The Doha Development Agenda: The Road Ahead

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Introduction

Despite deep domestic reforms and hectic negotiating efforts at the General Agreement on Tariffs and Trade and the World Trade Organization (GATT/WTO) trade talks, developing countries have been unable to fully integrate into the multilateral trading system. The Uruguay Round Agreements (URAs) reached in 1994 are perceived by developing countries to be unequal and unfair to their interests. This imbalance is attributed, among other things, to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and similar “trade-related” issues that were added to the trade agenda.

Following the Uruguay Round of trade negotiations, the World Trade Organization (WTO) was launched in January 1995. Its mandate calls for the WTO to provide a forum for trade negotiations; settle trade disputes; monitor national trade policies; and offer technical assistance and training for developing countries. The inaugural WTO Ministerial Meeting held in 1996 in Singapore witnessed an expansionist agenda unabashedly pushed for by the developed countries. The 1996 meeting led to the creation of three working groups on Government Procurement, Competition, and Investment, with a caveat that negotiations on the latter two issues would be launched only after an explicit consensus. These items, together with Trade Facilitation, would become known as the controversial “Singapore issues”.

“...positions the WTO primarily as a collector of intellectual property-related rents on behalf of multinational corporations.”

Economist Jagdish Bhagwati

The second Ministerial in Geneva in 1998 was merely a token one, celebrating the golden jubilee of the GATT. The Ministerial Meeting in Seattle in...
December 1999 was the focus of vociferous anti-trade protests and sparked great controversy. The Seattle talks failed to come to any conclusion due to various reasons, but foundered principally because of the traditional discord on agriculture between the USA and the European Union (EU), and the South’s strong opposition to US demands on labour standards. Seattle triggered a crisis of credibility in the multilateral trade system and signalled the fundamental need for international trade to change from a narrow “trade creates wealth” perspective to a broader view that sees trade as one element of a sustainable development strategy.2

After the Seattle ‘scare’, the fourth Ministerial Meeting in 2001 at Doha, Qatar managed to conclude successfully. The development friendly language of the Doha Declaration set out three areas of action. One has a clear mandate on Implementation, Agriculture, Services, Non-agricultural products, Environment, WTO rules (Anti-dumping and Subsidies) and TRIPs (dispute settlement). The second covers the ambiguous Singapore issues. Under the third agenda, a study program will set up two new working groups on Trade, Debt, and Finance and Trade and Transfer of Technology.

It is still too soon to assess the development outcomes of the Doha agenda commitments. There is a sense that the developed countries are not showing the required enthusiasm in implementing the Doha Development Agenda (DDA). On the two main issues of implementation and textiles and clothing, the USA appears reluctant to move ahead. Moreover, its adoption of safeguard action on steel and a new farm bill which increased “WTO-compliant” subsidies suggests a US lack of confidence in the Doha results. The recent WTO Trade Policy Review report on the European Union confirmed its continuance of high tariff barriers on textiles and agriculture. This reinforced doubts about the integrity of the EU commitments and casts a shadow on the efficacy of the DDA.

These actions have fuelled the scepticism of many developing countries as to whether the DDA will be able to deliver its objectives.

This essay looks at the Doha Development Agenda and its implementation since it was presented to the public in the fall of 2001. Divided into five sections, this paper first provides a brief background to the issues, followed by an assessment of the major gains and losses for the developing countries at the Doha Ministerial Conference. Third, the major issues of concern of the developing countries vis-à-vis the multilateral trading system are highlighted. A Southern perspective on the Singapore issues is presented in the fourth section. The final section concludes with relevant policy recommendations.

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US Trade Representative Charlene Barshefsky cited in CDR 2000
The Doha Development Agenda: Is There a Payoff for the Developing Countries?

The Doha Ministerial Conference marked the first WTO gathering where the voices of the developing countries received positive recognition. The Doha Ministerial produced three key documents: the Declaration on TRIPs and Public Health; the Decision on Implementation-related Issues and Concerns; and the Ministerial Declaration. The following discussion outlines their importance to the developing countries.

Declaration on TRIPs Agreement and Public Health

According to most analysts, the Declaration on TRIPs Agreement and Public Health is a clarification of the TRIPs Agreement, insofar as access to medicines to control pandemics or epidemics is concerned. Article 31 of the TRIPs Agreement allows member governments to authorize third parties to produce a patented product through the “compulsory license” provision according to local needs. It requires, however, that this authorization be preceded by efforts by the third party to obtain authorization from the patent holder on reasonable commercial terms. The requirement can be waived “in the case of a national emergency or other circumstance of extreme urgency.”

The Doha TRIPs Declaration dilutes the requirements member governments must fulfil before issuing compulsory licenses. It recognizes each member’s “right to grant compulsory licenses and freedom to determine the grounds upon which such licenses are granted.” It adds that each member “has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those related to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.” By giving members the right to decide what constitutes a “national emergency” or “extreme urgency,” the Declaration seemingly awards them more leeway in issuing compulsory licenses without prior effort by the potential licensee to obtain authorization at reasonable commercial terms. How far this provision extends remains unclear until its boundaries are tested in the WTO Dispute Settlement Body (DSB).3

It is important to note the asymmetry in the way different members benefit from the increased flexibility with respect to compulsory licensing. Article 31 of the TRIPs Agreement allows the authorization of production by third parties “predominantly for the supply of the domestic market of the Member authorizing such use.” However, members that do not have the domestic capability for such production will effectively be unable to benefit from the flexibility. The Declaration has instructed the Council for TRIPs “to find an expeditious solution to this problem and report to the General Council before the end of 2002.”
The Declaration allows the Least Developed Countries (LDCs) an extra ten years to implement the TRIPs Agreement for pharmaceutical products. This moves the implementation date of patents for medicines from January 1, 2006 to January 1, 2016 for these countries. The outlook for other patent issues remains uncertain; there is speculation that seeds and agricultural chemicals may also prove controversial when linked to food security arguments.

