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Implications of Some WTO Rules on the Realisation of the MDGs

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NOTE:

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1 Introduction

THIS is a paper on how some of the rules, recent proposals and developments in the World Trade Organisation (WTO) may have an impact on the realisation of the Millennium Development Goals (MDGs). It is beyond the scope of the paper to undertake an in-depth description or analysis of this important and complex issue. It is thus in the form of an outline or summary. As the paper cannot cover a comprehensive range of the WTO rules, only some of the agreements are covered on the basis of their importance and relevance to the MDGs.

The MDGs were formulated at the United Nations following the Millennium Summit of 2000. They comprise goals and targets that government leaders have collectively agreed on and are committed to at various summits and meetings. They constitute a useful set of references and benchmarks which governments, international and other agencies and people can look to as worthy goals to achieve.

The WTO is a multilateral organisation whose rules have a powerful effect on the trade and domestic policies of member states and on the livelihoods and lives of their people. It was established ten years ago, and it is possible to observe at least partially the impact of its agreements.

This paper begins with a brief assessment of the problems arising from implementation of the WTO rules. The main features and effects of some of the agreements (agriculture, services, intellectual property, GATT) are then outlined. This is followed by a discussion on the decision-making system and the structural or systemic aspects of the WTO. Some suggestions for improving the situation are made for each topic.

The WTO has effects on several or all of the MDGs and their targets. The most obvious is Goal 8 (Develop a global partnership for development), with Target 12 (Develop further an open, rule-based, predictable, non-discriminatory trading and financial system), Target 13 (which includes tariff- and quota-free access for exports of least developed countries (LDCs)), and Target 17 (…provide access to affordable essential drugs in developing countries).

Also very relevant are Goal 1 (Eradicate extreme poverty and hunger) with targets of halving the number of poor people and the proportion of people suffering from hunger by 2015; and several other goals that deal with health (Goal 4: Reduce child mortality; Goal 5: Improve maternal health; and Goal 6: Combat HIV/AIDS, malaria and other diseases) and education (Goal 2: Achieve universal primary education).

Reference is made to some of these goals when discussing the effects. Reference is also made to several reports exploring the links between globalisation and trade rules on one hand, and economic, social and cultural rights on the other. These reports cited were made by the UN Secretary General and the Human Rights Commission. It is useful to link the approach of the MDGs with the human rights approach. This paper also draws on earlier papers by the author.

2 “Problems of Implementation” and the Lack of Progress on the “Development Issues” in the WTO

AFTER the WTO was established, policy makers and analysts in many developing countries became increasingly concerned about the implications and emerging impacts arising from the implementation of the Uruguay Round agreements. They became increasingly aware that many of the agreements contained flaws and were imbalanced in that developing countries would have to undertake more obligations, and that the benefits would not be equitably distributed, and moreover the developing countries would in many cases suffer costs or losses. These problems were compiled by an influential group of developing countries (informally known as the Like Minded Group) and first tabled in 1999 as “implementation issues” in the WTO.

There are two sets of implementation problems that analysts and policy makers of the developing countries have found. Firstly, the benefits they anticipated did not materialise as the developed countries failed to implement their obligations in the manner expected of them. Secondly, the developing countries face many problems themselves in having to change domestic policies whilst attempting to fulfil their own Uruguay Round obligations. A useful analysis of many of these problems is contained in Das (1998a, 1999).

On the first set of problems, the developing countries’ main expectation was that the developed countries would very significantly open their markets in agriculture and textiles, the two main sectors in which the developing countries have an export advantage. The developing countries had made major concessions in agreeing for decades that agriculture and textiles would remain outside the general free-trade rules of GATT, thus allowing the developed countries to protect themselves. It was agreed during the Uruguay Round that the two sectors would be integrated into the system. However, up to now, the high protection has remained.

In agriculture, tariffs on many agricultural items of interest to developing countries are prohibitively high (some are over 200 and over 300 per cent). Domestic subsidies in OECD countries have risen from US$275 billion (annual average for base period 1986-88) to US$326 billion in 1999, according to OECD data (see OECD 2000), instead of declining as expected, as the increase in permitted subsidies more than offset the decrease in subsidy categories that are under discipline in the WTO Agriculture Agreement. There has been little expansion of market access to developed country markets.

In textiles and clothing, the developed countries agreed to progressively phase out their quotas over 10 years to January 2005, but they in fact retained most of their quotas until near the end of the implementation period. Genuine liberalisation was avoided by the device of choosing in the first phases to 'liberalise' mainly products that were not actually restrained in the past, thus leaving quotas on the bulk of significant products, which would be eliminated only at the end of the 10-year transition period. This, together with the absence of structural adjustment in the North to prepare for the ending of the quotas have raised doubts as to whether other trade measures (such as anti-dumping and safeguard measures) will be taken, besides high tariffs, to continue the protection of this sector.

Tariff peaks and tariff escalation continue to be maintained by developed countries on other industrial products in which developing countries have a manufacturing export capacity. The supposed improvement of market access through tariff reductions has to some extent been also offset by non-tariff barriers in the rich countries, such as the use of anti-dumping measures and the application of food safety and environmental standards.

On the second set of implementation problems, the developing countries are facing difficulties in having to implement their own commitments made in several WTO agreements. These problems include:

(a) the prohibition of trade-related investment measures and subsidies, making it harder for developing country governments to promote domestic industry;

(b) import liberalisation in agriculture, threatening the viability and livelihoods of small farmers whose products face competition from cheaper imports, many of which are artificially cheapened through massive subsidies;

(c) the effects of a high-standard intellectual property right (IPR) regime that has led to exorbitant prices of medicines and other essentials, to the patenting by Northern corporations of biological materials originating in the South, and to higher cost for and lower access by developing countries to industrial technology;

(d) increasing pressures on developing countries to open up their services sectors, which could result in some local service providers being rendered non-viable; and

(e) the recent negotiations (which began in 2001) for a new round of industrial tariff cuts are also likely to result in steep tariff reductions, which may unleash a level of import competition upon domestic industries that many may not be able to stand up to.

