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DEVELOPING COUNTRIES AND THE MULTILATERAL TRADING SYSTEM AFTER DOHA

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Abstract

The Fourth Session of the Ministerial Conference of the World Trade Organization (WTO), held in Doha, Qatar, in November 2001, launched a new round of multilateral trade negotiations (MTN) and a work programme (WP) for the WTO involving the negotiating agenda and steps for meeting the challenges facing the multilateral trading system. The paper evaluates the WP, in particular, whether it would redress the unfavourable balance between benefits and costs to developing countries DCs of the agreement that concluded the previous (Uruguay) round of MTN. It discusses the failure of the third session in Seattle to launch a new round in December 1999, and also documents the unfavourable balance. While concluding that with adequate preparation, the negotiators could reach an agreement in the new round yielding substantial gains to DCs, the paper also suggests possible negotiating points for DCs.

Keywords: World Trade Organization (WTO), Multilateral Trade Negotiations, Developing Countries, Antidumping, Trade Related Intellectual Property Services (TRIPS), Trade and Labour Standards, Trade and Environment, Preferential Trade Agreements.

JEL: F02, F13, F15, F16, F18, O19, O34

Developing Countries and the Multilateral Trading System After Doha

T.N. Srinivasan*

1. Introduction

The fourth session of the Ministerial Conference of the World Trade Organization (WTO) took place in Doha, Qatar during November 9-13, 2001. Before the ministers met, the deep divisions between developing and developed countries had not been resolved. There were fears that they would fail once again, as they did during their third session in Seattle in December 1999, to agree on launching a new round of multilateral trade negotiations. These fears were belied, and the ministers in their declaration at the conclusion of the meeting agreed to "undertake [a] broad and balanced work programme… that incorporates both an expanded negotiating agenda and other important decisions and activities necessary to address the challenges facing the multilateral trading system" (WTO, 2001a, paragraph 11). The Work Programme (WP) is fairly complex, including negotiations on some items from January 1, 2002, agreement to negotiate on some others with modalities for negotiations to be determined by consensus at the fifth session of the Conference in 2003, and studies to be undertaken on yet others. The ministers agreed that the negotiations under the terms of their declaration "shall be concluded no later that 1 January 2005. The fifth session of the Ministerial Conference will take stock of progress in the negotiations, provide any necessary political guidance, and take decisions as necessary. When the results of the negotiations in all areas have been established, a

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Special Session of the Ministerial Conference will be held to take decisions regarding the adoption and implementation of these results" (ibid, paragraph 45).

It took almost six years (1987-93) to conclude the negotiations in the previous Uruguay Round (UR) after the ministers decided to launch it at their meeting in Punta Del Este, Uruguay in September 1986. It is an open question whether the complex set of negotiations envisaged in the Doha declaration could be concluded within three years. Leaving aside this issue, in what follows I propose to evaluate the agreed WP from the perspective of developing countries (DCs). Before doing so I will briefly discuss the causes of the failure of the Seattle Ministerial (Section 2). An important cause was the perception by the DCs that they had signed an agreement in the UR which was unbalanced: they had undertaken commitments, which turned out to be difficult and costly to implement, in return for meager benefits from commitments undertaken by developed countries. In Section 3, I document this imbalance. Section 4 is devoted to the evaluation of the Doha WP, in particular, whether it redresses the imbalance of the Uruguay Round Agreement (URA). Section 5 concludes with some remarks on possible positions of developing countries in the forthcoming negotiations.

2. The Failed Third Session[1]

When the ministers met at Seattle in late November 1999, there was no agreed draft of their declaration for them to discuss: on agricultural trade, the differences between the CAIRNES group[2] and the U.S. which pressed for the elimination of export subsidies, and the European Union (EU) which wanted to retain them, were wide. Japan and Korea wished to continue their protection of rice. Developing countries with export interests wanted elimination of export

[1] Sections 2 and 3 draw on Srinivasan (2001a).
[2] CAIRNES group consists (as of March 2001) of Argentina, Australia, Bolivia, Brazil, Cambodia, Canada, Chile, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay.

subsidies in the EU, and import restrictions everywhere including the US. Others, mainly importers of food, were fearful of a potential rise in the cost of imports, were subsidies on exports by EU and others to be removed. The UR included agreements on new areas such as on trade related aspects of intellectual property services (TRIPS), and on investment measures (TRIMS), and a back loaded commitment by industrialized countries to phase-out the quotas of the Multifibre Arrangement (MFA). As the implementation of commitments under TRIPS, TRIPS and others was proving to be costly for the DCs, they were in no mood to be pressured into bringing other new areas such as labour and environmental standards into the WTO. There was no agreed draft at the start of the Punta Del Este ministerial that launched the UR either in 1986. The divisions on agriculture among US, EU and Japan then were equally wide, and DCs were against the inclusion of new issues such as services in the negotiating agenda. Yet at the last minute a compromise was reached that launched the UR. But this did not happen in Seattle. Why?

The demonstrations and the violence on the streets of Seattle disrupted the meetings, but they had little to do with the failure of the ministerial. Some of the demonstrators were merely exploiting for their own purposes the genuine unease in developed and developing countries over the impact of forces of globalization. They did not represent either the world's poor or the majority of its workers.

The reasons for failure are elsewhere. First, there was genuine concern among the DCs that the distinction between discussions leading to an agenda for negotiations on the one hand, and substantive negotiations on items on the agenda on the other, had become blurred. They justifiably feared that any compromise on their part on issues to be included in the negotiating agenda would hurt them in the subsequent negotiations. For example, most DCs had not

anticipated the outlines of the eventual TRIPS agreement when they agreed to include intellectual property in the UR negotiating agenda. With the high perceived cost to them of the final TRIPS agreement very much in their mind, they were less willing to compromise on items in the agenda of any future round for fear that eventual agreement on some might be costly to them. Second, many DCs felt that they had no voice in the so-called "Green Room" process at the Seattle session in which a selected group of countries participated in the negotiations and decided on an agenda which they later presented to the plenary. Third, the fact that the leader of the delegation of most powerful trading nation of the world, viz., the US, also chaired the ministerial did not help. But the single most important reason of the failure was the statement by the then President Clinton that trade sanctions could be used to enforce core labour standards. It ruled out any compromise on the part of developing countries.

