that were not distorting the agriculture trade, like the developing countries.

The story of domestic agricultural subsidies is even more striking. The subsidies were broadly categorised into two groups. The subsidies in one group were together required to be reduced over a given period of time, whereas those in the other group were not subject to the reduction requirement. While the major developed countries fulfilled their com-

mitment of reducing the reducible subsidies, they also cleverly raised the other type of subsidy by a huge margin. As a result, the total level of domestic subsidies was actually increased rather than reduced. Thus, the Agriculture Agreement and its manner of implementation have in fact led to enhanced distortion of agriculture trade by the major developed countries.

In textiles, the picture is a similar one. The major developed countries have technically fulfilled their obligation to liberalise their imports, but in effect they have really not liberalised except to a small extent. Under a regime introduced in derogation of GATT to provide protection to the textile industry of the major developed countries, a large number of developing-country textile products have been under import restraint in these countries. The WTO Agreement on Textiles and Clothing stipulated that the developed countries would progressively liberalise, in increasing percentages, these imports in stages. In actual practice, however, the liberalisation of the restricted products has been to a much lesser extent.

This has happened because the base for the calculation of these percentages is a list of products included as an annex to the agreement. This list contains a large number of items which were never in fact under restraint. It is mostly these unrestricted items that have been included by the developed countries in their liberalisation programme. Thus, the restricted items, except for a small percentage, still remain restricted. The developing countries, which were the sole targets of the import restrictions, continue to be the victims of trade discrimination in this sector.

In the area of anti-dumping, the developing countries had been the victims of harassment for a long time. It was expected that with the tightening of the rules in the WTO Anti-Dumping Agreement, the situation would improve. But the harassment of the developing countries through anti-dumping actions on their exports has continued in some

major developed countries, sometimes through repeated actions on the same or similar products.

An area of great hope for developing countries was the WTO's enforcement mechanism, i.e., the dispute settlement system. It has provided some relief to the developing countries against unilateral action and harassment, when they have been able to raise a dispute and pursue it through the panel and appeal process. But they are considerably handicapped because of the high cost involved, both in raising a dispute and in defending one. They do not have domestic expertise on this matter and have to depend almost entirely on the legal services of experts from the major developed-country centres. What has been particularly disappointing to the developing countries, moreover, is that the panel and appeal processes have been almost totally ignoring their grave concerns on important procedural matters and have also been giving interpretations which are substantially modifying the rights and obligations contained in the WTO agreements.

Ongoing Process of Constraining Market Access

Another concern of the developing countries has been the formulation of standards which may affect their market-access prospects on a continuing basis. Product standards are being fixed by the International Standards Organisation, and, in respect of sanitary and phytosanitary matters, by the Codex Alimentarius. These were generally voluntary standards in the past. Now the WTO agreements give primacy to these standards, in so far as a country has to justify its standards if they are different from those set by these bodies. Thus, there is a degree of obligation involved for countries in respect of these standards.

Developing countries are worried about these new obligations, which have arisen without their effective participation in the standard-setting

process in these organisations. The developed countries and transnational corporations have a generally good presence in these bodies, but the developing countries are mostly left out as they do not have the adequate financial and human resources to be involved in the process of standard-setting there. Thus, they have no effective say in this process.

Consequently, the standards set by these organisations do not generally take into account the experience of the developing countries and the special situations of these countries as producers and consumers of the products. The standards may sometimes be too stringent from their point of view; in that case, their market-access prospects in other countries may be undermined. This apprehension is further enhanced by the enthusiasm in many developed countries for the use of standards as a protectionist instrument.

Costly Implementation

Yet another point of concern in the developing countries is the complexity and difficulty in implementing the various WTO agreements. Some agreements require the formulation of legislation and regulations as well as the establishment of mechanisms for various purposes. Many developing countries do not have adequate skill and financial resources in this regard. Some calculations have shown that it is a very costly process.