**Decision on Implementation-related Issues and Concerns**

This issue gained prominence during implementation of the Uruguay Round Agreement. Developing countries had complained about a number of items under the various WTO agreements, which eventually came to be referred to as “implementation issues.” At Seattle, developing countries pushed unsuccessfully for an agreement on these issues. The matter was raised once again in Doha and culminated in the signing of a separate text, the “Declaration on Implementation-related Issues and Concerns.”

Though the title suggests that the issues relate to unsatisfactory implementation of the Uruguay Round Agreement, virtually no item involves serious enough violation to warrant a challenge in the Dispute Settlement Body. However, on closer examination, almost all of the issues involve either the implementation of non-binding, best endeavour clauses in the Uruguay Round Agreement or new concessions. Virtually all substantive implementation issues have landed on the future negotiating agenda of the Doha Ministerial Declaration, with the developed countries mainly offering further “best endeavour”, “good-faith effort” clauses.

The Decision is divided into 14 sections dealing with issues relating to Uruguay Round Agreements on Agriculture (AoA); Sanitary and Phytosanitary (SPS) Measures; Textiles & Clothing; Technical Barriers to Trade (TBT); Trade-related Investment Measures (TRIMS); Anti-dumping; Customs Valuation; Rules of Origin; Subsidies and Countervailing Measures; and Trade-Related Aspects of Intellectual Property Rights (TRIPs). Hopefully future discussions will move beyond the realm of “taking note” or “best endeavour”.

To give two examples, first, under the so-called “Green Box” provision, the AoA exempts certain agricultural support programs in developing countries from inclusion into the calculation of the Aggregate Measures of Support (AMS), which is the focus of liberalization commitments. (Green Box payments include subsidies for environmental reasons, insurance, and a range of additional measures).4 These programs, aimed at encouraging agricultural and rural development, include investment subsidies, agricultural input subsidies, etc., generally available to low-income or resource-poor producers in developing member countries. The Doha Decision on Implementation-related Issues and Concerns “urges” members to exercise restraint in challenging measures applied under the Green Box by
developing countries to promote rural development and adequately address food security concerns.

Second, the Uruguay Round SPS and TBT Agreements allow WTO members to introduce legitimate new technical standards and sanitary and phytosanitary measures. In some cases, the agreements provide the exporting countries short intervals of time to implement these standards and measures. They do not specify the precise lengths of intervals, however, and instead refer vaguely to “longer time-frame for compliance” or “reasonable interval” to introduce standards. The Decision defines this period by stating that it is to be understood to mean normally a period of not less than six months.

Ministerial Declaration

Similar to the pre-Seattle parleys, the run-up to Doha also saw development concerns reflected in the calls for the launch of a ‘Development Round’ of negotiations. The Doha Development Agenda that emerged is recognition of the need to put developing-country concerns at the centre of the WTO. Although the Doha negotiating agenda and work program illustrates the importance of developing countries in the trading system, achieving a pro-development outcome remains a major challenge.

The Ministerial Declaration offers a clear negotiating mandate for seven areas under the Doha Work Program: implementation issues, agriculture, services, market access for non-agricultural products, trade & environment, WTO rules, TRIPs, and dispute settlement. Developing countries stand to benefit from gains in agriculture, market access for non-agricultural products, and WTO rules. However, the language on TRIPs geographical indication is vague and the inclusion of environment is perceived as a setback.

Agriculture stands out as a contentious area since the Uruguay Round. It was the main cause for the failure of the Seattle Ministerial, and retained its volatility at Doha. Ultimately, agriculture proved to be the dealmaker at Doha when the EU compromised its stance on agriculture subsidies. The Declaration recognizes the progress in negotiations in agriculture mandated by the Uruguay Round Agreement and commits members to comprehensive negotiations aimed at substantial improvements in market access with a view to phasing out all forms of export subsidies and substantially reducing trade-distorting domestic support measures.

Many experts are of the opinion that this was a win for the developing countries. In reality, the EU only made its concession in exchange for stronger language on the environment, investment, and competition policy. The triangle of agriculture, environment, and the “Singapore Issues”, especially investment and competition policy, became the most important nexus for trade negotiation and bargaining in the final hours at Doha.

The Declaration invokes strong language for Special and Differential
Treatment (S&DT) for developing countries: “we agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development.” This is seen as an improvement over the language contained in Article 15.1 of the AoA promising good-faith efforts.

The Declaration also takes note of the non-trade concerns “reflected in the negotiating proposals submitted by Members” and confirms they are to be taken into account in the negotiations as provided for in the AoA. The reference to non-trade concerns is viewed as opening the gates to the debate on the whole range of these issues, including the multifunctionality argument of the EU.8

The Multilateral Trading System: Key Issues for Developing Countries

Following the establishment of the WTO in 1995, it became clear that many developing country governments, enterprises, and non-governmental organizations (NGOs) were disappointed with the outcome of the Uruguay Round, both in terms of market access payoffs and the burden of implementing certain WTO agreements.

The Uruguay Round Agreements resulted in a major step forward, bringing the agriculture and services sectors under the disciplines of the GATT. In order to realize the potential gains from trade, developing countries made substantial progress in liberalizing their own trade policies. Tariffs were cut, and fewer products were covered by quantitative restrictions. Despite the developing countries’ efforts to liberalize trade, their success in integrating into the world economy is far from universal. The LDCs experienced further marginalization. Their share in world exports of goods and services fell by half between 1980 and 1999 to 0.42 per cent. Their share of world imports declined by 40 per cent over the same period and stood at 0.7 per cent in 1999.9

In the farm sector, substantial protection barriers continue to exist, whereas in non-agricultural products, developing countries continue to face tariff peaks and escalation for some categories of manufacturing products, such as textiles and clothing, footwear, etc. The overall scenario in world trade reflects continued protectionism by the developed countries and the absence of complementary measures important to the creation of an enabling environment for supply-side responses to changed incentives.10

This section provides an overview of the key market access issues, and the supply-side and institutional constraints that confront developing countries. Better market access must be complemented by supply-side initiatives to address national trade capacity constraints and improve the investment climate in developing countries.
Major roadblocks to market access

Market access negotiations in the WTO focus on tariff reductions and the elimination or reduction of certain non-tariff barriers to imports. WTO rules like SPS, TBT, Anti-dumping, Subsidies and Countervailing Measures, etc., covering contingency protection, are not part of market access negotiations per se, although they can have an important effect on market access conditions.