3. Imbalances in the Uruguay Round Agreement (URA)

The perception of the DCs about what they had been promised in comparison to what they had received, in the UR agreement as they were about to meet at Doha, is best summarized by Oxfam (2001):

> "Since the end of the Uruguay Round of world trade talks in 1994, promises have been in steady supply. Rich countries have pledged to phase out protection against imports of textiles and garments, to scale down agricultural subsidies, and to remove trade barriers against the poorest countries. They have made commitments to ensure that WTO rules on intellectual property and investment do not undermine development prospects. And they have promised technical assistance to enhance the capacity of developing countries to participate in the WTO and in trade. So many promises - and such little action. The record of industrialized countries in the area of trade policy is one of heroic under-achievement. They have collectively reneged on every commitment made."

It is worth spelling out in some detail the basis of this perception.

3.1 Extension of Commitments Beyond Border Measures

To begin with, in contrast to the agreements concluding the previous seven rounds of multilateral trade negotiations (MTN), which by and large covered border measures that restricted trade such as tariffs and quotas, the UR agreement involved behind the border or domestic policy commitments, many of which required strengthening preexisting institutions as well as creation of new ones on the part of DCs. They undertook several "unprecedented obligations, not only to reduce trade barriers, but to implement significant reforms both on trade procedures (e.g. import licensing procedures and customs valuation) and on many areas of regulation that establish the basic business environment in the domestic economy (e.g. technical, sanitary, and phytosanitary standards, intellectual property law)" (Finger and Schuler 2000, p.511). For example, "countries that did not have patent or copyright laws were obliged to enact them, to offer remedies for infringements, and educate officials in how to carry them out" (Odell, 2000, p.3). Sylvia Ostry (2000, p.6) has aptly described the shift from the General Agreement on Tariffs and Trade (GATT) to the WTO system as follows "The degree of intrusiveness into domestic sovereignty bears little resemblance to the shallow integration of the GATT model of negative regulation - what governments must not do - to positive regulations, or what governments must do." Under the single undertaking rule, participating countries had to accept all the multilateral agreements relating to goods and services, including TRIMS, TRIPS, understandings on Dispute Settlement, and on Trade Policy Review Mechanisms. Thus they had no option to pick and choose among the many agreements for acceptance. In fact, there were only four plurilateral agreements (on civil aircraft, government procurement, dairy and bovine meat) that did not form part of the single undertaking.

Clearly the range of commitments undertaken by DCs in the UR is far more extensive than those in any of the previous rounds. Although many of them were in their interest,

particularly their binding tariffs on many products and reducing applied tariffs, still, given the, mercantilism of GATT negotiations, it is not unreasonable to ask what they got in return.

3.2 Market Access

The sectors that are of vital interest to DCs are textiles, clothing and agriculture. The barriers that protect industrialized country producers from competition from DC exporters are high in both these sectors. Indeed, the MFA that governs trade in textiles and clothing violates the fundamental principle of the General Agreement on Tariffs and Trade (GATT), namely, non-discrimination in trade taxes and charges. This principle is enshrined in Article I relating to General Most-Favoured-Nation Treatment. The MFA also violates Article XI which prohibits import or export quotas, and Article XVI that prohibits export subsidies. Agriculture was in effect exempted from the disciplines of GATT from its very inception in 1947 through waivers obtained by the US and others.

3.2.1 Textiles and Clothing: The Phase-out of the MFA

The MFA, which initially (in the 1960's) was a short term agreement governing exports of cotton textiles from Japan, eventually became a long term agreement relating to trade in textiles and clothing made from almost all fibres, natural and manmade! It consists of a set of export quotas, bilaterally negotiated by an exporter with each importer for each item included in the agreement. Its egregious violation of the core principles and articles of GATT is beyond dispute. Yet, because the export quotas were "voluntarily" imposed and enforced by the exporter, they fell in the grey area between measures that were either explicitly prohibited or explicitly allowed under GATT rules. Since most of the exporters were DCs with little bargaining power to resist, and a large share of their exports went to developed countries with much greater power to punish, the "voluntariness" of the agreement is doubtful. Clearly by

letting the DC exporters to administer the quotas, and thus keep the quota rents, the developed countries simply bought off the DCs from resisting. All grey area measures including MFA, are slated for abolition under the UR agreement. The phase-out of MFA could be a major benefit that the DCs. Yet this is a qualified benefit for many reasons.

First, the phase-out is heavily back-loaded: products accounting for as much as 49 percent of the value of 1990 imports could still be under quota restrictions as of December 31, 2004, just a day prior to the phase out! Second, even after the phase-out of quotas, significant tariff barriers would still remain in developed countries on their imports of textiles and apparel. Third, since the UR was concluded, the actions by the US and EU have thrown some serious doubt about their fulfilling their commitment to liberalize trade in textiles and apparel. For example, the US imposed restrictions in April 1995 on imports of women and girls' coats from India. India contested this action before the Textile Monitoring body of the WTO. Although India won its case, the fact that the US took safeguard actions is disturbing. The European Commission (the same one which was tainted by allegations of corruption and some of whose members had to resign) recommended the imposition of a provisional anti-dumping duty on imports of unbleached (grey) cotton fabrics originating from China, Egypt, India, Indonesia, Pakistan, and Turkey. These imports were subject to bilaterally negotiated MFA quotas; as such exporters cannot possibly increase their sales by dumping since their sales, are bound by such quotas if they bind. If they cannot increase their sales, they cannot obviously hurt their competitors in the EU. As such imposing anti-dumping duties has no rationale other than protection intent (Hindley 1997a, 1997b). Fortunately the EU ministers did not accept commission's recommendation.

The DCs are rightly concerned that US restrictions and EU measures might be the first among many such so called "safe guard' actions to come. Although such actions have to be terminated by January 1, 2005, in the interim the damage to developing countries could be substantial. A failure to live up to the UR commitments in textiles and apparel would be damaging for yet another reason: the developing countries might then revert to their perception that the WTO, like the GATT, largely subserves the interests of the industrialized countries.

3.2.2 Agriculture

The decision to bring agricultural trade back into GATT was indeed a very important achievement of the UR. However, the attempt to subject it to disciplines similar to those that govern trade in manufactures was only partially successful; export subsidies were reduced but not eliminated; domestic support measures were restricted but not removed; and the process of "tariffication" of pre-existing non-tariff measures became so scandalously "dirty" that the bound levels of tariffs (from which scheduled reductions were to take place) were set way beyond prevailing applied levels; moreover "In agriculture, exports from developing countries remain severely hampered by massive domestic support and export subsidy programmes in developed countries, by peak tariffs and difficulties in the implementation of the tariff quota system" (UNCTAD, 1999, p 41).