Furthermore, there are some obligations, like the prohibition, under the Agreement on Trade-Related Investment Measures (TRIMs), of the domestic-content requirement, which have serious adverse implications for the development process of the developing countries. These countries are finding it difficult to adhere to the time frame for undertaking such obligations, and stand the risk of trade retaliation for non-fulfillment.

In respect of many obligations, the actions required for implementation have to be taken at various levels in a country. Thus, not only the central

government, but also the regional governments and local bodies, have to adhere to the disciplines of the WTO agreements. If they are not able to do so, the central government is held responsible in the WTO for the default, and it may have to pay a price through the dispute settlement route if a complaint is raised. The ability of the developing countries to train the officials of the regional and local administrations is limited. Also, it is very difficult for them to collect information from the widely dispersed centres of these authorities, which is necessary to enforce the implementation of the obligations.

Special Interests Ignored

The developing countries are disturbed that the special provisions in some agreements incorporating their interests to some extent have not been given due attention. In particular, the General Agreement on Trade in Services has the objective of expanding the services supply capacity in the developing countries. It also has a stipulation that the developing countries may liberalise fewer sectors and fewer transactions in services. But these provisions have not been adequately implemented in actual practice. In fact, there has been insistence that some developing countries accept far more onerous obligations in some sectors, particularly financial services, than they were prepared to undertake.

Likewise, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has the objective of encouraging the technological development of the developing countries. But steps to realise this objective have not materialised in any concrete form in the policies or actions of the developed countries.

The main reason for not putting these principles and objectives into actual practice is that there are no direct and specific obligations in the agreements on the developed countries to take some specific measures in this regard. Thus, there is no specific enforceable provision which can be

the subject of a specific dispute in the WTO.

New Pressures

The WTO agreements, which had been reached after a protracted negotiating process of nearly eight years under the Uruguay Round, came into force in the beginning of January 1995. The developing countries had had hardly enough time to absorb the implications of these extremely complex agreements and start the process of implementation, when the major developed countries came up in 1996 with proposals for fresh negotiations in the WTO on some entirely new subjects, some of which were totally unrelated to trade. They put intense pressure on the developing countries and got many of these new subjects included in the work programme of the WTO, though they did not succeed in actually starting negotiations because of the forceful and united opposition of the developing countries. They are, however, continuing with their pressure for launching negotiations in these new areas.

They also brought two proposals suddenly for decisions in the WTO Ministerial meetings, one for zero duty on information technology goods and the other for zero duty on electronic commerce, at Singapore in December 1996 and at Geneva in May 1998 respectively. The developing countries had very little time to examine the proposals but agreed to these decisions in the spirit of goodwill and cooperation.

These experiences are bound to arouse concern among the developing countries that they will be pushed more and more with further new proposals of interest to the developed countries if they continue to succumb to the pressures.

The developing countries will certainly learn a lot from these experiences in the WTO over the last six years. These lessons will naturally play an important role in determining their approach in the WTO in the new phase of its work during this year and in the near future.

3

FACING THE CHALLENGES IN THE NEAR FUTURE

Changed Approach of Developing Countries

Signs have already emerged that the developing countries are starting to change their approach in the WTO. The year 1999 was the watershed. Departing from their earlier stance of merely responding and reacting to the proposals of the major developed countries, they decided to be proactive. They gave deep thought to the deficiencies, imbalances and inequities in the WTO agreements and their implementation, and decided to take the initiative to correct the situation. They coordinated among themselves and prepared well.

Finally they came up with a large number of proposals under the general heading of “implementation issues”. This was an important input to the preparatory process for the Seattle Ministerial meeting of the WTO in December 1999. In the final stages in the run-up to Seattle, attempts were made by some quarters to ignore these proposals by keeping them out of the text to be submitted to the meeting. But the developing countries determinedly persisted and got their proposals included in the text. It was a significant achievement, considering their passive and defensive role in the past.

Up till now, however, the major developed countries are not prepared to work on these proposals; they say that these would entail amending some agreements, which should rightly only be taken up in the course of a new round of negotiations. In this manner, they are trying to strengthen their case for launching a new round, which has been pursued by them for more than a year. They forget that major new commitments have been

taken in the WTO at their instance in the last few years as mentioned above, without a new round having been launched.