The problems arise from the flaws and imbalances in several of the WTO agreements. The developing countries have tabled in the WTO a list of these problems, encountered during the implementation process, and also put forward proposals for addressing these problems. The summaries of these proposals are contained in the WTO compilations on implementation issues (WTO 2001e, 2001f, 2001g).

Requests by developing countries from 1999 that these problems be resolved first in the sequencing of the WTO's future activities have not been agreed to, and there has been little progress even though a set of these issues has been placed under the Doha negotiating agenda. The attitude of the developed countries seems to be that the developing countries had entered into legally binding commitments and must abide by them; any changes would require new concessions on their part. If this approach is adopted, it would imply that the state of imbalance will remain.

At the WTO General Council meeting in July 2004, when a package of decisions was adopted in relation to the Doha Work Programme, there were no concrete results reported on resolving the implementation issues. A related set of issues, on how to strengthen existing provisions on special and differential treatment for developing countries, was also unresolved. The meeting merely agreed on a new time-table for further discussions on these two related issues, which together are known in the WTO as the "development issues".

There are implications of this lack of progress on the "development issues" for the realization of the MDGs. Goal 8 calls for the development of a "global partnership for development". A genuine and effective partnership would require that the developing countries obtain their fair share of benefits from the trading system. It would also mean that care is taken to ensure that the rules of the trading system are balanced and will result in equitable outcomes, that at least the developing countries do not suffer losses and costs from the rules, and that the rules do not adversely affect the welfare and rights of ordinary and poor people.

Although MDG Target 12 (calling for further development of an open, rule-based, predictable, non-discriminatory trading and financial system) does not explicitly mention that the trading system should be *fair and balanced,* this is implied in Goal 8's main term, "partnership for development". Moreover the term "non-discriminatory" presumably also covers that goal that the rules should not be skewed against the developing countries and poor people.

The lack of realisation of the anticipated benefits to developing countries of the Uruguay Round also affects other MDGs. According to a report by the UN Conference on Trade and Development (UNCTAD), protectionism in developed countries has prevented developing countries from fully exploiting their existing or potential comparative advantage. The missed opportunities for them due to trade barriers are estimated at an additional $700 billion in annual export earnings in low-technology industries alone. (UNCTAD 1999: 143). If these opportunities had been available, and had been taken up, they would have provided developing countries with more export earnings, employment and income, and these in turn could have made significant contributions (in some countries at least) to the realisation of MDG 1 (eradicating extreme poverty and hunger) as well as the other goals relating to health and education.

Moreover, failure till now to tackle the second set of implementation issues implies that the policy space required by developing countries to enact development strategies and policies has been eroded. Indeed, there are concerns whether the presently poor and middle-income developing countries can anymore pursue many of the development policies that the presently industrialised countries (and the successfully industrialising developing countries) had undertaken during their process of development.

The problems of implementation affect their prospects for technology upgrading, the development of local industries, survival and growth of local farms and the agriculture sector, attainment of food security goals, and fulfillment of health and medicinal needs. These are all of course of relevance to the realisation of most of the MDGs.

The following chapters discuss issues arising from the design and implementation of some of the specific agreements.

3 Agriculture

THE WTO Agreement on Agriculture (AoA) established disciplines on three pillars: market access, domestic support and export subsidies. There are several weaknesses and imbalances in the AoA that have enabled the developed countries to maintain high protection in this sector, whilst the policy space for developing countries to promote their small farms, rural development and food security has been seriously eroded.

If the present flaws are not rectified, there can be serious adverse consequences for realising Goal 1 (Eradicate extreme poverty and hunger) and Goal 8 (Develop a global partnership for development) of the MDGs. Indeed, whether the unfairness of the present global rules on agriculture is removed would be a litmus test for the seriousness with which the developed countries take the MDG process.

The AoA prohibited the continuation of quantitative restrictions, and those that practised it had to convert these to tariffs. In the tariffication process, many developed countries set very high tariffs on several products; thus, even after the required 36 per cent reductions, they remain prohibitively high. Domestic support has also remained very high; in fact, the total amount of domestic subsidies in OECD countries has actually risen as there was an increase in permitted types of subsidies which offset the decrease in those subsidies that come under discipline and have to be reduced. The export subsidies budget in developed countries was also required to be reduced by only 36 per cent under the agreement.

Of the three aspects above, worldwide public criticism has focused most on the continuation and expansion of domestic subsidies in the developed countries. A loophole in the AoA has allowed the developed countries to maintain or even increase their total domestic support by shifting from one type of subsidy, the Amber Box (price-based, which is directly trade-distorting), to two other types, the Blue Box and Green Box (grants to farmers to set aside production and direct payments to farmers, and other "indirect" subsidies), that are exempted from reduction discipline.

In reality, the Blue and Green Box subsidies also have significant effects on the market and trade, and are thus also trade-distorting. For the farmer, what is important is whether he can obtain sufficient revenue and make a profit. If a subsidy, in whatever form, is assisting the farmer to obtain revenue and to be economically viable, then that subsidy is having a significant effect on production and on the market.

The effect of agriculture subsidies in developed countries is that their farm production levels are kept artificially high and their producers dispose of their surplus in other countries, often by dumping on world markets at less than the production cost. Farmers in developing countries incur losses in three ways: they lose export opportunities and revenues from having their market access blocked in the developed countries using the subsidies; they lose export opportunities in third countries, because the subsidising country is exporting to these countries at artificially low prices; and they lose their market share in their own domestic market, and even lose their livelihoods, due to the inflow of artificially cheap subsidised imports.

Subsidy payments in the rich countries favour the largest producers. Data from 1996 show that 17 per cent of farms that are large or extra-large received 50 per cent of agricultural support under the Common Agricultural Policy in the European Union countries (ActionAid 2002: 8). In 1997-98, direct payments in the UK's arable, sheep and beef sectors totalled about Sterling 2,730 million, and 16 per cent of the largest holdings received 69 per cent of the subsidies (ActionAid 2002: 9).