3.2.3 Tariff Peaks and Escalation

Even after the reductions of tariffs agreed to by the industrialized countries on imports from DCs, problems of tariff peaks and tariff escalation remained. According to Hoekman (2001, p.5), “most favored-nation tariff rates of developed countries are less than 5 percent on average. Indeed, much trade is now duty-free as a result of zero ratings, preferences and free trade agreements. However, tariffs for some commodities are over 100 percent. Such tariff

peaks-rates above 15 percent-are often concentrated in products that are of interest to developing countries. In 1999, in the US alone, imports originating in least developed countries (LDCs) generated tariff revenue of $487 million, equal to 11.6% of the value of their exports to the US, and 15.7% of dutiable imports (US Department of Commerce, 1999).[3] Although, the LDCs are by definition among the poorest countries in the world, in absolute terms most of the poor live in non-LDCs such as China, Egypt, and India. From a poverty alleviation perspective, it is therefore vital that market access improves for all developing countries."

McCulloch et al (2001, p.178) point out that "tariffs over 50% exist for 60 tariff lines (1.2% of the country's total number of tariff lines) in Canada, 71 (1.4%) in the EU, 14 (0.34) in Japan at 8 (0.2%) in the United States. These cover nearly US $5 billion of developing country exports (despite the trade chilling effects of very high rates) and are almost exclusively focused on agriculture." The authors also draw attention to tariff escalation (i.e. increases in tariff rates according to the stage of processing) in rich countries, which penalizes DCs for trying to process their exports than exporting them raw. They cite an enormous increase in tariffs from 3% at the first stage of processing to 42% at the fully processed stage in food manufacturing in Canada, from 15% to 24% in EU and from 35% to 65% in Japan.

3.3 TRIPS

In retrospect, the decision of the UR to bring intellectual property (IP) issues into the WTO through the TRIPS agreement seems to have been a mistake. Since the World Intellectual Property Organization (WIPO) already existed for dealing with IP issues, there was no need to bring them into the WTO by calling them trade related, rather than deal with any problems of enforcement of IP rights and create any new disciplines needed in the WIPO. The only reason

[3] This calculation excludes Angola, 95% of whose exports are oil-related and not dutiable. The LDCs comprise 49 low-income countries, mostly in Africa.

for bringing them into WTO seems to be the availability of the WTO's dispute settlement and trade sanctions mechanism for enforcing IP rights. The very same motive lies behind the persistent demand by some developed countries for inclusion of labour and environmental standards in the WTO.

TRIPS imposes a uniform life of at least 20 years from the filing date for all patents regardless of the nature of invention and protection for copyrights is for a much longer period. Products as well as processes can be patented. Bhagwati (2001) points out that unlike traditional trade liberalization, in which a liberalizer and its trading partners gain, TRIPS involves an unrequited transfer of royalties from user (poor) to producer (rich) countries. Markus (2000, Table 6.1) estimates a transfer of $8.3 billion to just four rich countries. Still, to be fair, "TRIPS provides a great deal of latitude in terms of how countries implement it. A variety of policies can be pursued to reduce the magnitude of the income transfer from South to North that will be associated with the implementation of TRIPS" (Hoekman, 2001, p.231).

TRIPS agreement recently attracted much criticism on the ground that monopoly rights conferred by patent protection raise the prices of life saving drugs (e.g. AIDS drugs) and put them out of reach of millions of those who need them in poor countries. Although, the compulsory licensing provisions of the TRIPS can be read as permitting rights of patent holders to be overridden in a national health emergency, this was challenged by multinational pharmaceutical companies. The failure of these companies to win their case in South African courts, the recent decision of the US not to challenge the Brazilian production of AIDS drugs as violation of TRIPS, and also the substantial reduction by drug companies of the prices of AIDS drugs sold in poor countries, were not enough to prevent the interpretation of TRIPS provision relating to public health from becoming almost a 'deal breaker' at Doha. Rich countries,

particularly the US, were accused of double standards in their insistence on poor countries respecting patent rights, while the US government itself threatened to override patents on the antibiotic CIPRO during the outbreak in October 2001 of anthrax infections attributed possibly to terrorist actions.

In the debate over the pros and cons of the TRIPS agreement, three separate issues are being confounded. First is the fundamental question: Is granting monopoly rights through patent protection the most cost-effective way of promoting innovation and invention of new drugs?[4] Second, what is the least cost way of producing the patented product to meet world demand? Third, what is the appropriate mechanism for ensuring that the individuals deemed poor according to some accepted criteria have access to the drugs they need?

On the first and basic question, the empirical evidence in favour of a strong link between patent rights and innovation does not exist. In the absence of such a link, patent protection is not even a means of promoting innovation, let alone being the most cost-effective means. Lerner (2001) cites Edith Penrose (1951) as noting, "If national patent laws did not exist, it would be difficult to make a conclusive case for introducing them; but the fact that they do exist shifts the burden of proof and it is equally difficult to make a really conclusive can for abolishing them." In his own examination of 177 patent policy changes across 60 countries over a 150 year period, using patent based measures of innovative output, Lerner found, that adjusting for overall patenting, the impact of patent protection-enhancing shifts on applications by residents was actually negative" (Lerner, 2001, p.30). While noting the limitations of his study for not allowing for possible interactions between patenting and other forms of technology policy, and

[4]In asking this question I am taking a utilitarian perspective in balancing the benefit of incentives to innovation from protecting IP against the dead weight loss of monopoly. There are other perspectives such as 'natural rights' and 'communtarian rights' on IP (Srinivasan, 2001b).

for the crudeness of his patent-based measures of innovative output, he concludes, that despite these limitations, "The failure of domestic patenting to respond to enhancements of patent protection, and the particularly weak effects seen in developing countries, were quite striking" (ibid, p.31). Jaffe (2000) also found that robust conclusion regarding the empirical consequences for technological innovation of changes in patent policy are few.

The Rand Journal of Economics published a symposium on the Patent System and Innovation in its Spring 2001 issue. Two of the papers in the symposium are particularly relevant Sakakibara and Branstetter examine the responses to Japanese patent reform of 1988, which significantly expanded the scope of patent rights. They econometrically analyzed US and Japanese patents data on 307 Japanese firms, and found "no evidence of an increase in either RRD spending or innovative output that could plausibly be attributed to patent reform (Sakakibara and Branstetter, 2001, p.98). Hall and Ziedonis examine the patenting behavior of firms in the semi-conductor industry in which the propensity of firms to patent has apparently increased dramatically since the mid 1980s. Yet they cite survey evidence suggesting that "firms in most industries have <u>not</u> increased their reliance on patents for appropriating returns to RRD over the decade of the 1980's "(emphasis in original) and ask “If firms in most industries do not rely heavily on patents to profit from innovation, then why are the patenting aggressively?” (Hall and Ziedonis, 2001, p.102).