It would be unfair to maintain that the Uruguay Round did not make any contribution toward lowering global trade barriers. However, the poor countries have still not been able to penetrate the developed countries’ markets. The majority of tariff bindings are much higher than the applied tariffs, creating uncertainty for exporters wishing to access these markets. While the overall use of non-tariff measures has declined, the use of certain trade remedy instruments, such as anti-dumping and countervailing measures, is on the rise. Moreover, there is mounting evidence of the difficulties faced by developing countries, especially LDCs, in implementing WTO commitments in new areas such as TRIPs, SPS, and TBT.

For poor countries, the major concerns are tariff peaks, tariff escalation, distortion in agriculture trade, restrictions on textiles and clothing, and the growing incidence of anti-dumping measures, etc. These are the main obstacles to free and fair market access in developed countries. These hurdles impede their capacity to integrate into the WTO or move their people along the path of trade liberalization.

The tariff structure in many industrial countries still contains rates over 100 per cent. Low average duties conceal high tariffs and tariff escalation. These tariff peaks are often concentrated in products that are of export interest to developing countries, including major agricultural products such as sugar, cereals, and fish; tobacco and certain alcoholic beverages; fruits and vegetables; clothing; and footwear. Developing countries must also deal with other forms of tariff barriers, such as variable tariffs and tariff rate quotas. Imports at tariff peaks represent about five per cent of total Quad (Canada, European Union, Japan, and USA) imports from developing countries, and more than 11 per cent of total Quad imports from LDCs.

Tariff escalation has been a matter of concern for developing countries as it increases the rate of effective protection at higher stages of production, thereby making market access more difficult for finished manufactured products. For example, in the case of food products, the 1997 EU tariff rate was 15.7 per cent, 17.6 per cent and 24 per cent, respectively, at the primary, semi-processed, and fully processed stage. In the case of Canada, the degree of escalation was much higher at 1.8 per cent, 7.2 per cent and 42.1 per cent for the three levels of processing, respectively, in
1998. Tariff escalation in high-income countries has the potential of reducing demand for processed imports from developing countries, hampering diversification into higher value-added exports. This phenomenon also exists in large developing countries like Malaysia and India, on which the LDCs depend for market opportunities. These tariff barriers pose industrialization problems for primary-product exporting countries as well. They cannot sustain, expand, or create new industrial capacities to increase employment or raise living standards.

Distortions in agricultural trade

As a result of the Uruguay Round, agriculture was brought under WTO disciplines. Import measures had to be eliminated or converted to tariffs (“tariffied”), and then subjected to progressive reduction commitments, except for rice and some other staple foods that were subject to minimum access commitments—that is, Tariff Rate Quotas (TRQs). There was also agreement on the reduction of the level of domestic support, except for exempted Green Box policies and de minimus amounts (amounts below a certain level).

Developing countries were allowed more flexibility through longer implementation periods and lower reduction commitments by S&DT provisions. However, the share of developing country exports in global agricultural trade has increased only slightly over the period from 1990 through 1999, from 40.5 per cent to 43 per cent. The support to

Box 1
Agreement on Agriculture: Some Serious Concerns

- The practice of “dirty tariffication” (tariffs set above the equivalent of existing non-tariff barriers) resulted in bound tariffs at abnormally high rates. Since international agricultural prices in the base period for the Uruguay Round AoA (1986-88) were far below the high domestic prices supported by quotas, the conversion of quotas into tariff equivalents resulted in high rates of tariff protection.

- Support to agricultural producers in high-income countries remains sizeable. The OECD estimated it at US$245bn in 2000, about five times the level of international development assistance. Total support to agriculture, according to the OECD, is even higher, at about US$327bn in 2000, which is about 1.3 per cent of the total GDP of OECD countries.

- Export subsidies in agriculture allow countries to export surpluses to the world market at prices below the high domestic prices. Export subsidies averaged about US$7bn in 1995-98, of which 95 per cent was granted by the European Union.

- Adding insult to injury, after the Doha meeting, the USA announced a US$5bn agricultural subsidy measure, which although WTO-compliant, runs against the spirit of liberalization.

- The average fill rates of TRQs have been low and declining, from 67 per cent in 1995 to 63 per cent in 1998, while about a quarter of tariff quotas were filled to less than 20 per cent.

- Non-trade concerns like food security and rural development of poor countries are very important as between 40 and 60 per cent of the poorest in the developing world live in rural areas.

Notes:


agriculture is still sizeable and growing in high-income (OECD) countries (see Box 1).

Rules on standards and technical barriers
While traditional trade barriers in agriculture such as tariffs continue to decline, the use of technical and regulatory barriers is on the rise. In recent years, Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT) have emerged as the greatest threat to poor countries’ exports.

By their very nature, both of these agreements may result in restrictions on trade. All governments accept the fact that some trade restrictions may be necessary and appropriate in order to ensure food safety and animal and plant health protection; however, developed countries are increasing their arbitrary use of these measures.

Developed countries are adopting stricter standards for macro-cleanness, microbial loads, aflatoxin, and pesticide residues. For instance, Japan insists on DDT residues level of 0.4 PPM on unmanufactured tobacco while the international standard is as high as 6 PPM.14

Developing countries are especially vulnerable to regulatory changes in developed countries as they lack the public resources to finance compliance with new and more restrictive SPS and TBT standards. A World Bank study estimated that implementing just three of the Uruguay Round Agreements (on TRIPs, customs valuation, and SPS) could cost more than a year’s development budget for the poorest countries.15

Poor operationalization of S&DT provisions
The Uruguay Round had an explicit understanding that developing countries were to be accorded Special & Differential Treatment (S&DT) in the negotiations in line with the terms of the 1979 Framework Agreement. Various elements of S&DT grant developing countries and LDCs more favourable access to markets in the industrial countries and allow them substantial policy discretion with respect to their domestic markets.