A good example of the effects of Northern agricultural subsidies on developing countries is provided by the case of cotton, which has been highlighted by West African producer countries. The President of Burkina Faso, Mr Blaise Compaore, addressing the WTO's Trade Negotiations Committee (TNC) in June 2003, called for a decision at the WTO on measures to eliminate cotton subsidies, and until then, to pay financial compensation to the least developed countries that suffer losses due to the subsidies (Khor 2003a).

President Compaore highlighted the plight of West and Central African cotton-exporting countries resulting from the developed countries' agricultural subsidies and the urgent need for action to prevent further loss of income and livelihoods. He pointed to the hypocrisy and double standards in the global economic system. The multilateral trade rules, reinforced by the Washington Consensus, led developing countries to undertake structural adjustment reforms. In line with these, West and Central African states eliminated their agricultural subsidies but these reforms were nullified by "multiform subsidies" by some WTO members "in total contradiction with WTO basic principles." In 2001, the rich countries' $311 billion farm subsidies were six times the $55 billion dispensed as aid. Mali received $37 million in aid but lost $43 million from lower export revenues caused by other producer countries' cotton subsidies.

"Such practices provide rich country agriculture with an unfair competitive edge that works against developing countries," President Compaore said. African farmers produce cotton 50% cheaper than their competitors from developed countries, ranking them among the most competitive in the world. But cotton subsidies have caused a crisis, with Burkina Faso losing 1% of its GDP and 12% of its export income, Mali 1.7% and 8%, and Benin 1.4% and 9% respectively.

In 2001, cotton production in Benin, Burkina Faso, Mali and Chad accounted for 5% to 10% of GDP and 30-40% of export revenues, and over 10 million people in West and Central Africa depend on cotton production and several million others are indirectly affected by the distortion of world prices due to subsidies. And while cotton accounts for a small part of the rich world's economy, in Africa it represents a determining factor for poverty reduction policies and political stability (Khor 2003a).

"From this platform I am launching an appeal in the name of several millions of people for whom cotton is the main means of subsistence. I ask the WTO and its member states to prevent these populations who are victims of the negative impact of subsidies, from being excluded from world trade," said President Compaore. "African countries share the opinion that a satisfactory settlement for the cotton subsidy issue is both a must for the current negotiation round and a test that will allow member States to prove their sincerity behind the commitments taken at Doha."

A paper by the West African countries (Benin, Burkina Faso, Chad and Mali) to the WTO in May 2003 stated that the subsidies to US cotton producers ($2.3 billion in 2001/2) are 60% more than Burkina Faso's GDP where over 2 million depend on cotton production. Half the cotton subsidies to American producers (around $1 billion) goes to a few thousand farmers who cultivate around 1,000 acres. In contrast, in West and Central African countries, these subsidies penalise one million farmers who each only has five acres of cotton land and live on less than $1 per person per day. The subsidies cost West and Central African countries $250 million in direct loss in export earnings in 2001/2. Including indirect effects, the loss would be about $1 billion a year to these countries.

The countries therefore called for recognition of the strategic nature of cotton for development and poverty reduction in many LDCs, and a complete phase-out of support measures for the production and export of cotton, and cotton producers in developing countries should be given financial compensation until cotton subsidies are eliminated (Khor 2003a).

Special safeguard mechanism

Another imbalance in the AoA is that a special safeguard (SSG) mechanism (which makes it easier for countries to protect themselves when they face import surges affecting their agriculture) is not allowed for use except in cases where a country has tariffied a product in the Uruguay Round. The developed countries qualify and are able to safeguard many of their products. However, only 20 developing countries are eligible. Thus most developing countries have no proper instrument to counter import surges. A study by the UN Food and Agriculture Organisation (FAO) also found that during the period 1995-2001, only two developing countries made use of the SSG. This imbalance is especially unfair because it is the developing countries that are facing import surges and are unable to defend themselves.

Thus, developing countries are facing serious implementation problems in agriculture. They have had to remove non-tariff controls and convert these to tariffs. With the exception of LDCs, they are expected to reduce the bound rates progressively. They also have had low domestic subsidies (due to financial constraints) and are now not allowed to raise these subsidies beyond a *de minimis* level and have (excepting LDCs) to reduce them if they are above this level.

Increased competition from imports has threatened the small farm sectors in many developing countries and increased fears of food insecurity. An FAO study in 14 developing countries concluded that liberalisation in the agriculture sector has led, variously, to an increase in the food import bill, a decline of local production in products facing competition from cheaper imports, and a general trend towards consolidation of farms and displacement of farm labour.

High protection in developed countries and further liberalisation in developing countries have resulted in surges of imports to many developing countries. In many cases these imports were artificially cheapened by domestic and/or export subsidies. There are many cases of "dumping" in which the developed-country products' export price is below the cost of production. Often, the poorer countries may have more efficient farmers, but their livelihoods are threatened by products of subsidised inefficient farmers in rich countries.

The FAO (2003) shows very high incidences of import surges in 1984-2000 for 8 key products in 28 developing countries, with the incidence rising after 1994.

For example, Kenya experienced 45 cases of import surges, in wheat (11 cases), rice (3), maize (5), vegetable oils (7), bovine meat (4), pigmeat (6), poultry meat (5), and milk (4). The Philippines had 72 cases of import surges, Bangladesh 43, Benin 43, Botswana 43, Burkina Faso 50, Cote d'Ivoire 41, Dominican Republic 28, Haiti 40, Honduras 49, Jamaica 32, Malawi 50, Mauritius 27, Morocco 38, Peru 43, Uganda 41, Tanzania 50, and Zambia 41.

The FAO study also cites that several recent studies on import surges trace the problem to unfair trade practices (e.g. dumping), export subsidies and domestic production subsidies. It says: "Indeed, import surges seem to be more common in product groups that are subject to high levels of subsidies in exporting countries, notably dairy/livestock products (milk powder, poultry parts), certain fruit and vegetable preparations and sugar."

There are now many case studies of the incidence and damaging effects of import liberalisation on local communities and rural producers in developing countries. These studies show how farmers in many sectors (staple crops like rice and wheat; milk and other dairy products; vegetables and fruits; poultry; sugar) have had their incomes reduced and their livelihoods threatened by the influx of imports. The problems caused to small rural producers in developing countries are now very widespread (FAO 2000, 2001; Meenakshi Raman 2004).