The developed countries would like to address a few of the 'easier' implementation issues in a superficial manner and then sweep this matter off the WTO table. But the developing countries are very much united on pursuing these proposals. It has become their common platform. They also have the moral justification in insisting on correcting the deficiencies, imbalances and inequities in the current agreements on a priority basis before embarking on any new negotiations. One visible effect of these proposals is that the momentum of the new issues has slowed down, though there may be other reasons for it too.

The developing countries are aware of the importance of their proposals and have been consistently pressing for decisive and meaningful consideration thereof as a priority.

Agenda of Developed Countries

The agenda of the major developed countries is to launch a new "comprehensive" round of negotiations in the WTO, which means that the new subjects proposed by them at the Ministerial meetings of Singapore (1996) and Geneva (1998) should be taken up for negotiation. These subjects include: investment, competition policy, government procurement, electronic commerce and labour standards. Of course, there are varying degrees of intent among the major developed countries on these issues. The US is not keen on taking up the subject of competition, while it is the main champion of the subject of electronic commerce. The EU is keen on the former, though not quite so keen on the latter. But both of them would like to have investment, government procurement and labour standards on the agenda of new negotiations, though the US appears to be less enthusiastic about investment.

The developing countries generally are opposed to the launching of a new round. Their main concern is that it will involve negotiations in new areas, which will put their own priority subject of improving the existing agreements on the backburner. Their case is that their proposals have been placed on the basis of their experience of the workings of the agreements for the last six years and must have priority over consideration of the new subjects. They also argue that subjects like investment and labour standards do not belong in the WTO and as such should not be covered by negotiations in this organisation.

There is, of course, a more basic reason behind the developing countries' opposition to the new subjects. They apprehend that through each of these subjects, the developed countries will be pushing ahead with their interests, curtailing the discretion and constraining the development efforts of the developing countries and using new tools to restrain exports from the developing countries.

Main Fears of Developing Countries

All the subjects proposed by the major developed countries for negotiations cause grave fear among the developing countries. For example, they apprehend that negotiations on investment will be geared towards ensuring unrestrained entry and operation of developed-country investors in the developing countries. The current WTO agreements have already ensured expanded opportunities for the farmers, manufacturers, exporters, service providers and technology providers of the developed countries in the developing countries. The proposed negotiation and agreement on investment is aimed at extending the benefit to their investors. It is feared that the agreement will constrain the flexibility of the developing countries in guiding and channelling foreign investments in the interests of attaining their development objectives.

Similarly, it is feared that the proposed negotiation on labour standards is meant to effect the enforcement of these standards through the WTO dispute settlement mechanism. This will provide a new tool of protectionism to the developed countries, whereby the exports of developing countries may get constrained under the pretext of safeguarding labour standards.

Even the proposed negotiations on competition and government procurement give serious grounds for concern. Negotiations on the former may end up curtailing the flexibility of the developing countries to protect their firms against the onslaught of big foreign firms. And negotiations on the latter may expose their government purchases to international competition, thereby prohibiting the developing-country governments from giving preference to particular sources of supply, including their domestic suppliers.

The past experience of the developing countries justifies such fears. New areas were included for negotiations in the Uruguay Round against the stiff opposition of the developing countries. During the course of the negotiations, the scope was expanded, e.g., in the area of intellectual property rights (IPRs) although the developing countries had not earlier agreed to negotiate IPRs standards. Also, the initial agreement to keep the new subjects, like services and IPRs, separate from the traditional area of GATT (trade in goods) was ignored. All these areas were joined together through the integrated enforcement mechanism of the dispute settlement process, which provides for cross-retaliation among these areas (i.e., retaliation for a country's non-conformity with an obligation in one area, e.g., IPRs, by imposing restrictions on the country in another area, e.g., goods).