In principle, the existence of S&DT provisions takes into consideration the different stages of development of a country and the way these disparities significantly affect the benefits, which

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I don't know how American farmers can sell corn to this country at such low prices. I have heard that their government gives them money. What I know is that we cannot compete with their prices. Imports are killing our markets and our communities.


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these countries derive from multi-lateral trading system. At present, there are over 145 S&DT provisions that apply differential rules to the developing countries during implementation of the various WTO agree-
ments. Unfortunately, most of these are of the “best endeavour” variety and none are binding.

The Doha Ministerial Declaration contains several mentions of S&DT but most of them are superficial. In the ongoing negotiations under the Doha Round, there has been little movement since the last Ministerial as the S&DT review has now been extended to the end of 2002 (see Box 3). Many developing countries have voiced their concerns, claiming a lack of meaningful progress on S&DT will most probably result in a slowdown of all other negotiating tracks.

### Participation and transparency in rule-making

The Doha Round saw a change in developing-country involvement, with the prospect of their becoming active participants in the negotiating process. Yet, many developing countries still have inadequate (or no) representation in Geneva, which impedes their active engagement in negotiations and in the day-to-day functioning of the WTO (see Box 4). Although options have been identified to expand representation in Geneva at relatively low cost, expertise is still in short supply. Funding could be made available to allow low-income countries to finance the cost of hiring experts to undertake the required analyses.

A second important aspect of the Round is transparency in the decision-making process. It also includes enhancing transparency in WTO operations and improving access to and dissemination of WTO databases, reports, and information. This would broaden the basis for participation of developing countries. Developing country grievances with the existing system mounted following the conclusion of the Uruguay Round, particularly regarding the constraints the agreements imposed. Although

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**Box 2**

**Upgrading Standards: A Fact Sheet**

Product standards are a critical part of trade in the twenty-first century. These include product and sanitary and phytosanitary standards necessary for market access in agriculture. The development challenge posed by standards and border barriers are particularly important to the future trade prospects of the LDCs. Following are some bitter facts about standards:

- The OECD estimates that standards alone represent an additional cost of between two and ten per cent of final product costs.
- Most developing countries do not have the resources to apply standards. In Guatemala, for example, the total budget for standards in 2000 totalled US$119,000. This represents a small fraction of the total government budget.
- The World Bank’s experience with standards in the 1990s shows that investments of US$305m (Vietnam), US$155m (Turkey), and US$5m in Morocco, were needed in order to begin the process of modernization.
- In Jamaica, implementation of the SPS agreement will require a total of US$7.6m. This includes a revision of current laws and regulations to make them WTO-compliant (US$200,000); establishment of an Agriculture, Health and Food Safety Authority to administer and coordinate SPS activities (US$6m), and other activities.

developing countries played an active role in the period leading up to the Seattle meeting, submitting over half of the more than 250 specific proposals on the agenda, they claimed that their proposals were not given due consideration.

The “green-room” practice fuelled their disenchantment, underscoring the claims of a “democratic deficit” and a lack of transparency during the Seattle meeting. At Doha this system was replaced by the Committee of the Whole (CoW)/Friends of the Chair process for the purposes of consultations.

Supply-side and institutional constraints

The problems vis-à-vis realization of market access opportunities for developing countries are also linked to their own supply-side and institutional constraints, that is “behind the border” barriers to trade. If a country’s investment climate is poor and its institutions and infrastructure are weak, simply changing relative price incentives through trade policy may do little to promote sustained growth. A supporting legal and regulatory environment is vital if trade liberalization is to serve as an engine of growth. Elements that affect the investment climate include policies and institutions that support the participation of national firms in international markets and measures to enhance their competitiveness by ensuring access to crucial services inputs—both public and private.

Box 3

S&DT Review

As per the timeline of the next Ministerial Conference in Cancun, the Committee on Trade and Development (CTD) was to report to the General Council (GC) with clear recommendations for a decision on S&DT issues by July 31, 2002. At the July GC meeting, the deadline was extended until December 31, 2002. Developing countries expressed their disappointment in missing the Doha-mandated July target date. The EU had initially pushed for a March 31, 2003 deadline, thus aligning the issue with the agriculture and services negotiations. With a December deadline, the next challenge lies in finding a way of organizing the future work program so as to avoid a similar deadlock. With almost 90 proposals on the table, and only four formal meetings scheduled between September and December, members will be hard-pressed to determine which issues must be prioritized.

Key problem areas in many low-income countries are product standards and services. Many low-income countries are not adequately equipped to deal with rapidly tightening product standards and labelling requirements and confront major investment requirements in order to do so.17

The availability of low-cost, high-quality financial, telecommunication, and transportation services are critical determinants of the competitiveness of national firms. Research has shown that measures aimed at reducing the cost of services that facilitate trade have economy-wide welfare benefits that are a multiple of those associated with merchandise liberalization.18

Whatever the priorities, there is a need for complementary macroeconomic, education, health, and technology policies. Separating out the
trade agenda from the more broadly defined development agenda is difficult, if not impossible.19

The WTO has a role to play in dealing with such constraints. The WTO’s responsibility evolves from the six-agency Integrated Framework for LDCs, which is committed to integrate LDCs into the international trading system. Some of the proposals will require additional flexibilities, which can be negotiated through S&DTs, when implementation poses problems. This issue is also likely to be deliberated at the new working groups on trade, debt and finance, and trade and transfer of technology.