Human rights link

The link between the trading system and human rights has been explored by the UN Commission on Human Rights' special rapporteur on the right to food in a report after the failure of the WTO's Cancun Ministerial Conference (UN Commission on Human Rights 2004). The report looks at why international trade in food is not benefiting the vast majority of poor and marginalised people, but rather creating even greater marginalisation and inequality.

The report examines the negative impacts of the WTO rules and the potential negative impacts of transnational corporations (TNCs) that are exercising increasing control over food and water systems. It criticises the double standards of the trading system that enables developed countries to protect their agriculture whilst developing countries are too poor to subsidise but must reduce tariffs and open up to unfair competition from the developed countries' subsidised products. "This leaves the countries unable to produce their own food and unable to guarantee an income to buy their own food, leaving them increasingly vulnerable to food insecurity and severely affecting their ability to guarantee the realisation of the right to food." (UN Commission on Human Rights 2004: 8). This finding has clear implications for the MDGs, especially Goal 1 (Eradicate extreme poverty and hunger).

There are serious implications of the AoA and its implementation for the realisation of the MDGs:

Firstly, the continued existence of the inequitable AoA, and the effects of its implementation, is a major blow to the spirit of Goal 8 (Develop a global partnership for development). Developing countries can forcefully argue that the AoA symbolises hypocrisy and double standards that make a mockery of Goal 8.

Secondly, continued protection in rich countries prevents developing countries from expanding their export revenue. The African cotton-producing countries estimate their loss in income amounts to US$250 million a year due to the subsidies of developed countries. Thus, the subsidies adversely affect the realisation of Goal 1 (on poverty and hunger).

Thirdly, the AoA is contributing to the liberalisation of food imports in developing countries, to the displacement and loss of livelihoods of small farmers, and the deterioration (or potential deterioration) of the food security situation nationally. All of this makes it even more difficult to realise Goal 1, to eradicate extreme poverty and hunger.

Proposals to rectify this situation have been given in Third World Network (2001: 8, 83-84). The domestic and export subsidies and tariff peaks in agriculture in developed countries should be drastically reduced. The loopholes that allow domestic subsidies to be maintained or increased by shifting subsidies from one box (or category) to another should be plugged. Meanwhile, developing countries should be allowed greater flexibility on the grounds of food security, protection of rural livelihoods and poverty alleviation. Food production for domestic consumption in developing countries (as well as the products of their small and non-commercial farmers) should be exempt from the Agriculture Agreement's disciplines on import liberalisation and domestic subsidy.

At the least, developing countries should be allowed to self-designate "special products" (which they rely on for food security, rural livelihoods and rural development), which should be exempted from further tariff reduction. Also, developing countries should be able to use a special safeguard mechanism enabling them to raise their tariff above the bound rate when surges of imports affect local producers. However, the chances for many of these proposals to be accepted are slim, in light of the decision of the WTO General Council on a framework for agriculture modalities in July 2004.

4 Services and GATS

BEFORE the Uruguay Round was launched, many developing countries had tried to resist the inclusion of the then "new issue" of trade in services. They were against bringing services into the GATT system since they lack the capacity to gain from increased exports, while they would have to liberalise their services sectors, with local companies losing ground to bigger foreign service providers. Despite this reluctance, services became a part of the Round and eventually the WTO rules.

The General Agreement on Trade in Services (GATS) contains inherent imbalances. It favours major services-exporting countries that can take advantage of liberalisation, while disadvantaging developing countries that lack the capacity to benefit from exports. Also, it specifically includes obligations to liberalise the movement of capital (for example, in Article XI and Article XVI.1 footnote) but the same special treatment has not been given to the movement of labour, which is of interest to developing countries.

In an area where developing countries do have an advantage, such as the movement of labour, developed countries have not yet been prepared to undertake liberalisation. Although developing countries are allowed under GATS to liberalise fewer sectors and transactions, it is not specified how this is to be operationalised. Negotiations on financial services showed that developed countries insisted on high levels of commitments from developing countries.

The result has been that the developing countries have given concessions without effectively getting any in return. Within the services trade, there are imbalances in the distribution of benefits between industrialised and developing countries. The commitments undertaken in GATS do not reflect the interests of developing countries in terms of commercially meaningful sectoral and modal coverage (Mashayekhi 2000a).

It has been argued that GATS is beneficial as services liberalisation helps developing countries by increasing efficiency and providing required inputs. Even if this were so, developing countries can choose to liberalise selectively and autonomously, without making binding commitments at the WTO; thus, if the liberalisation turns out to have negative effects, they can reverse course without having to pay any compensation.

New sectoral agreements on financial services and telecommunications have increased the imbalances as the developed countries are the major service providers in these sectors, whilst most developing countries have hardly any supply or export capacity (Das 1998b).

There are also increasing public concerns that GATS is creating conditions that may affect the public's access to social services, such as health care, education, and water supply that traditionally have been provided by the public sector. Among the concerns is that governments would come under pressure to change the conditions under which public services are provided, for example, to privatise such services, to allow competition from the private sector and from foreign firms, and to privatise natural resource-based items, such as water, and also sell them to foreign countries.

Many "public services" have traditionally been provided by the public sector. There have been assurances by the WTO secretariat that under GATS countries are not "compelled" to liberalise, that they are bound by GATS disciplines only in sectors and sub-sectors they have agreed to liberalise and that public services maintained or supplied by a government need not be opened to foreign competition (WTO 2001a).

There is some degree of ambiguity as to the extent to which government services are exempted from the coverage of GATS. According to Article I of GATS, the definition of "services" covered in the agreement gives an exception to "services supplied in the exercise of governmental authority" and that term in turn means "any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers." Thus, government services provided on a commercial basis are subject to GATS provisions, as are government services supplied in competition with any other suppliers. In many countries, there are many aspects of education, health care, housing and other social services in which the government as well as the private sector provide services, and it could be argued that in these aspects the government service is in competition with other suppliers, and thus falls under the GATS purview.