Their answers to this “patent puzzle” for the semiconductor industry are two: “stronger patent rights may have facilitated entry by specialized firms and contributed to the vertical disintegration of the industry. But these positive effects coincide with a process whereby firms a mass vast patent portfolios simply as "bargaining chips", leading to portfolio races "(ibid, p.125). Since holding a patent confers a legal right to exclude, the authors argue that “for firms engaged

in rapidly changing, cumulative technologies, building larger portfolios of their own" legal rights to exclude" may reduce the hold up problems fixed by external technologies on favorable terms" (ibid, p.1281).

On the second question, it should be evident that the unit cost of production need not necessarily be minimized if the patent holder itself produces the product, rather than licensing others to produce. And indeed, if the licensing activity was not constrained by government interventions, normal profit calculation would lead the patent holder to license others to produce (if it is more profitable to do so).

The answer to the third question is also clear. For ensuring the access of the poor to life saving drugs, no intervention in the markets for drugs are called for as long as they are or could be made competitive. What are needed are income transfers to the poor individuals and households (and not necessarily to governments of the countries in which they live). Of course allowing segmentation of markets in which most of the potential buyers are poor from those in which the buyers are rich, and enforcing the segmentation through a prohibition of so called "parallel" imports into rich markets of lower priced drugs from poor markets, could (though not necessarily would) enable producers to sell drugs at a lower price in poor markets, and thus make them affordable to the poor. However, compared to a policy of income transfers to the poor to enable them to buy drugs at a common world price, market segmentation is an inferior policy.

Unfortunately by accepting without question the efficacy of patents as a means of encouraging innovations, and worse still imposing a uniform patent life for all innovations, and forcing DCs to enact or amend patent laws, TRIPS agreement has imposed an avoidable burden, particularly on poor countries.

3.4 Dispute Settlement Mechanism

A rule-based, rather than power-based, world trading system is obviously in the best interest of the weaker members of the system, viz. DCs. For a rule-based system, such as that of the WTO, to be effective, has to have a mechanism for interpretation and enforcement of rules and for settlement of disputes among members. The WTO indeed has a Dispute Settlement Mechanism (DSM). But it differs from the one that existed in the GATT in one crucial respect. In the GATT if two contracting parties failed to resolve a dispute between them through mutual consultation, the aggrieved party could ask for the establishment of a GATT panel to resolve the dispute. However, a consensus among all contracting parties was required to adopt a panel's report. Thus either party to the dispute could block its adoption, if it deemed the panel's report as very unfavorable to it. In the WTO's DSM, although either party can appeal against the panel's report to the Appellate Body (AB), a consensus among all WTO members is required to overturn the AB's decision. This requirement has made the AB a powerful force in the system. The process of dispute settlement in the GATT was essentially political, and the fact that either disputant could block the adoption of a panel's report, provided incentives for the disputants to negotiate and arrive at a compromise. This political process has been replaced in the WTO by an adversarial legal process.

This change has resulted in some adverse consequences for DCs. First, accessing the DSM is costly, particularly for the smaller and poorer DCs. To recognize whether one's trade has been hurt by the violation by one's powerful trading partner of one or more complex rules of the WTO, and equally, to mount a strong defense if one is accused of such a violation, needs legal expertise, which can be costly to acquire. Clearly a DSM that can be accessed only the rich and powerful members are not conducive to building confidence in a rule-based system among its less powerful poor members.

There is disturbing evidence that the AB, through its interpretation of GATT/WTO articles, is usurping the exclusive rule-making power WTO members. For example, in overturning the ruling of the panel on the so called "shrimp-turtle" dispute relating to the complaint of US against India and Thailand, the AB has so broadly interpreted Article XX as to go far beyond what the founding contracting parties probably intended in the article. Those who want to use denial of market access as an instrument for enforcing environmental objectives by linking trade and environment in the WTO can now invoke Article XX as interpreted by the AB, to achieve their goals, without such linking. The DCs, who have been against trade-environment linkages, now find that the linkage has come in through the back door. Another disturbing aspect of the functioning of the AB is its decision to accept amicus briefs. By doing so, the AB has allowed a role in dispute settlement to individuals and groups who do not formally represent any of the WTO members. For all these reasons, not withstanding the fact that ordinarily a rule-based legal system of settling disputes is in the interest of the weak, it is not clear that replacing the GATT political process which favour the powerful, by a costly legal process of the WTO which the weak can ill afford is necessarily an improvement.

3.5. Decision Making Process as of the WTO

The decision-making processes of the WTO are matters of great concern to DCs. The Seattle ministerial exposed their weaknesses. In most rounds of GATT negotiations, DCs did not participate actively in the negotiations and, in effect, were presented with agreements that were negotiated by the few powerful developed countries, on a more or less “take it or leave it” basis. The so-called “Green Room” process of ministerial meetings, controlled by its chairman, the few powerful developed countries and the Director General, came a cropper in Seattle. With no discernible criterion for admission to the Green Room, those not admitted felt disenfranchised.

Even the DCs present in the Green Room could not claim to represent other DCs. Thus the legitimacy of any decisions or consensus arrived at the Green Room became doubtful, with the Caribbean and African countries explicitly dissociating themselves from any consensus that might emerge from such a process. In response, a hybrid system of formal working groups and informal Green Rooms emerged. But it satisfied very few. Naked exercise of power by Ambassador Barshefsky, Chairperson of the Seattle Ministerial, did not help. Bernal (2000) quotes her as having said: "I fully reserve the right to also use a more exclusive process to achieve a final outcome. There is not question about either my right as the chair to do it or my intention as the chair to do it."

3.6. General Agreement on Trade in Services (GATS)

The GATS did not include agreements on movement of natural persons for the purpose of supplying services, and on maritime services. However the ministers, in approving GATS, decided to continue the negotiations on these two beyond the conclusion of the UR. They established a negotiating group on the movement of natural persons with a mandate to conclude the negotiations no later than six months after the entry into force of the Agreement establishing the WTO (i.e. by mid 1995). The negotiations are yet to be concluded. DCs have a comparative advantage in the supply of labour intensive, and certain skill intensive (e.g. computer programming) services. Lack of an agreement on the movement of natural persons continues to delay their reaping the benefits of their comparative advantage.