Box 4
Participation in the WTO

- In 1997, the industrial countries deployed an average of 6.8 officials to follow WTO activities in Geneva. Developing countries sent an average of 3.5.
- Twenty-three least-developed country members of the WTO have no representation in Geneva.
- A recent survey of African delegations in Geneva shows that virtually all of them are staffed by officials from the Ministry of Foreign Affairs rather than the Ministry of Trade.
- Located in Geneva, the WTO is far from most developing-country capitals; immediate, day-to-day domestic concerns in these capitals seem to leave little time for planning on long-term WTO issues; this seems to be the case even for large developing countries.


The Singapore Issues: A Southern Perspective

Generally, developing countries have been against the inclusion of new issues at the WTO. The Singapore issues are no exception. However, there is a fundamental difference between the Singapore issues and other non-trade issues (such as environment and labour) under discussion. While other issues are potentially trade-restrictive, the Singapore issues, by and large, can facilitate trade liberalization, which is the overall objective of the WTO. Yet, many developing countries feel that these issues are better kept outside the WTO, at least for the time being.

Many are still sceptical about the benefits and rationale of including investment, competition policy, trade facilitation, and transparency in government procurement. Although the experience of realpolitik at the WTO indicates that negotiations on these issues are most likely to be launched, WTO agreements on these issues, especially investment and competition, are being proposed by a number of countries including the EU, Korea, and Japan. They are being vigorously opposed by India, Malaysia, Egypt, and others, while the USA has said it will not stand in the way of such agreements, it will not be an active proponent.

In a recent development, however, the USA has fired a salvo, which could derail any desirable progress on these discussions. In a statement before the Working Group, the USA has said that in view of its positive
experience with bilateral investment treaties, portfolio investment and pre-establishment rights should feature in any investment agreement at the WTO, otherwise they will not be interested. Both these definitional issues are anathema to many developing countries, and thus will not fly. China and others have already retorted that these demands cannot be met.

The LDC’s position was summed up in a statement by Tanzanian Ambassador Ali Mchumo at the General Council Meeting in October 2001:

“LDCs were not ready to negotiate on [Singapore issues] since the issues were complex and the LDCs were not able to fully understand the development implications for them. It is for this reason that with regard to investment and competition policy, we preferred the options for the continuation of the study process and we took the same view for government procurement and trade facilitation. We are therefore surprised and disappointed that in your current text there is only one option for negotiations on all the four areas.”

On competition policy, the main objection of developing countries is that they do not have adequate experience regarding investment policy, they feel that countries are trying their best to provide an investor-friendly environment unilaterally and hence there is no need for a multilateral agreement. On trade facilitation, everybody accepts that there are merits, however, it may place a substantial financial burden on developing countries. Regarding the other Singapore issue, although no one is against ensuring transparency in government procurement as such, it is widely believed that it may be a Trojan Horse for a market access agenda.

Trade and investment

Attempts to multilateralize the issue of investment began with its inclusion in the Havana Charter, as part of the unsuccessful effort to set up an international trade organization just after World War II. The United Nations later tried to establish standards of behaviour for transnational corporations (TNCs), particularly via the Code of Conduct proposed by developing countries (the Group of 77); this effort was aborted in 1992 under pressure from the USA. Within the General Agreement on Tariffs and Trade (GATT), the issue was dealt with occasionally until the Uruguay Round, with theoretical discussions on the possibility of developing a ‘GATT on investments’ having taken place as early as the 1970s. Toward the end of the decade, discussions were held under the auspices of the Development Committee of the World Bank and the International Monetary Fund. Even though these did not lead to any specific or concrete instrument, non-binding guidelines for the treatment of foreign direct investment (FDI) were adopted in 1992.

The 1994 Uruguay Round Agreements also addressed topics directly or indirectly related to
investment. During the Uruguay Round trade negotiations, the developed countries advanced the idea of framing multilateral rules to further liberalize the foreign investment regime.

The developing countries opposed any such idea, primarily on the grounds that they were unwilling to embark on multilateral negotiations on investment under the GATT, which was essentially devoted to trade relations. Many least developed and developing countries had, in any case, liberalized their FDI regimes substantially and considered that they were served well under the many bilateral arrangements signed with several developed countries. Nonetheless, they agreed to negotiate on four clusters of investment-related matters involving Trade-Related Investment Measures (TRIMs), the General Agreement on Trade in Services (GATS), Trade-Related Aspects of Intellectual Property Rights (TRIPs), and the Agreement on Subsidies and Countervailing Measures (SCM).

TRIMs deals with investment issues such as local content requirements and export balancing. TRIPs also affects FDI in that the definition of intellectual property rights and adherence to the international standards and procedures constitute part of the framework within which foreign investment takes place. The GATS relates to FDI matters since many services can only be provided by the establishment of a local company, either as a subsidiary or a joint venture, by a foreign service provider. In fact, commercial presence is one of the “four modes” of exporting services as defined by GATS. With respect to SCM, certain investment incentives lie within the definition of a subsidy and as such are prohibited.

Besides this, the TRIMs agreement has a built-in agenda under Article 9 of the agreement, under which WTO members may recommend expansion of the WTO agreement to broader investment and competition policy. At the Singapore Ministerial, members decided to set up two study groups to examine the necessity of further accords on investment and competition policy.

The Doha Ministerial made substantial progress in pushing the competition and investment agenda further. The Doha Declaration recognized the utility of having multilateral agreements on investment and competition with a work program to clarify the elements of a possible multilateral framework. The Declaration also expressed the willingness of the members to launch negotiations after the Fifth Ministerial, subject to an explicit consensus on the modalities of negotiations. Scholars have argued that this is tantamount to the launch of negotiations per se and that it is only the methodology which needs to be negotiated.

Many developing countries remain unconvinced, as there is no evidence to suggest that an international investment agreement would in effect increase investment flows to developing countries. Furthermore, contrary to expectations, investment flows to developing countries have actually declined as a proportion of total FDI since the establishment of the WTO.
Developing countries are comfortable with the existing investment-related provisions in the WTO *acquis*. TRIMs has tied their hands considerably and has not resulted in any substantial increase in the inflow of FDI. As such, TRIMs is widely considered a victory for the transnational corporations. More importantly, the agreement concentrates more on TRIMs heavily used by the developing countries. There is also a concern that WTO rules might effectively give foreign investors preferential treatment relative to national investors if modelled after NAFTA investment provisions.