On the issue of whether governments are pressured to privatise or open up public services activities to foreigners, it is also necessary to consider the way in which the International Monetary Fund (IMF) and the World Bank have operated through structural adjustment conditionality to get governments to privatise government-supplied services and infrastructural projects and also to open developing-country markets for foreign service suppliers (including participation in the privatisation schemes). Many developing countries have been required to privatise water supply, sanitation and other services and to charge "user fees" to bring in revenue, as well as open up the field for private entities to provide the service, whether in competition with or as a complement to the public service (Raghavan 2001).

Once the public service is privatised, it ceases to be an exempted government service. Even in a case where privatisation is partial, or where the government still maintains its service but allows private entities to also participate in supplying that service, in terms of Article I.3(c) of GATS, such a service may no longer qualify as a service "supplied in the exercise of governmental authority" and thus could be brought under GATS.

Thus, the IMF and World Bank on the one hand, and the WTO on the other hand, can play complementary roles in generating a process by which public services are either commercialised, privatised, opened up for competition from private entities, or opened up to foreign service suppliers. While the initial prompting for privatisation, commercialisation, competition and liberalisation might begin with IMF-World Bank conditionality (or even a government's unilateral policy), pressures could then build for the countries involved to bind these decisions or policies under GATS.

In conclusion, since many "governmental services" can and do fall under the purview of GATS, there are grounds for concern that countries could come under pressure to accept requests that they open up public services to foreign competition, and that, moreover, these services come under the purview of the cross-cutting rules of GATS. Also, for many developing countries that are under structural adjustment programmes, there are elements external to the WTO that generate pressures for public services to be commercialised, privatised and liberalised, which would then make these services ineligible for classification as exempted government services, and thus subject to GATS rules and processes.

Path-breaking study

In a path-breaking study of liberalisation of trade in services and human rights, the UN High Commissioner for Human Rights found that foreign direct investment (FDI) can bring some benefits, but the increased presence of foreign private suppliers can pose challenges to governments as guarantors of human rights. The introduction of user fees can reduce or even cut off service supply to the poor, marginalised or vulnerable.

In the health sector, privatisation can result in a two-tiered system, with a corporate segment focused on the healthy and wealthy and an underfinanced public sector focusing on the poor and sick. As FDI is driven by commercial interests, the promotion of FDI in health, water and education sectors will not necessarily be the most effective means of ensuring universal access to entitlements.

Privatisation can also threaten the government's role as primary duty bearer of human rights; for instance, private companies can subvert health systems through political pressure and coopting regulators to make regulations more favourable to them. Other sectors can also be affected, as liberalisation can increase prices of services and threaten the provision of transport and communications services to the poor (UN Commission on Human Rights 2002: 21).

Though there may be opportunities offered through increased trade in services, the report warns that liberalisation of essential service sectors can have negative effects, citing the case in Cochabamba, Bolivia where the city's water system was liberalised to a foreign company, causing price increases of over 35 per cent resulting in mass demonstrations and strike action that led the government to reverse its liberalisation decision and restore public ownership. The company lodged a complaint against the government in an international disputes centre.

Regarding GATS, the report warns that government regulations come within the scope of GATS and the general obligations of non-discrimination will apply. The "necessity test" has been introduced for domestic regulations in at least one service (accountancy), whereby measures relating to licensing, technical standards and qualifications should not be more trade-restrictive than necessary to fulfill the regulation's objective. The report says that "the question arises whether this has the effect of subordinating human rights obligations to trade rules" and stresses that "a human rights approach to trade sets the enjoyment of all human rights among the objectives of trade liberalisation, not as an issue secondary to trade rules."

The rules of GATS and their implementation have implications for several MDGs:

Firstly, the present imbalances in the agreement can be expected to lead to more unequal outcomes especially between developed and developing countries in benefits and costs, and thus affect the realisation of MDG 8 (Develop a global partnership for development).

Secondly, some countries may experience negative effects on their balance of payments should foreign ownership of services cause significant profit outflow, and this would in turn have implications for the external debt position and debt sustainability (thus affecting Target 15 of the MDGs).

Thirdly, the pressures by developed countries on developing countries to commit themselves to liberalising social services and utilities such as water supply, electricity, telecommunications, education and health care, may adversely affect access especially of the poor to these services and utilities. This has implications for the realisation of Goal 7 (Ensure environmental sustainability) and its Target 10 on access to water, Goals 4 and 5 on child and maternal health care, Goal 6 on combating diseases and Goal 2 on education.

Measures to deal with these problems are suggested in Third World Network (2001: 9-10, 84-85). The lack of data on benefits and losses arising from services liberalisation needs to be addressed, and until then, developing countries should not be expected to undertake further obligations. The special provisions for developing countries in GATS (Articles IV and XIX.2) should be seriously implemented, and a mechanism set up to monitor the implementation. Developed countries should take concrete steps in liberalising the movement of labour from developing countries to developed countries. The GATS provisions for flexibility in the choice of sectors and pace of liberalisation for developing countries should be preserved.

In the discussions on rule-making and the development of new rules, including those on domestic regulation and government procurement, great care must be taken to ensure that the flexibility and options for governments to make their own domestic regulations and policies are not adversely affected. Proposals must be assessed especially on their potential social, economic and developmental effects on developing countries.

Public concerns that the GATS rules and framework cover basic services (such as water, health, education and social welfare) and may involve some types of activities that are provided by the government and public sector, should be addressed. The nature and scope of exception for services provided by the government should be clarified and an assessment made on the implications of whether (and to what extent) countries can have adequate flexibility in making national policies for basic services. The effects of this on social development (including access of the public, especially for poor people, to basic services) should be taken fully into account in decisions on changes to and future directions relating to GATS.

It should be clarified that each country should have the full flexibility to decide on its own policies regarding public and social services and that these can and should be excluded from the general rules relating to GATS. Developing countries should take full advantage of current flexibilities that allow them not to make commitments on social services in GATS; the developed countries should not make requests that other countries liberalise their social services; and the international financial institutions should not pressurise developing countries to privatise and liberalise public services.

