World Trade and Development Report 2003

The completion of the Uruguay Round with the setting up of WTO in 1995 marked an important turning point for the world economy. What started as a process of trade liberalization under GATT has come to embrace broader parameters of policy hitherto subject to decision-making at the national levels. The ministerial conferences of WTO evoke a lot of interest among the policy makers and the civil society given the critical effect of their decisions for development patterns.

The Uruguay Round also signified a new trend in the multilateral trade negotiations. In this Round, developing countries undertook far heavier commitments than developed countries. Developed countries not only have emerged as beneficiaries of the Round, they have been resistant to giving any market access that had been promised. In fact, signs of a protectionist backlash are visible. The effects of the asymmetries in the process of trade liberalization are clearly evident in the form of declining shares of world trade, terms of trade, growth and equity in the developing world. These trends do not bode well for the long-term sustainability of the world trading system.

The Doha Ministerial Conference attempted to restore the emphasis on development in the WTO. The progress since the Doha Ministerial, however, has been far from satisfactory. Almost all the deadlines proposed have been missed. On the other hand, pressure is mounting on developing countries to agree to give the negotiating mandate on the Singapore Issues at the Cancun Ministerial.

It is clear that the multilateral trade negotiations have failed to liberalize the trade and industrial policy regimes in the world’s richest and most developed countries that could have enabled equitable sharing of the fruits of globalization.

The World Trade and Development Report 2003 examines the trends and asymmetries in the emerging multilateral trading system from a development perspective. It also outlines an agenda for developing countries for the Cancun Ministerial and beyond to restore the development focus and - more importantly - popular confidence in the multilateral trading system.

The Report argues that the trade liberalization should be seen as a ‘means’ and not the ‘end by itself’. The ‘end’ beyond any doubt should be sustainable development in all parts of the world, with principles of efficiency and equity providing the basis.

RIS

RIS is an autonomous policy think-tank, based in New Delhi, specialized in trade and development issues. Its work programme focuses on multilateral trade negotiations, regional economic cooperation in Asia, new technologies and development, among other issues. The work of RIS is published in the form of research Reports, books, discussion papers and journals. For more information about RIS and its work programme, please visit its website: www.ris.org.in.
World Trade and Development Report 2003

Cancun and Beyond

An Executive Summary
World Trade and Development Report 2003

Cancun and Beyond

An Executive Summary
The World Trade and Development Report 2003 has been prepared by an RIS research team led by Dr Nagesh Kumar, Director-General, RIS. The core team comprised Dr Rajesh Mehta, Senior Fellow, RIS, and Dr Sachin Chaturvedi, Dr Ram Upendra Das and S.K. Mohanty, Fellows of RIS.

Key inputs have been provided by Dr. J. George, Senior Consultant and Rajesh Sehgal, Consultant. The Report Team benefited a great deal from perceptive comments and advice of Saikat Sinha-Roy.


Production of the Report was managed by Tish Kumar Malhotra with DTP assistance by Pradeep Kumar.
Contents

List of Boxes, Tables, and Figures ........................................................................................................ vii
Foreword by Shri K.C. Pant, Deputy Chairman, Planning Commission and Chairman RIS ..... xi
Preface .................................................................................................................................................. xii

Chapter 1: World Trading System and Developing Countries: Cancun and Beyond
An Executive Summary ......................................................................................................................... 1
1. Introduction ................................................................................................................................... 1
2. WTO, Rising Protectionism and Development:
   An Analysis of Trends and Their Implications ........................................................................... 3
3. Singapore Issues ........................................................................................................................ 4
4. Agreement on Agriculture ....................................................................................................... 5
5. Non-Agricultural Market Access ............................................................................................. 6
6. TRIPs, Public Health, Traditional Knowledge and
   Geographical Indicators .............................................................................................................. 6
7. Agreement on Sanitary and Phyto-Sanitary Measures ............................................................ 7
8. Dispute Settlement Understanding ......................................................................................... 8
9. Special and Differential Treatment (S&DT) for Developing Countries ................................. 8
10. Some Issues for a Developing Countries’ Position at Cancun and Beyond ...................... 8

Chapter 2: WTO, Rising Protectionism and Development ................................................. 19
Introduction ....................................................................................................................................... 19
Market Access in Agriculture, Industry and Services: Chasing a Mirage .......................... 20
Protectionist Industrial Policy and Strategic Trade Policy .................................................. 28
Implications of WTO Process for Development .................................................................... 30
Concluding Remarks and Policy Lessons ................................................................................ 38