On the other hand, the Doha agenda agrees to examine a possible agreement on a GATS-type approach where members may agree to open such sectors as they wish to, rather than open every sector *a priori*. Still, they fear the proposed agreement on investment would limit the scope for domestic control of transnational corporations without any balancing measures. It will be more pronounced, particularly, in the context of those LDCs whose economic might is considerably weaker than many of the corporations and also hamper investment decisions by the governments in the context of national development strategies. Further, if these rules are modelled on the lines of NAFTA, they might discriminate against domestic investors by not providing them the same rights as foreign investors. Whereas a foreign firm can sue a government at an international forum, a domestic investor cannot sue its own government, except in domestic fora.

**Competition policy**

Strictly speaking, a multilateral approach to competition policy is not a new issue. An entire chapter was devoted to restrictive business practices (RBPs) in the aborted Havana Charter, but was dropped in the GATT.

Competition policy issues and measures to deal with restrictive business practices were raised in the Uruguay Round negotiations. Although there is no multilateral agreement on trade and competition policy, the underlying issues are very much present in many of the provisions of the existing WTO Agreements, namely GATS, TRIPs, and TRIMs. The Agreement on Safeguards, Article XVII of GATT 1994 and other provisions also deal with certain competition issues.

An interesting development has emerged from discussions at the WTO. Many countries which did not have a competition law, have either enacted one or strengthened the existing one, or are in the process of enacting one. When the WTO came into being, only 50 countries had a competition law; today nearly 100 countries have one. Many have begun to realize that liberalizing without an effective competition law has been causing problems for their economies. As a result of greater global concentration of ownership, consumers and weaker producers worldwide and developing countries have become more vulnerable to anti-competitive abuses by corporations. This calls for a stronger competition policy, not only at the national level but also at regional and international multilateral levels.
It is impossible for a single country to control the abusive practices perpetrated by global monopolies unless it has a large market like the United States or the European Union. This is a serious problem for the developing countries, and more specifically the LDCs, due to their weak enforcement capabilities.

Trade barriers in rich countries inflict real costs on poor people in poor countries. Some of the world’s most vulnerable communities are being denied an opportunity to reap the potential benefits of integration into global markets. Poor people in general and women in particular bear the brunt, since it is they who produce the goods most affected by import barriers: agricultural and labour-intensive manufactured products. Agriculture accounts for 62 per cent of women’s employment in developing countries, and women make up 70 per cent of workers in export-processing zones.

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They are frequent targets of anti-competitive and unfair practices perpetrated by corporations operating from other countries. Small markets restrict the basket of protective measures that these countries can employ. Few companies are interested in these markets, leading to low market contestability; the existing players do not find much threat from the potential new entrants. There is no multilateral framework for binding obligations on restrictive practices by private corporations. This is ironic, as more than half of the world’s largest 100 entities are now corporations. The top 200 corporations account for more than a quarter of the global economic activity. These corporations are capable of creating serious barriers to trade. Thus, the need for a multilateral competition regime can hardly be overemphasized, but whether this should be negotiated at the WTO or somewhere else is a different matter.

During the Uruguay Round negotiations, the demand for multilateral rules on restrictive business practices came first from the developing countries. However, it is ironical to see that the developing countries, which once promoted the idea of converting the UNCTAD Set (The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, 1980) into a binding instrument, are now less enthusiastic with the idea of a multilateral competition framework within the WTO. This is in spite of the fact that they are likely to benefit most if such a framework is developed and enforced in a fair manner. Their scepticism, however, is not without reason.

One of the main reasons for their scepticism is their unsatisfactory experience with the Uruguay Round Agreements and the present functioning of the multilateral trading system under the WTO. Expectations from the URAs were very high, but did not materialize. All the trade-offs did not pay off. Therefore, any new agenda pushed forward by developed countries is seen by the developing country members as yet another attempt to win further concessions from them, without any reciprocating moves.
The approach of both the EU and Japan on the issue of competition policy at the WTO is seen by the developing world as a ‘market access’ push, seeking only to remove policies favouring national companies rather than focusing on measures addressing market dominance. Developing countries also fear that under a competition regime, large transnational corporations will swallow up local companies, and thus dominate their economies. The EU has stated that it is not interested in such a deal, but is seeking a regime which will enable better market behaviour by its own corporations. Before Doha, the EU also proposed that a plurilateral agreement can be pursued even if all countries participate in negotiations and do not sign on the dotted line at the end. Further, the recent soft line taken by the US vis-à-vis a multilateral agreement on competition is viewed by many as an effort to enable smooth cross-border mergers, in which US-based corporations have a significant stake.

While clearly suspicious of these pronouncements, many of the developing countries are of the opinion that, even if such an arrangement is arrived at, it may not be sufficient to solve every problem. For instance, export cartels are deliberately kept out of the purview of their own competition law in many countries (for example, export cartels are exempted in the USA through the Webb-Pomerene Act). If this approach is outlined at the WTO, the developing countries (who, in general, import more than they export) will be the losers in the long run.

Box 5
Global business and competition
In 1980, 180 companies dominated the world food and beverage industry with highly segmented markets. Today, at least half of these companies retain roughly the same market power. In the early 1980s, the top 20 pharmaceutical companies held about five per cent of the world prescription drug market. Today, the top ten companies control 40 per cent of the market. Sixty-five agrochemical companies were competitors in the world market at the beginning of the 1980s. Today, nine companies account for approximately 90 per cent of global pesticide sales. Ensuring competition and consumer welfare in a liberalized trade regime is a major challenge.

Recently, there has been a sharp increase in global cartel activity. Consumers, either directly or indirectly, bear the cost in higher prices and reduced choice. Simultaneously, enforcement agencies have slapped multi-million dollar fines against vitamin companies, food additive makers, steel manufacturers, etc.