5 Intellectual Property Rights and TRIPS

MANY developing countries had tried to resist the entrance of intellectual property as a subject in the Uruguay Round, and then tried to limit what they saw as the more damaging aspects of the proposals coming from developed countries. But eventually the developed countries succeeded in getting most of what they had been after in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

There are inherent imbalances in the TRIPS Agreement. Most of the world's registered intellectual property is owned by persons and enterprises in the developed countries. A strengthening of intellectual property rights (IPRs) would thus benefit these countries. Thus, the benefits of TRIPS are inherently skewed to the rich countries, whilst the costs (in terms of royalties paid, and of high prices charged) are mainly borne by developing countries. Thus, there is no reciprocal benefit-sharing under TRIPS.

TRIPS has instituted what is basically a "one-size-fits-all" (or rather a minimum-but-large-size-for-all) system of IPRs, where high minimum standards are set for countries at differing levels of development. The level of IPR protection set by TRIPS is far higher than the levels that the presently developed countries themselves had when they were developing.

Since TRIPS was established, there has been increasing evidence of social and economic problems caused by the introduction of stricter IPR laws as a result of implementation of TRIPS. This has led to a growing public perception that under the influence of TRIPS, the present IPR system is heavily tilted in favour of IPR holders *vis-à-vis* consumers and the users of technology. The IPR holders' privileges and rights have been overly protected while their obligations in relation to the social and economic welfare of the public, and to technology transfer, have been under-fulfilled or unfulfilled.

There are also asymmetries between North and South in the balance of benefits and costs (Correa 2000). Developing countries are overwhelmingly dependent on innovations made in the North; patent applicants from developing countries constituted less than 2 per cent of all US applicants between 1977 and 1996; and the developed countries dominate the trade in medium- and high-tech goods. Thus, the worldwide establishment of strict IPR standards under TRIPS will result in benefits accruing overwhelmingly to the developed countries, paid for by the increased costs accruing to the developing countries.

The UN Secretary-General, in a report on globalisation and human rights, notes that the rules do not always produce results that are consistent with human rights imperatives, and takes the case of IPRs as example. He notes that the IPR minimum standards under TRIPS have led to concerns of balance and fairness, citing the example of how universities and companies have taken and developed traditional medicines and other knowledge, protecting the resulting technology with IPRs without equitable sharing of benefits and profits with the original holders of that knowledge. Similarly, questions have been raised over the adequacy of TRIPS in addressing the needs of developing countries to access needed technology for development and the protection of the environment. He noted that high-income countries received US$63 billion in royalty and licensing fees, whilst the rest of the world received only $1.3 billion (United Nations 2000).

Among the problems faced in implementing the TRIPS Agreement are:

- the increase in prices of consumer products (including some essential items such as medicines) charged by companies owning IPRs, which reduces consumers' access and affects their welfare, health and lives;
- the high cost to firms in developing countries which have to pay royalties for use of technology, or are unable to get permission from IPR holders

to use modern technologies, thus affecting the countries' ability to modernise; and

- the phenomenon of "biopiracy" in which corporations (mainly of the North) have been able to patent biological resources and knowledge of their use (most of which originate in the South).

By preventing competition, IPR protection enables higher prices and reduces consumer access. In the pre-TRIPS period, countries were able to set their own IPR regime and many developing countries exempted items such as pharmaceutical drugs and biological materials from patentability. Under TRIPS, options for exclusion are explicitly stated. Drugs and food products are not explicitly mentioned as products that can be excluded; some biological materials and processes appear to be included as items that must be allowed for patenting; and plant varieties must also be protected.

More than 50 countries did not confer patent protection on pharmaceuticals prior to the negotiation of the TRIPS Agreement (UNCTAD 1996). Many developing countries regarded the absence of protection as necessary to promote access to drugs at competitive prices. Implementation of TRIPS may lead to high drug prices, lower access and a weakening of national pharmaceutical industries. In 2001, a year's supply to a patient of a combination of three patent-protected HIV/AIDS medicines cost US$10,000 to US$15,000 in the United States. The price for a similar combination offered by an Indian generic drug producer is around US$350-600. By 2004, generic companies were making the drugs available for as low as US$150. An Oxfam study shows that around the years 2000-2001, the AIDS drug fluconazole was marketed by generic companies in Thailand at US$0.29 and in India at US$0.64. This compares with market prices for brand-name drugs of US$10.50 in Kenya, and US$27 in Guatemala (Oxfam 2001).

TRIPS does allow members to take compulsory licensing and parallel import measures to enable third parties to produce or import alternative versions of products that are patented. However, developing countries have generally not made as much use of such provisions as they might have liked to, due to pressures put on some of them as well as their own uncertainties about the conditions under which these measures are legitimate. These pressures were to some extent reduced following the adoption of the Doha Declaration on the TRIPS Agreement and Public Health at the WTO Ministerial meeting in 2001. However, this has only to a very limited extent softened the damage that is caused by TRIPS in this regard.

Developing countries still have to follow cumbersome procedures for offsetting patents through compulsory licensing, which may account for the fact that up to 2004, very few developing countries had issued compulsory licences. Further, there are several new bilateral and regional trade and economic agreements that have been concluded or are at the negotiations stage, which have provisions on intellectual property that restrict some of the flexibilities that TRIPS allows; for example, these agreements limit the grounds on which compulsory licences can be issued, whereas TRIPS does not restrict conditions for their use. The Doha Declaration on the TRIPS Agreement and Public Health in fact confirms that countries have "the freedom to determine the grounds upon which such licences are granted."

The high-standard IPR regime is also making it more costly or difficult for local firms in developing countries to use patented technology. Further, TRIPS makes it mandatory for members to allow patenting of some life-forms and living processes, as well as IPR protection for plant varieties. This has facilitated the spread of "biopiracy," in which indigenous knowledge and biological wealth of developing countries are patented mainly by developed country firms. Public citizen groups and farmers' organisations have expressed grave concerns that the farmers' rights to the use and exchange of their seeds may be threatened, and that the supply of seeds and food products will be even more concentrated in a few giant corporations.