Chapter 3: Singapore Issues: Investment, Competition Policy, ........................................ 43
Government Procurement and Trade Facilitation
Introduction ........................................................................................................................................ 43
Trade and Investment .................................................................................................................. 44
Trade and Competition Policy .................................................................................................... 50
Transparency in Government Procurement .............................................................................. 51
Trade Facilitation .......................................................................................................................... 52
Concluding Remarks .................................................................................................................... 53

Chapter 4: Agreement on Agriculture and Developing Countries .................................. 55
Introduction ....................................................................................................................................... 55
The Three Pillars of AoA ............................................................................................................. 56
Different Proposals for AoA ......................................................................................................... 62
Challenges before Developing Countries ................................................................................. 65
Key Points of Interests for Negotiations on Agriculture .......................................................... 68
<table>
<thead>
<tr>
<th>Chapter 5: Market Access for Non-Agriculture Sector</th>
<th>75</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction ..................................................</td>
<td>75</td>
</tr>
<tr>
<td>The Doha Mandate: A Comment .............................</td>
<td>75</td>
</tr>
<tr>
<td>Priorities for Developing Countries ....................</td>
<td>76</td>
</tr>
<tr>
<td>The Present Status of Negotiation on Modalities ....</td>
<td>79</td>
</tr>
<tr>
<td>Proposals ........................................................</td>
<td>79</td>
</tr>
<tr>
<td>Concluding Remarks ..........................................</td>
<td>85</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 6: TRIPs, Public Health, Traditional Knowledge and Geographical Indications</th>
<th>87</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction .........................................................................................................</td>
<td>87</td>
</tr>
<tr>
<td>TRIPs and Public Health .......................................................................................</td>
<td>88</td>
</tr>
<tr>
<td>Biodiversity and Traditional Knowledge ...........................................................</td>
<td>92</td>
</tr>
<tr>
<td>Geographical Indications .....................................................................................</td>
<td>94</td>
</tr>
<tr>
<td>Concluding Remarks and Policy Imperatives ......................................................</td>
<td>95</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 7: Environmental Requirements and Market Access for Developing Countries: Implementation Related Concerns</th>
<th>99</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction ..................................................................................................................................................</td>
<td>99</td>
</tr>
<tr>
<td>Impact on Trade of Developing Countries .................................................................................................</td>
<td>100</td>
</tr>
<tr>
<td>Outstanding Implementation Concerns .......................................................................................................</td>
<td>102</td>
</tr>
<tr>
<td>What is Implemented? ..................................................................................................................................</td>
<td>103</td>
</tr>
<tr>
<td>Concluding Remarks and Policy Imperatives ...............................................................................................</td>
<td>105</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 8: Issues in Disputes Settlement Understanding: Developing Countries Perspective</th>
<th>111</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction ..........................................................................................................................</td>
<td>111</td>
</tr>
<tr>
<td>Objectives of the DSU ..........................................................................................................</td>
<td>111</td>
</tr>
<tr>
<td>The DSU and Developing Countries – Some Trends ................................................................</td>
<td>112</td>
</tr>
<tr>
<td>Constraints Faced by Developing Countries in the Functioning of the DSU ........................</td>
<td>116</td>
</tr>
<tr>
<td>Facilitating Developing Countries Participation in DSU ...................................................</td>
<td>116</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 9: Issues in Special and Differential Treatment</th>
<th>119</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction ..........................................................................................................................</td>
<td>119</td>
</tr>
<tr>
<td>The Evolution of S&amp;DT in GATT and WTO ................</td>
<td>119</td>
</tr>
<tr>
<td>S&amp;DT Provision in Different WTO Agreements ...............</td>
<td>123</td>
</tr>
<tr>
<td>Concluding Remarks and the Future Agenda ........................</td>
<td>128</td>
</tr>
</tbody>
</table>
List of Boxes, Tables and Figures

Boxes
2.1: Poor Pays Higher: Asymmetries in Tariff Policy of the United States .......... 21
2.2: Rules of Origins Imposed by NAFTA and EU to Increase Local Content: Select Case Studies ..................................................... 31
2.3: Balance of Commitments: The Uruguay Round Scorecard .................................. 32
2.4: WTO, Trade Liberalization and Trade Growth: Lessons from Quantitative Studies ....................................................................... 33
2.5: Trade and Growth Relationship .................................................................................... 36
3.1: LDC Trade Ministers on Singapore Issues ................................................................. 47
4.1: Some of the Agricultural Market Access Provisions in the Uruguay Round Negotiations ........................................................................ 57
4.2: Who is Using Special Safeguards? ................................................................................ 58
4.3: Constituents of Green Box Support ........................................................................... 59
4.4: What About South-South Trade? .................................................................................. 63
4.5: Broad Contours of Food Security Box (FSB) and Development Box (DB) ......................................................................................... 65
4.6: The Red Cotton .................................................................................................................. 67
4.7: Transnational Corporation in Agriculture: Case of Coffee ...................................... 69
6.1: IPRs and the East Asian Miracle .................................................................................. 88
6.2: Campaign Funds Help Steer U.S. Stance on Drug Patents ..................................... 91
6.3: Urgency to Conserve Protection of Traditional Knowledge .................................. 93
7.1: Emerging Non-Tariff Barriers and Multiplicity of Standards .................................. 100
7.2: Export of “Egg Powder” from a Developing country to Developed Countries: Case of EU Enthusiam .............................................. 105
8.1: United States - Restrictions on Imports of Cotton and Man-made Fibre Underwear, Complaint by Costa Rica .......................................... 114
8.2: Indonesia - Certain Measures Affecting the Automobile Industry, complaints by the European Communities, Japan and the United States .................................................. 114
9.1: Leutwiler Report .............................................................................................................. 121
9.2: Proposal for a Framework Agreement on Special and Differential Treatment ......................................................................................... 122