A World Bank study has shown that in 1997, developing countries imported US$81.1 bn of goods from industries where price-fixing conspiracies were rampant during the 1990s. These imports represented 6.7 per cent of imports and 1.2 per cent of Gross Domestic Product (GDP) in developing countries. Several other price-fixing conspiracies may remain undetected. Moreover, all of these cartels are made up of producers that are mostly from industrialized OECD countries. To date only a handful of countries have taken action to penalize transgressing companies or to recover compensation. No developing country, except Brazil, has taken any action on these cartels. Owing to their domestic scope, national competition laws are severely limited when it comes to dealing with cross-border competition cases.

Trade facilitation
There is general agreement on the merits of trade facilitation. It is defined as “the simplification and harmonization of international trade procedures” with trade procedures being the
“activities, practices and formalities involved in collecting, presenting, communicating, and processing data required for the movement of goods in international trade”. This definition relates to a wide range of activities such as import and export procedures (e.g., customs or licensing procedures), transport formalities, payments, insurance, and other financial requirements. These are cumbersome and place enormous burdens on traders, increasing transaction costs unnecessarily.

In many cases, the losses that business suffers through border delays, complicated and unnecessary documentation requirements, and lack of automation of government-mandated trade procedures are estimated to exceed the costs of tariffs. WTO estimates put the costs of trade transactions equal to seven to ten per cent of the total value of world trade. Another estimate puts the total cost worldwide at around US$75bn. Developing-country traders are probably more constrained than their developed country counterparts because of these unnecessary hindrances. Since developing-country traders are relatively smaller in size and trade in smaller lots, their costs for documentation, etc., are disproportionately higher. Costs are often fixed and do not vary according to the size of the consignment.

Moreover, there is a sense that a multilateral agreement on trade facilitation will place substantial financial burdens on developing countries. The Doha Declaration has promised to ensure adequate technical assistance and support for capacity-building in this area, but this has not reassured the developing countries. They conclude, from past experiences that assistance may not be forthcoming, while the agreement will make things difficult for them.

A cut-off clause in relation to dispute settlement on trade facilitation matters has been proposed. Cases relating to consignments below a cut-off point would not be brought to the dispute settlement panel, but no one knows what this point would be. Thus, there is a chance that the WTO dispute settlement machinery would be flooded with trade facilitation cases. Alternatively, if the cut-off point is set too high, the agreement will benefit only developed-country traders and work against the developing countries. Further, it will provide a better facility to developed-country traders, as traders from the developing countries will not be able to take the dispute settlement route against their own governments.

**Government procurement**

No one is against ensuring transparency in government procurement as such, but many developing countries believe that the issue is better left for national governments to take appropriate action. It is widely assumed that the goal of a multilateral procurement agreement is to improve market access for foreign firms. The same group of countries that were unwilling to concede any ground to the developing countries on TRIPs and public health issues are now pushing forward the procurement agenda. Arguments that this will help the developing countries
by promoting good governance, has raised suspicion about the underlying motives. The fact that the Doha Declaration emphasized the negotiations shall be limited to transparency aspects, and therefore not restrict the scope for countries to give preferences to domestic goods and suppliers, did not dispel suspicions.

Their doubts are not without reason. The existing WTO plurilateral agreement on government procurement (GPA) that came into force on January 1, 1996, goes far beyond transparency. Governments are required to apply national treatment to goods, services, and suppliers, of other parties to the GPA and to abide by the most-favoured-nation rule, which prohibits discrimination among them. In terms of services, the GPA takes a GATS-type positive list approach and only those services listed in the annexes are covered by the agreement.23

If its proponents are to be believed, the proposed multilateral agreement must be fundamentally different from the existing plurilateral agreement, as non-discrimination (national treatment and MFN) lies at its core. It is not clear if a multilateral agreement is signed what will happen to the existing GPA. Obviously, developing countries suspect that the ultimate aim of the multilateral agreement is to establish a framework similar to the existing plurilateral GPA.

Moreover, as many countries have argued, if transparency in government procurement has nothing to do with market access, as claimed by its supporters, then neither has it any trade implications. In this case, it is not clear why such an agreement should be negotiated at the WTO. The WTO exists to liberalize trade, not to promote good governance in developing countries, for which there are other intergovernmental organizations.

Non-Trade Issues: Overloading the Agenda

Out of several non-trade issues, labour and environment have always been a major bone of contention between the developed and developing countries. The status of labour and environment is different in the WTO. There is a committee on trade and environment, which has a mandate to hold discussions on a 10-point agenda. On labour it was decided during the Singapore Ministerial that the ILO is the competent body to set and deal with core labour standards, but that there should be a dialogue between the ILO and the WTO.

After the Doha Ministerial Conference, the situation altered. The Doha Declaration brought environment into the negotiating agenda for the first time in spite of opposition by the developing countries. The EU was the main demandeur, appealing for a face-saving agreement to counter-balance the language on phasing out agricultural subsidies, and got a commitment to start limited negotiations. Fortunately, the negotiating mandate in the Declaration is quite limited and unlikely to damage the interests of developing countries significantly. In our opinion it may actually help
developing countries by clarifying the relationship between multilateral environmental agreements (MEAs) and the WTO.

The Declaration calls for negotiations on the relationship between existing WTO rules and specific trade obligations set out in MEAs, explicitly mentioning that the negotiations shall not prejudice the WTO rights of any member that is not a party to the MEA in question. This means that trade sanctions by MEA signatories on non-parties are ruled out.

After the successful mainstreaming of environment into the work program of WTO, the next target could well be labour standards. Many people think that the issue of trade-labour linkage is dead, but a close look at the Draft and final Ministerial Declaration reveals that there are grey areas and the issue may not be entirely dead.

The final Declaration of Doha Ministerial on the issue of labour standards states: “We reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognised core labour standards. We take note of work under way in the International Labour Organisation (ILO) on the social dimension of globalisation”.