Serious implications

The effects of TRIPS have serious implications for the realisation of various MDGs. The agreement stands in the way of achieving a "global partnership for development" (Goal 8) as it is so skewed against the interests of developing countries and is in fact an outstanding example of what an international agreement based on equitable partnership should not be. By creating or furthering a monopolistic environment in which commercial companies can charge exorbitant prices, it reduces access of the public, especially the poor, to essential goods such as medicines. It is thus a hindrance to attaining Target 17, to "provide access to affordable essential drugs in developing countries".

TRIPS is also an obstacle to Goal 6 (Combat HIV/AIDS, malaria and other diseases) and its Targets 7 and 8. It makes it more difficult for Goal 1 (Eradicate extreme poverty and hunger) to be achieved. Further, by requiring that certain biological materials be patented, and that plant varieties be protected by a form of intellectual property, TRIPS contributes to the threats against farmers' rights and food security and the environment, with implications for Goals 1 and 7.

Many measures are required for TRIPS to become more balanced in its rules and implementation. Developing countries must be allowed to make maximum use of the flexibilities in the agreement. They should be allowed to choose between various options in devising legislation, without being subjected to external pressure or influence. The mandated review of Article 27.3b of TRIPS should eliminate the artificial distinctions between those organisms and biological processes that can be excluded from patents and those that cannot. One way to do this, as proposed by the Africa Group in the WTO, is to agree that all living organisms and their parts, and all living processes, cannot be patented.

With the adoption at the Doha Ministerial Conference in 2001 of the Doha Declaration on the TRIPS Agreement and Public Health, developing countries should make full use of the flexibilities to take public health measures, including compulsory licensing and parallel importation, which can make medicines more accessible and affordable. Least developed countries should also make use of the extra flexibilities afforded to them under the same Declaration. The TRIPS objectives and transfer-of-technology provisions (including Articles 7, 8 and 66.2) should be operationalised. Developing countries should also be given flexibility to exempt certain products and sectors on the grounds of public welfare and the need to meet development objectives.

Finally, it should be noted that several people, including prominent orthodox trade economists such as Jagdish Bhagwati, have come to the conclusion that it was a grave mistake to have placed the TRIPS Agreement or the IPR issue in the WTO. Whilst the WTO is based on the approach of reciprocal concessions, the royalties and other benefits from TRIPS flow in a single direction, with developing countries being the losers. Intellectual property is also not a trade issue, and principles like national treatment derived for trade are inappropriate for a non-trade issue like IPRs. And whilst the WTO is supposed to promote competition, TRIPS is mainly a protectionist device. Thus, TRIPS is sitting inappropriately in the WTO and there should be discussions on how to remedy this problem.

6 The Industrial Sector

REGULATING trade in manufactured products has been the traditional core function of GATT and the WTO. The multilateral trade system till now had by and large allowed developing countries the flexibility to choose the scope of tariff bindings (the number of products whose tariffs are to be bound) and the levels at which to bind their tariffs. Even then, many developing countries have significantly reduced their applied industrial tariffs, even if they maintained relatively high bound tariffs, often under the influence of loan conditionalities of the international financial institutions. As a result, many countries have experienced a "deindustrialisation" process, whereby cheaper imported goods displace local goods, causing the closure or loss of business of local industries, and significant retrenchments of workers.

Under the Doha Work Programme which began in 2001, there have been strong pressures from major developed countries to institute deep reductions in industrial tariffs of developing countries, through the application of a "non-linear formula", in which there will be sharper cuts the higher the tariffs. It is also proposed that developing countries will have to bind almost all their unbound tariffs, with the new bound rates to be set after multiplying the applied rates by two and then subjecting these to the formula cut. Since many developing countries have relatively high bound tariffs (though their applied tariffs may be significantly lower), this may result in very sharp cuts to the existing bound tariffs, and also cuts to the presently unbound applied rates. Another proposal is that in several selected sectors, there will be accelerated tariff elimination on a fast-track basis.

The above proposals have been incorporated in a framework for modalities for negotiations on non-agricultural market access (NAMA) that was adopted by the WTO in July 2004. (See Khor 2004a). However, negotiations on details and even these elements are still to take place. If these proposals are accepted, the developing countries would be subjected to the shock of having to cope very quickly with cheap imports competing with local industrial products. Their prospects for industrialisation involving domestic firms would be seriously darkened.

TRIMs

The developing countries have already suffered a loss in policy space to devise their own national policy for the industrial sector during the Uruguay Round. Under the Trade-Related Investment Measures (TRIMs) Agreement, governments are constrained from adopting certain investment measures that oblige or encourage investors to use local materials or restrict imports, as this is counter to GATT's Article III (on national treatment) and Article XI (on quantitative restrictions) (Third World Network 2001). The illustrative list of prohibited measures includes local content policy (which developing countries had used to increase the use of local materials and improve linkages to the local economy) and some aspects of foreign exchange balancing (aimed at correcting balance-of-payments problems). The TRIMs Agreement is a notable example of a WTO rule that prevents developing countries from taking policy measures that promote domestic industrial development, and which had been used by the present industrial countries and by several developing countries previously. Implementation of TRIMs has already given rise to problems in several developing countries. Several cases have been brought to the WTO dispute settlement process against developing countries, including Indonesia, the Philippines, India and Brazil, mainly relating to the automobile sector.

Under the Agreement on Subsidies and Countervailing Measures, there is another imbalance. Subsidies mostly used by developed countries (e.g., for R&D and environmental adaptation) have been made non-actionable (immune from counter-action) while subsidies normally used by developing countries (for industrial upgrading, diversification, technological development, etc.) have come under actionable disciplines, and countervailing duties could be imposed on the products enjoying such subsidies. The prohibition of these subsidies is another encroachment on the policy space needed by developing countries for their industrial development (Third World Network 2001).

With these above developments, the ability of developing countries to develop their industrial sectors will be constrained, and this has adverse effects on growth and development. This has implications for the realisation of various MDGs, including Goal 1 and Goal 8.