On maritime services, voluntary negotiation, through a Negotiating Group established by the Ministers, was envisaged. The Group was asked to conclude the negotiations and issue a final report by June 1996. This also has not happened as yet.

It is clear that the UR agreement was unbalanced from the perspective of developing countries: the commitments they undertook had up front costs and these were found to be high; the benefits they got were modest, and even these are back loaded and uncertain.

4.0 The Doha Declaration

How far do the Doha ministerial declaration and decisions go in addressing the concerns of DCs? The crowning achievement at Doha beyond doubt is the decision to launch a new round of multilateral negotiations. The importance of this decision cannot be overstated. The threats to a liberal, rule-based, and multilateral trading system, were gathering strength as the ministers met. The anti-globalization forces, a motley combination of anarchists, protectionists and their political (and even some academics) patrons, and those who mistakenly, but nonetheless genuinely, believed that global integration was hurting the poor in DCs, have not disappeared. They were only deterred by the events of September 11, 2001 from mounting a Seattle style attack in Doha. The world economy, which was already in a slow down, if not in a major recession, faced great economic uncertainties after the terrorist attacks on the World Trading Center in New York on September 11, 2001, and the hostilities in Afghanistan that they spawned. Unlike past episodes, the current slow down is affecting all major economies of the world at the same time. It is well known, that in periods of economic weakness, protectionist forces gather strength everywhere. By launching a new round, and thereby creating a reasonable presumption of further multilateral reductions in barriers to trade and investment flows, the ministers have provided incentives for exporting interests everywhere to counter protectionist threats. By affirming their commitment to negotiate further reductions in trade barriers and thereby furthering the process of global integration the Ministers have spoken clearly and loudly against the anti-globalization cabal.

Another threat to the multilateral trading system arises from the proliferation of preferential trading agreements on a regional basis. As of mid-2000, there were 114 such agreements in effect and notified to the WTO by one or more WTO members WTO (2001b, p.37). Virtually all WTO members, other than China (including Hong Kong and Macau), Japan and Mongolia, were partners in at least one regional trade agreement (RTA). The EU is a partner in the largest number of agreements encompassing Europe, Africa, Asia and as of 2000, Latin America. WTO (2001b, p.39) recognizes that "the trend to the conclusion of RTAs, which took off in the 1990s, continued to be very strong in 2000; indeed, perhaps the term "regional" is increasingly superfluous to describe the plethora of new agreements linking countries around the globe". In April of 2001, President George Bush and leaders of 33 other nations met in Quebec City, Canada, at a summit. They instructed their ministers to conclude, no later than January 2005, negotiations on a free trade area extending from high arctic in the North to Terra de Fuego in the South. Finally the expansion of the EU with the admission of some Central and Eastern European countries is likely to take place in the very near future.

It has been claimed (World Bank, 2000) that contemporary regional trade agreements (RTAs) involve benefits from "deeper" integration through harmonization of standards, competition and investment rules and so on, and that there are political benefits such as greater national security, greater bargaining power in global negotiations and the possibility of "locking-in" domestic reforms by invoking commitments undertaken in an RTA. However, no convincing case or evidence have been offered as to why preferential trading is a prerequisite for reaping these unconventional benefits. The argument that preferential trade liberalization on a discriminatory regional basis, and on a multilateral, non-discriminatory basis are mutually reinforcing is utterly convincing. "Open regionalism," which claims that the two processes are

compatible is a vacuous- notion, if not an oxymoron. It is to be hoped that by agreeing to launch negotiations for non-discriminatory reductions of trade barriers, the ministers would succeed in slowing down the mad rush to conclude discriminatory regional agreements.

Let me now turn to the evaluation of the Doha declaration. The chairman of the meeting (Qatar's Minister of Finance) structured the discussion around six topics: agriculture, implementation, environment, rules, the so-called Singapore issues (i.e. trade and investment, trade and competition policy, transparency in government procurement, and trade facilitation) and Intellectual property. Informal discussions took place on each topic, with any delegation wishing to participate being invited to do so, and a "friend of the chair" led the discussions and reported their progress regularly to the full heads of delegation. This process of holding simultaneously informal discussions on each topic and formal meetings at which ministers made their conference statements, avoided much of the unhappiness associated with the "Green Room" process of earlier ministerials.

4.1 Implementation Issues

The DCs had earlier placed before the WTO General Council the difficulties they encountered in implementing their Uruguay Round commitments. Before Doha, the General Council had met in special sessions to deal with them. Some countries (for example, India) had taken the position that the implementation issues have to be resolved before they would endorse a new round. In their Doha declaration, the ministers attached "the utmost importance to the implementation issues and concerns raised by members "and indicated their determination to solve them by making them an integral part of the agreed work program." (WTO, 2001a, paragraph 12) They also adopted some of the decisions of the General Council on these issues. However, most of these decisions do not appear to be substantive. They involve easing of

procedural constraints, appeals to members to use restraint in exercising their rights in relation to developing countries (e.g. members are urged to exercise restraint in challenging measures notified under the green box by developing countries), and requests to WTO bodies to examine proposals that may help developing countries (e.g. a request to the Council for Trade in Goods to examine the proposal that when calculating the quota levels for the remaining years of the agreement on textiles and clothing, members will apply the most favourable methodologies available….). Although the commitments to resolve implementation problems and the decisions already taken to do so are positive developments, they do not by any means constitute the equivalent of a "down-payment up front" before the start of a new round that some DCs had been demanding before the Doha meeting.

4.2 Market Access

4.2.1. Agriculture

The UR agreement on agriculture in its Article 20 had recognized that "the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process" and mandated that "negotiations for continuing the process will be started one year before the end of the implementation period." (GATT, 1994, p.55) These negotiations began in 2000 with its first phase ending with a stocktaking meeting in March 2001. The second phase was on, as the ministers met in Doha. Altogether 126 of the 142 members of WTO had submitted 45 proposals and three technical documents in all. The proposals contained starting negotiating positions. In the second stage discussions were by topic and included more technical details as a prelude to an eventual consensus agreement on changes to rules and commitments in agriculture. By September 2001 the Agriculture Committee had reached decisions on three issues of concern of DCs about implementing their current WTO

commitments. The first related to export credits, guaranties and insurance programmes. The decision was mainly on future work and a mandate to report to the General Council late in 2002. The second issue was the possible negative effects of agricultural trade reform programme on least-developed and net-food-importing developing countries. The decision covered food aid and, technical and financial assistance, financing normal levels of commercial imports of basic foodstuffs, with a planned review and follow-up in late 2002. The third issue was the transparent and equitable administration of tariff quotas. The decision was simply to keep the issue under review.