What has disturbed most of the developing countries is the steamrolling technique of the major developed countries. Decisions are taken in small groups and then the results are placed before the other countries for

acceptance. A vast majority of the developing countries are thus not able to participate in the 'real' decision-making process, and yet they get saddled with the new obligations inherent in the new decisions. Theoretically, they can block a decision even in the last minute, but this is not a practical course of action. Any developing country will find it difficult to take the blame for blocking a consensus at the final formal meeting to approve a decision. The developing countries have lately been voicing their concern loudly and clearly about the lack of transparency and lack of participation in the decision-making process.

Next Few Years

There will be a hard struggle ahead for the developing countries in the next few years. Intense pressures will be put on them to accept the launch of a new round of WTO negotiations that encompasses the new subjects. In the process, some assurances may be given that their development interests will be kept in view. There may also be promises dangled of special and differential treatment of the developing countries. Some safeguards may be suggested in terms of holding out the possibility that a developing country need not join a new agreement if it so decides, i.e., something like the route of "plurilateral" agreements. More concrete steps may be taken by the developed countries in respect of the least developed countries, by allowing the latter some improved market access up front. All these inducements will be designed to blunt the sharp opposition of the developing countries to the launching of a new round and the inclusion of new subjects in it.

Once the negotiations get underway, however, the past picture may emerge again. The new subjects, which are of great interest to the major developed countries, may receive full attention, while the subjects of interest to the developing countries may get relegated to the background. Finally the developing countries may end up making further concessions

that add to their already heavy burden. And perhaps they will be doing all this for no real gain in return in terms of better market access abroad or better protection for their domestic production.

The developing countries have to keep in mind the recent experiences of the Uruguay Round, discussed briefly above. They should know that promises, assurances and expressions of benign intentions, principles and objectives do not count for much in the WTO setup. It is only the concrete and enforceable obligations of individual countries that have real value in this organisation. Also, they should recall that the developed countries never make a concession without getting at least a commensurate reciprocal concession in return. The developing countries' response to the pressures of the developed countries should be guided by these factors.

First and foremost, they should not allow those subjects that are not within the current GATT/WTO framework, e.g., investment and labour standards, to be included in negotiations. If they have to yield on this matter (as happened in the Uruguay Round in respect of services and IPRs), they must ask for consideration for the mere entry into the negotiating agenda of the subject, and make sure they receive it before the subject is included. The 'price' could be in the form of concrete and enforceable concessions from the subject's demanders which could be of immediate and also long-term utility to the developing countries. Also, they should ensure inclusion of the points of their interest in the agenda of negotiations in these areas if negotiations are to be undertaken.

In the areas which are within the framework of GATT/WTO, they should put all the matters of their interest on the negotiating table.

They should continue to insist on consideration of the "implementation issues" on a priority basis. In fact, they could insist on agreements on some of the important issues before agreeing to the initiation of negotiations in the new areas, even new areas which are within the current

GATT/WTO framework. The other “implementation issues” should be accorded unambiguous priority in the negotiating programme.

The developing countries have to realise that they can achieve their objectives in the WTO only if they work together. There is a great need for consolidation of their positions and mutual cooperation and support in the preparation process.

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WTO: CHALLENGES FOR DEVELOPING COUNTRIES IN THE NEAR FUTURE

The establishment of the World Trade Organisation (WTO) and the entry into force of the agreements under its auspices have visited considerable iniquities upon the developing countries over the last six years. Rife with imbalances and deficiencies, the WTO agreements and the manner of their implementation have hardly benefited the Third World nations but have instead littered their development path with imposing obstacles.

Amid this panorama of inequity, the major developed countries are pushing for the launch of fresh negotiations that could result in new WTO rules which add to the already onerous obligations of the developing countries and further undermine their development prospects. This paper calls on developing countries to resist these pressures wholeheartedly and insist instead that the myriad asymmetries in the existing agreements be remedied. This in turn demands that they shed their previous passive stance and forge coordinated and consolidated positions within the WTO, emphasises the author, for only with proactive cooperation can the countries of the South effectively advance their interests in the multilateral trading system.

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