After careful analysis, the statements in no way rule out a possible role for the WTO on the debate on the social dimension of globalization. More importantly, a significant line recognizes the ILO as a more suitable place to discuss labour standards has been removed from the final declaration. The deleted line reads as: “The ILO provides the appropriate forum for a substantive dialogue on various aspects of the issue”.

Demanding the inclusion of social issues in the WTO implies opening the window for never ending non-trade issues like gender, human rights, animal welfare and social development, all of which fall into the purview of sustainable development. This contamination of trade with non-trade issues certainly does not promote the trade agenda. The arguments from developing countries, including India, on extraneous and protectionist nature of these issues are quite understandable and convincing.

Conclusions and Policy Recommendations

Considering the complexities and heterogeneity within the developing world, it would indeed be difficult to suggest one set of policy recommendations for the South as a whole. Hence, an attempt is made here to explore possible scenarios and a range of policy options, including trade-offs, that would improve the developing countries’ negotiating position so as to arrive at an agreement that would be better for the South as a whole.

External factors will also determine how such efforts will move forward. Increasingly, civil society is intervening on global trade issues. A raging debate occupies centre stage with, on the one side, well-argued proposals aimed at addressing the inequities in the trading system from those who believe that trade is making globaliza-
tion work for the poor, countered on the other by a vociferous civil society response which believes that trade is unsustainable and that further expansion of the WTO will only benefit rich countries and spell doom for the poor. Secondly, regional and preferential trading arrangements are multiplying, reducing the interest of many countries in the multilateral trading system or efforts to rectify it, if they can capture trade benefits through such exclusive arrangements. While these types of exclusive arrangements are WTO-compatible, the excluded countries may challenge them.

In the short-term, one of the immediate objectives for developing countries is how to extract a better deal out of the Doha Development Agenda, which is being negotiated at present. Supply-side capacity-building cannot be achieved in a short time span.

Therefore, a long-term, focused approach is required, since most of the policy agenda associated with trade capacity enhancement is domestic. It is up to the national governments to devise beneficial policy changes and to set priorities in the context of an overall development strategy and to allocate scarce resources accordingly. In this exercise they will also need to ensure that the rich countries meet their commitments for aid and assistance, often a daunting task.

As regards the Doha Development Agenda and negotiations to secure better market access in the North, developing countries need to try a different approach. Firstly, they must be persistent in negotiations. Secondly, they should try to forge alliances not only with developing countries, but with developed countries as well, wherever there are common interests, such as the Cairns Group24 (an 18-member group of agricultural exporting nations which includes Canada). In other words try to break the alliances of developed countries. For example, at Doha the EU changed its position on agricultural subsidies when the Cairns Group found common ground with US interests. Lastly, developing countries should also think strategically, concentrating on the issues and trade-offs.

Developing countries are indeed at a crossroads, especially with respect to the new issues. Experience with TRIPs and other agreements demonstrate that once an agreement is reached, it is extremely difficult to modify. Most of the implementation problems could have been avoided if developing countries had been actively engaged in earlier negotiations. If the South is going to be cajoled to sign onto a plurilateral or multilateral agreement on any of these issues, it should enter into solid discussions to prevent any harm to its interests.

The South could pressure the developed countries to break away from the “single undertaking” approach where member countries accept all multilateral trade agreements. For example, it might accept an agreement on competition, which has potential benefits, but the South could also use competition as a trade-
off to secure gains in other areas, say TRIPs or the movement of natural persons. Strategically, the South could take part in the negotiating process in order to push its own agenda, regardless of its final intention to sign an agreement. In any case, there is a high possibility that an agreement on competition could be beneficial to developing countries if negotiated properly. Thus, careful preparation is key to achieving a beneficial outcome. However, the stubborn refusal of many developing countries to support and build up the capacity of their own negotiators, even where there are sufficient financial and intellectual resources available, is a cause of concern.

In the case of investment, developing country opposition stems from an understanding of the issues and past experience. The controversial Multilateral Agreement on Investment negotiated in the OECD from 1995 was the most sustained and important effort at creating a multilateral investment framework so far. The attempt by the 27 rich countries with five developing countries as observers ultimately ended in failure. The negotiations revealed crucial issues and the fate of the agreement holds valuable lessons for any future negotiations on investment. The reservations expressed in this context are not very different from those of the developing countries, suggesting they may well find some support on certain aspects.

Transparency in government procurement may do little to promote WTO objectives, but on the other hand, such negotiations will do little harm if they adhere to transparency. Trade facilitation in itself is not a bad idea. But negotiators must ensure that any agreement they finally sign benefits all and not only the industrialized countries. Poor countries will need operational special and differential treatment clauses. The proposed cut-off point in this regard, although sounding practical, may not be in their interests. Moreover, enforcement of the agreement should be linked to the receipt of capacity-building and technical assistance, rather than leaving these to a “best endeavour” clause.

On the other hand, the protagonists of these agreements, especially the Quad countries, should be sensitive to the concerns and experiences of the developing countries, if they are to reach any consensus, let alone ensure the success of the multilateral trading system as a whole.

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Footnotes

1 The author acknowledges the research assistance provided by Pranav Kumar and Nitya Nanda of CUTS in writing this paper.

2 The North-South Institute, Canadian Development Report 2000, Ottawa.


5 Geographical indications identify a good as originating in a specific country or region, where a given quality or reputation of the product is attributable to its geographical origin. (ex. wines)

6 Panagariya, 2002.

7 Amphora 2002.

8 Multifunctionality refers to the fact that an economic activity may have multiple outputs and, by virtue of this, may contribute to several societal objectives at once. Multifunctionality is thus an activity-oriented concept that refers to specific properties of the production process and its multiple outputs.


16 The “green room” is the name given to the traditional method used in the GATT/WTO to expedite consultations. It involves the Director-General and a small group of Members, numbering between 25 and 30 and including the major trading countries, both industrial and developing.


21 See www.wto.org/english/tratop_e/trad-fa_e/tradfac2_e.htm


24 The Cairns Group includes: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, Uruguay.