At Doha, as in Punta del Este, the issue of phasing out export subsidies and other support measures was the major issue that divided the members, with EU again reluctant to commit to a phase-out in advance of negotiations. Eventually a compromise was reached in which the ministers "without prejudging the outcome of negotiations" committed themselves to "comprehensive negotiations aimed at: substantial improvements in market access; reduction of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade distorting domestic support…modalities for further commitments including provisions for special and differential treatment, shall be established no later than 31 March 2003" (WTO, 2001a, paragraphs 13 and 14). If these new commitments, and an earlier one that was reaffirmed at Doha, "to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments… to correct and prevent restrictions and distortions in world agricultural markets" (WTO, 2001a, paragraph 13) are kept, and the negotiations do succeed in achieving the objectives enumerated in the commitments, the gains to the DCs would be substantial.

4.2.2 Non-Agricultural Products

The Ministers agreed to negotiations (albeit by modalities yet to be agreed) "to reduce or as appropriate, eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalations, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without a priori exclusions" (WTO, 2001a, paragraph 16, emphasis in original). This is indeed a substantial gain for the DCs.

4.2.3 Textiles and Clothing

Trade in textiles and clothing represents nearly 8% of world trade in manufactures. DCs regard it as one major manufacturing sector in which they have a comparative advantage. The Agreement on Textiles and Clothing (ATC) in the UR, as noted earlier, provided for the phase-out of bilateral import quotas of the MFA in three stages, over a ten-year period ending on December 31, 1994. The DCs came to believe that industrialized countries were exploiting the three-stage process of elimination of quotas to their advantage by postponing to the final stage the elimination of import quotas on product of considerable interest to exporting DCs. This meant that until the final stage the benefits accruing to the DCs from the phase-out of MFA quotas would be limited. Viewing this as an imbalance in the implementation of ATC, the DCs called for an acceleration of the pace of trade liberalization relative to that specified in the ATC. The developed countries maintained that they have been scrupulously observing the stipulations of the ATC. At Doha, the DCs lost – there is no mention at all of trade in textiles and clothing in the ministerial declaration. This was not unexpected since the demand of the developing countries in effect amounted to renegotiating the ATC. Presumably market access negotiations in the next round will finally and fully liberalize this sector.

4.3 TRIPS

TRIPS figured both in the main ministerial declaration and a separate one concerning TRIPS and public health. In the main declaration, ministers agreed to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session in 2003. More relevant for developing countries is the extension of protection of geographical indications to other products (e.g. Basmati rice). This has been left to be addressed by the Council for TRIPS, which has also been instructed to examine the protection of traditional knowledge and folklore. While the outcome of the deliberations of the Council on these issues cannot be foreseen, the fact that the extension of geographical indicators to products of interest to DCs and the protection of traditional knowledge have been explicitly recognized in the main declaration is a positive development.

The main demand of the DCs related to the public health provision of TRIPS. The "Declaration on TRIPS Agreement And Public Health" goes a long way in addressing the concerns of DCs. First, it recognizes the gravity of the public health problems resulting from HIV/AIDS, tuberculosis, malaria and other epidemics in poor countries. Second, it stresses the need for wider national and international actions to address these problems and for TRIPS to be part of these actions. Third, while recognizing that IP protection is important for the development of new medicines, the ministers agreed that TRIPS Agreement "does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating [their] commitment to the TRIPS Agreement, [they] affirm[ed] that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all" (WTO, 2001c, paragraph 4), the ministers explicitly recognized certain flexibilities in the interpretation of TRIPS commitments. In particular, the ministers recognized the right of each member" to grant

compulsory licenses and the freedom to determine the grounds upon which such licenses are granted… to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics can represent a national emergency or other circumstances of extreme urgency (WTO, 2001c, paragraph 5). The ministers left each member free to determine its own regime of IP exhaustion.

Interestingly, while recognizing that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing, the ministers left it to the Council on TRIPS to find as an expeditions solution to this problem. The least developed country Members were given until January 2016 to implement or apply Section 5 (on Patents) and Section 7 (on Undisclosed Information) of TRIPS agreement without prejudice to their seeking other extensions.

4.4 Labour Standards, Competition Policy, Environment and Investment, Government Procurement and Trade Facilitation

When the ministers met at Seattle there was neither an agreed draft ministerial declaration nor a consensus on the agenda for any future round of negotiations. In contrast, at Doha there was a draft declaration for the ministers to discuss which also proposed a negotiating agenda. However this draft was put together by Stuart Harbinson, Chairman of the WTO General Council, and was by no means a consensus draft. As such, the issue remained open whether the negotiating agenda would be narrow as advocated by the "minimalists" including the U.S. or comprehensive as proposed by the EU. The "minimalists" had argued, even prior to the Seattle meeting that there was no need at all for a new round of negotiations until the built-in agenda of the UR agreement, namely the review of the agreements on

Agriculture and Services were concluded. In their view these negotiations would themselves by complex, time-consuming, and call for difficult compromises. The DCs mostly were of the minimalist persuasion-they wanted to discuss the implementation problems and failures relating to the UR commitments in addition to the built-in agenda.

Those who had argued for a comprehensive new round made the case that a broad agenda would offer many options and trade-offs so that there would be greater gains for the participants. Again as Ambassador Bernal (2000) points out, there was no agreement before Seattle either among developed countries or between developed countries and DCs or what the expanded agenda should cover. Among the additional issues proposed, viz. competition policy, government procurement, investment, linkage of market access to enforcement of labour and environmental standards and electronic commerce, the US accorded high priority electronic commerce and labour standards. The EU, on the other hand, placed investment and competition policy on the top of the agenda. Among services, the developed countries wanted the focus to be on air transport, financial and professional services, while the developing countries were more interested in maritime transport, entertainment, and the movement of natural persons. Those, such as the UNCTAD, who forcefully raised the issue of imbalance in the UR commitments and asserted that the gains to the developing countries from the UR liberalization have proved to be limited, argued that any new round should be a "Development Round" devoted to issues of interest to DCs. The former chief economist and senior vice president of the World Bank, Joseph Stiglitz (2000) also supported the idea of a "Development Round." In his view, it has to be fair to developing countries and also comprehensive in the sense of including issues of critical importance to developed countries such as financial market liberalization and information

technology, but also those, such as construction and maritime services, that are important to developing countries. World Bank (2001) has also endorsed a "Development Round".