There should be a rethinking on the proposals and pressures to sharply cut industrial tariffs of the developing countries. Instead, the flexibilities that they have been allowed up to now should be retained, i.e., the developing countries should be allowed to choose the pace and scope of their liberalisation. There should also be a rethinking on the TRIMs and Subsidies agreements. Developing countries should be allowed to make use of instruments such as local content policy and subsidies for their development purposes, as measures under special and differential treatment. The presently developed countries had been able to use these during their development stage.

7 Attempts to Introduce New Issues and Agreements in the WTO

PROPOSALS have been made (mainly by developed countries) to expand the WTO's mandate by negotiating agreements on several new issues. Among them are three "Singapore issues" (so called as they were first introduced at the WTO Ministerial Conference in Singapore in 1996), i.e., investment rules, competition policy and transparency in government procurement. These three issues have a similar theme: to expand the rights and access of foreign firms and their products in developing countries' markets, and to curb or prohibit government policies that encourage or favour local firms and the domestic economy.

The proposed investment rules would place governments under greater pressure to grant the right of establishment to foreign investors, to liberalise foreign investments (defined broadly) and to bind the level of liberalisation; prohibit or otherwise discipline "performance requirements" (such as limits to foreign equity participation, obligations on technology transfer, geographical location of the investment, etc); allow free inflows and outflows of funds; and protect investors' rights, for example through strict standards on compensation for "expropriation". The rules would also grant "national treatment" to foreign firms, thus extending the GATT principle (which applies to goods) to the whole new domain of investment.

The proposed rules on competition would require members to establish national competition law and policy. Within that framework, it is proposed that the WTO non-discrimination principles be applied, so that foreign products and firms can compete freely in the local market on the basis of "effective equality of opportunity". Thus, policies and practices that give an advantage to local firms and products could be prohibited or otherwise disciplined.

Developed countries have also been advocating to bring government procurement policies (presently exempt from the WTO's multilateral disciplines) under the system, with the effect that governments would have to open their procurement business to foreigners and the current practice of favouring locals would be curbed or prohibited. For a start, there would be an agreement limited to transparency in government procurement, and later this would be extended to the market access dimension.

These proposals were unpopular with the developing countries generally, which have been very reluctant to begin negotiations on these issues. They fear that new agreements on these issues would further limit their space to formulate national policies, especially those aimed at building the capacity of the local economy.

Despite these objections, the developed countries (particularly the EU) pushed hard for negotiations on these issues to be launched during the Doha Ministerial Conference in 2001. They partially succeeded, by having the adoption of a Declaration that negotiations would begin on these issues at the next Ministerial Conference on the basis of an explicit consensus. However, at the next Ministerial Conference at Cancun in 2003, most developing countries opposed the launch of negotiations, and the meeting ended without any decision taken.

In July 2004, the WTO General Council decided that no further work towards negotiations on these three issues would be undertaken during the period of the Doha Work Programme. The issues are expected to be revived, by the developed countries, after completion of the Doha programme. Meanwhile, these issues are being pursued by the developed countries in various bilateral agreements with the developing countries.

These issues would have serious implications for various MDGs. Agreements based on the developed countries' proposals could have significant negative effects on efforts to build the capacity of local firms and farms, and the poorer countries would be more vulnerable to foreign products and investors taking over increasing shares of their economic assets and production. The loss of policy space would be tremendous, and over a wide range of economic and social issues. A detailed study on the implications for the realisation of the MDGs should be undertaken.

8 Transparency and Participation in the WTO

THERE is currently a lack of transparency and participation by developing countries in key WTO operations. To start with, developing countries are in general seriously understaffed both in capitals and in Geneva and are thus unable to adequately follow or take part in the WTO's deliberations**.** Despite the "one country one vote" rule, in practice, a few major countries have been able to dominate decision-making in critical aspects, using informal meetings to make decisions among a small group of members that are then passed along to the other members. The so-called "Green Room" process of exclusive decision-making is especially prevalent at and before Ministerial Conferences, where important decisions are taken. "Consensus-building" is also normally embarked on when proposed by the major players as opposed to the developing countries.

The decision-making system has given rise to frustration and unpredictability. Two of the last three WTO Ministerial Conferences (Seattle 1999 and Cancun 2003) failed to produce results, largely due to the non-inclusive manner in which the meetings were conducted.

The WTO needs to evolve more inclusive, participatory and transparent methods of discussion and decision-making, in which all members are fully enabled to participate and make proposals. Decision-making procedures and practices that are non-transparent and non-inclusive, especially before and during Ministerial Conferences, should be discontinued. The WTO secretariat should also be impartial and seen to be impartial. In particular it should not be seen to be taking sides with the more powerful countries at the expense of the interests of developing countries. The system must reflect the fact that the majority of members are developing countries and must provide them with adequate means and with appropriate procedures to enable them to voice their interests and exercise their rights. Further, citizen groups must be allowed to follow developments in the WTO and channels opened to make their views better heard. A detailed critique and set of proposals in this regard is provided in TWN *et al* (2003).

This issue has direct implications for MDG 8, as a genuine global partnership for development should be based on inclusive and democratic practices, through which the weaker partners can have their full say, so that there can be better chances for fair outcomes. Target 12 under Goal 8 is to develop further an open, rule-based, non-discriminatory trade system. “Open” should be taken to also mean “transparent” in decision-making and processes, and not just free of trade barriers; whilst “non-discriminatory” should also mean inclusive, with all countries able to participate effectively.

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IMPLICATIONS OF SOME WTO RULES ON THE REALISATION OF THE MDGS

Following the Millennium Summit of 2000, a useful set of references and benchmarks which governments, international and other agencies and people can look to as worthy goals to achieve, was formulated at the United Nations. They came to be known as the Millennium Development Goals (MDGs).

The realisation of the MDGs has, however, been impacted upon by some of the rules, recent proposals and developments in the World Trade Organisation (WTO). This paper attempts, in summary, to show some of the effects the multilateral organisation has had on the goals and targets government leaders have collectively wanted to achieve.

It begins with a brief assessment of the problems arising from the implementation of WTO rules. This is followed by an outline of the main features and effects of some of the WTO agreements and a discussion on the decision-making system and the structural or systemic aspects of the WTO. Some suggestions for improving the situation are made for each of the topics.

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