At Doha the minimalists clearly lost, except on the vital issue of labour standards, on which the ministers simply reaffirmed their decision at the Singapore ministerial to leave the issue to the International Labour Organization. The ministers recognized "the case for a multilateral framework to secure transparent, stable and predictable conditions for long-term cross border investment, particularly foreign direct investment" and agreed that "negotiations will take place after the fifth session of the ministerial conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations"[5] (WTO, 2001a, paragraph 20). Until that session, there will be further work by the Working Group on Relationship Between Trade and Investment on a variety of issues.

On competition policy, transparency in government procurement and trade facilitation the ministers recognized the case for a multilateral framework to enhance the contribution of competition policy to trade and development. On this and on the ministers agreed that negotiations will take place at the same time and on the same terms as set forth for negotiations on trade and investment (WTO, 2001a, paragraph 23).

On trade and environment, the ministers agreed to negotiations, without prejudging their outcome, on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs), procedures of exchange between MEA secretariats and the relevant WTO committees and on the reduction or as appropriate, elimination of tariff and non-tariff barrier on environmental goods. The Ministers instructed the Committee

[5] A literal reader of the declaration would conclude that the phrase "decisions to be taken, by explicit consensus" applied only to the modalities of the negotiations, and not for undertaking the negotiations. On India's insistence, the chairman of the Doha ministerial clarified that it applied to both. The legal standing of this clarification is unclear.

on Trade and Environment to pursue work on all items on its agenda and its current terms of reference, while giving particular attention to the effect of environmental measures on market access, particularly of DCs at LDCs, relevant provisions of TRIPS and to ecolabeling. (WTO, 2001a, paragraph 32)

4.5 Capacity Building, Special And Differential Treatment, And Least Developed Countries

The ministerial declaration in several of its paragraphs refers to the specific problems of least developed countries (LDCs), the need for technical and other assistance to them and also to the Special and Differential treatment (SDT) for DCs. Paragraphs 38-41 deal with Technical Cooperation and Capacity Building, 42 and 43 are devoted to LDCs and 44 to SDT. Recognizing that the majority of WTO members are DCs, the ministers sought "to place their needs and interests at the heart of the Work Programme [they] adopted " and took note of the important roles played by "enhanced market access, balanced rules, and well targeted, sustanably financed technical assistance and capacity building programmes" (WTO, 2001a, paragraph 2). They recognized the importance of the last two in the field of trade and environment to DCs and in particular to LDCs (WTO, 2001a, paragraph 33).

They endorsed the New Strategy of WTO Technical Cooperation for Capacity Building, Growth and Integration, instructed the WTO's Committee on Budget Finance and Administration to develop a plan for long-term funding for development assistance, and established firm commitments on technical cooperative and capacity in various paragraphs (1b, 22, 25-27, 33, 38-40, 42 and 43) of their declaration. (WTO, 2001a, paragraph 38, 40 and 41).

Recognizing that integration of LDCs into the Multilateral Trading System will involve efforts by all WTO members and would require meaningful market access, support for the

diversification of their production and exports base, and trade-related technical assistance and capacity building, the members committed themselves to the objective of duty-free, quota-free market access for products originating from the LDCs and to consider additional members for progressive improvements in market access for LDCs. They endorsed an Integrated Framework for Trade Related Technical Assistance to LDCs and requested the Director General of the WTO to provide an interim report to the General Council in December 2002 and a full report to the Fifth Ministerial (in 2003) as all issues effecting LDCs (WTO, 2001a, paragraph 42-43).

The ministers agreed that the provision for SDT of developing countries is an integral part of the WTO agreements and that all such provisions "shall be reviewed with a view to strengthening them and making them more precise, effective and operational" (WTO, 2001a, paragraph 44).

It would seem that all these decisions have conceded, in large part, most of the demands of the DCs and LDCs, thereby going a long way towards making the next round of MTN into a "Development Round". There is a danger, however, that if the next round of MTN is deemed and sold as the "Development Round," expectations would be created about the negotiations solving all major development problems. Not only such expectations are wildly unrealistic and sure to be belied, there is the further danger that they might place undue pressure on the WTO to become yet another development institution. If this happens, it would be unfortunate. It would dilute the WTO mandate on matters of trade. Such dilution is already evident in the International Monetary Fund, which, instead of sticking to its mandate, is involving itself in poverty alleviation in which it has neither a mandate nor competence.

Moreover, some of the conceded demands of DCs are not in the interests of the DCs as a whole. For example, the duty-free, quota-free market access for LDCs could involve diversion

of trade from other DCs. Also, greater external market access by itself may not increase the exports of LDCs or their overall economic growth, if the constraints on growth of exports are internal or domestic. Although, it is natural for the trade ministers to focus on trade-related technical assistance and capacity building, the economic problems of LDCs and many DCs are broader developmental problems. Without underestimating the significant potential of the meaningful integration of LDCs into the global trading system for accelerating their development, it is fair to say, that unless domestic constraints of social and economic structure as well as governance are addressed, not only significant integration would be unlikely to come about but also the benefits from whatever integration that does come about would be modest. I have argued elsewhere (Srinivasan, 1998) that the DCs by demanding and receiving SDT, simply hurt themselves in three ways: once through the direct costs of enabling them to continue their import substitution strategies; a second time, by allowing the developed countries to get away with their own GATT-inconsistent barriers (i.e. in textiles) against imports from developing countries; and a third time by allowing the industrialized countries to keep higher than average tariffs on goods of export interest to developing countries.

4.6 WTO Rules and Dispute Settlement

The ministers agreed to negotiations aimed at improving disciplines under Article VI of GATT (on Antidumping Subsidies, and countervailing measure) and on disciplines and procedures under the existing WTO provisions applying to RTAs, taking into account the development aspects of RTAs.

5.0 Conclusions and Suggestions for Negotiating Positions of DCs in the Next Round of MTN

It is very encouraging that the ministers had the courage, not to let their pre-Doha divisions, to come in the way of launching a new round of MTN. The agreed agenda for the negotiations are comprehensive and complex, the time schedules and modalities (in some cases yet to be determined) of negotiation vary across the items in the agenda. The ministers have been particularly sensitive to the needs of DCs, particularly LDCs, and have made several firm commitments to assist them. Clearly the potential for the next round to conclude with an agreement that considerably liberalizes the world trading system and meaningfully integrating the DCs and LDCs into it is large. At the same time, there is also the danger that the negotiations might flounder on differences relating to the new areas that are tangentially related to trade, such as competition policy, investment and environment. It is to be hoped that the potential, and not the danger, is realized.

5.1 Competition Policy, Environment and Investment

Let me conclude with some suggestions for possible actions by, and negotiating positions of, the DCs. First, on the issues of competition policy, environment and investment: the DCs, with the help of the development institutions such as the UNCTAD, World Bank and the Regional Development Banks, academic research institutes on development, should undertake studies that clarify the (possibility conflicting) interests of DCs depending on their stage of development (including their institutional development), capacity to undertake and deliver possible commitments and the opportunity costs of doing so. In particular, the significance of trade-relatedness of multilateral disciplines on these issues must be examined without automatically assuming such relatedness to exist, and thereby asserting a place for these issues in the WTO.

5.2 Regional And Preferential Trade Agreements

Second, in the negotiations on clarifying the WTO provisions relating to PTAs in general, and RTAs in particular, the DCs should insist on the recognition that these provisions, GATT, have failed. Any proposed PTA or RTA was promptly required to be notified to the GATT for an examination by a working party of GATT contracting parties for its compatibility with Article XXIV of GATT relating to PTAs. It is known that the "WTO, does not have adequately functioning rules and procedures for examining RTAs. To date 220 RTAs have been notified to the GATT/WTO, and the Committee on Regional Trade Agreements…[had] 86 RTAs still under examination at the end of 2000... In addition to facing the heavy backlog of agreements under examination, the Committee has been unable to finalize any reports due to a lack of consensus among the WTO members, demonstrating that the unsatisfactory experience of the GATT process of examining RTAs continues to be the same in the WTO" (WTO 2001b, p.39, emphasis added). This unhappy experience is exemplified by the startling and not widely known fact that the Working Party examining the Rome Treaty that established the longest surviving RTA, namely the European Economic Community (EEC), never produced a report pronouncing the compatibility of EC with GATT's Article XXIV. In fact "no agreement was reached on the compatibility of the Treaty of Rome with Article XXIV, and the contracting parties agreed that because 'there were a number of matters on which there was not sufficient information…to complete the examination of the Rome Treaty…this examination and the discussion of the legal questions involved in it could not be usefully pursued at the present time.' The examination of the EEC was never taken up again." (WTO, 1995, p.11)

The DCs could propose, that instead of wasting time and effort on the impossible task of clarifying the failed provisions, Article XXIV be replaced by the simple requirement that any proposed PTA be notified to the WTO, and any trade preferences that its members grant to each

other be extended to all other members of the WTO on an MFN basis within a specified period (say 5 years) of coming into force of the PTA. This way, members of the WTO would be free to enter into a PTA and reap its non-trade-related benefits, if any, while limiting the potential damage to non-members of the PTA from the trade preferences that the members of the PTA grant to themselves.

5.3 Antidumping Measures and Safeguard Actions.

GATT/WTO rules allow safeguard actions to be taken to protect domestic producers against temporary surges in imports. However the actions are required to be non-discriminatory across exporters, and exporters have to be compensated for the loss they would suffer because of the safeguard action. In contrast, anti-dumping measures (ADMs) could be targeted against particular exporters (even individual exporting companies). Furthermore, the targeted exporters do not have to be compensated. It is no surprise that ADMs are the preferred means of administered protection everywhere. According to the WTO (2001b, p.31), there is a rising trend in the use of ADMs. DCs such as Brazil, India, Mexico and South Africa have begun to use ADMs. During 1 July 1999 to 30 June 2000, out of 1100 ADMs in force, as many as 490 were imposed by the EU and US. The third largest user of ADM was South Africa (104 in force), followed by India (91), Mexico (80), and Brazil 42. DCs that were subject to two or more ADMs during 1999-2000 included China, Korea, Taiwan, Indonesia, Thailand, India, Malaysia and Brazil. Given that ADMs are discriminatory, can be manipulated, and distort trade significantly, DCs, which are victims of ADMs imposed by developed countries, should resist imposing them themselves. In the negotiation on clarifying Article VI of GATT/WTO relating to anti-dumping, the DCs should propose its banning their use altogether.

5.4 TRIPS

It would be ideal if IP protection is taken out of WTO altogether. This is unlikely to happen. As such DCs could propose amendments to TRIPS allowing DCs with no or limited capacity to manufacture pharmaceuticals to use the compulsory licensing provision to license producers in other DCs who can produce and sell lifesaving drugs at prices the poor can afford to pay. They could also propose a "peace clause" precluding challenges to any DC's actions on the ground that they are not in conformity with TRIPS for a specified period.

5.5 WTO Decision Making Processes

With the approval in Doha by the ministers of the accession of China and Taipei, China at Doha, the total number of members of the WTO has reached 144. The probability that the traditional consensus process of GATT/WTO would lead to hold-ups by a determined member is not neglible in such a large body. However because power is very unequally distributed among members, the consensus procedure does give a veto power to even the weakest member. On the other hand, weaker members would be very cautious of exercising their veto powers on any issue for fear that the far more powerful members could retaliate on matters outside the mandate of the WTO. Nonetheless, the existence of the veto, albeit under severe self-imposed constraints on its exercise, is still reassuring the DCs who are the weaker members of the WTO. Although the consensus process of decision making is a long observed convention, rather than a formal requirement of the rules of GATT/WTO, it would be wise, and certainly in the interests of DCs, that the substance of the process be retained in some form, such as a qualified majority being enough to decide on most issues and consensus being required only for a few narrowly specified issues. In my view, it would be extremely unwise to create a IMF/World Bank style executive board for the WTO, with some permanent and others elected directors, each of whom has votes proportional to the share of world trade of countries he or she represents. The rationale for

weighted votes as in the IMF/World Bank does not apply to WTO. IMF/World Bank distribute resources which are very disproportionately contributed (or guaranteed) by its richer numbers, to its poorer members. As such, it is understandable that the richer members have a greater decision making power. The WTO does not have a resource redistributing role. It is a body that facilitates the observance of agreements into which its members have entered. And the rules that govern trade also derive from these agreements and WTO is again a facilitator in their observance. Since the power imbalances among WTO members are already reflected in the multilatered agreements that members have signed, there is no reason to reflect these imbalances once again in the executive of the WTO.

To conclude, the future set of negotiations that the ministers have launched in Doha would be tough, and call for hard decisions and compromises. But with adequate preparation particularly by the DCs, and handled with imagination and finesse, the end result could usher in an era in which national boundaries cease to become barriers to gainful exchange of goods, factor services, technology and ideas and to movement of natural persons. In such a world the DCs would rapidly graduate from the status being DCs by transforming their domestic social, institutional and economic infrastructure.

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