Tables
2.1: Post-UR Tariffs in Quad Countries on Select Items of Exports from Developing Countries ................................................................. 20
2.2: Tariff Escalation in the “Quad” by 2-digit ISIC Industry .................................................. 22
2.3: Proportion of Tariff Lines Subject to Specific Tariff Rates in Industrialized Countries ......................................................................................... 22
2.4: Summary of Commitments under GATS made by Countries by Modes of Supply ......................................................................................... 25
2.5: Number and Percentage of Antidumping Initiations by Country Groups (1995 – 2001) ......................................................................................... 27
2.6: An Illustrative List of Investment Incentives Given by Industrialized Country Governments ................................................................. 28
2.7: Income Transfers Resulting from TRIPS in Select Countries ................................................................. 32
2.8: Region-wise Share in Global Exports in Percentage .................................................................................. 35
2.9: Income Inequality Changes in 73 Countries from 1960s to 1990s .......................................................... 39
4.1: Distribution of Domestic Support (Figures in percentage) ....................................................................... 61
4.2: Economically Active Population in Agriculture .................................................................................. 65
4.3: Productivity of Different Food Crops in Selected Countries .................................................................. 66
4.4: Annual Average Growth of Primary Commodity Prices of Direct Relevance to the LDCs ......................... 66
5.1: Tariff Reduction on Industrial Products by Select Developing Countries .................................................. 77
5.2: A Summary of Alternative Liberalization Proposals .................................................................................. 83
5.3: Bound and Applied Non-agricultural Tariffs before and after Application of Various Proposals ........... 82
7.1: Number of Contraventions cited for US Food and Drug Administration import detention from South Asia, August 2000-July 2001 .......................................................... 101
8.1: Comparison of Participation by Developed and Developing countries in the WTO Dispute Settlement Process up to 14 July, 2003

Figures
2.1: Movement in Terms of Trade of Developed and Developing Countries ................................................. 34
2.2: Median RCA of Dynamic Products ........................................................................................................... 35
2.3: Standard Deviation of RCA of Dynamic Products .................................................................................. 36
2.4: Change in Average Growth Rate of Real Per Capita Income in Developing Countries between 1980s and 1990s .................................................................................................................. 37
2.5: Economic Growth in Select Developing Countries between 1980s and 1990s ........................................... 37
5.1: NGMA Chairman Draft Formula for Tariff Reduction Proposed Tariff
\[ Y = \frac{(B\cdot a\cdot X)}{(B\cdot a + X)} \]
where B=2.0 and a= average tariff ........................................................................................................ 84
5.2: NGMA Chairman Draft Formula for Tariff Reduction Proposed Tariff
\[ Y = \frac{(B\cdot a\cdot X)}{(B\cdot a + X)} \]
where B = 1.5, and a = average tariff ........................................................................................................ 84
5.3: NGMA Chairman Draft Formula for Tariff Reduction
\[ Y = \frac{(B\cdot a\cdot X)}{(B\cdot a + X)} \]
where B=0.5, and a=average tariff ........................................................................................................ 84
5.4: NGMA Chairmand Draft Formula for Tariff Reduction Proposed Tariff
\[ Y = \frac{(B\cdot a\cdot X)}{(B\cdot a + X)} \]
where B = 1, and a = average tariff ........................................................................................................ 84
5.5: NGMA Chairman Draft Formula for Tariff Reduction Proposed Tariff
\[ Y = \frac{(B\cdot a\cdot X)}{(B\cdot a + X)} \]
where B = 0.25, a = average tariff ........................................................................................................ 84
FOREWORD

The various multilateral trade agreements under WTO have, over the years, come to exercise a great deal of influence on a number of policy issues that have conventionally been in the domain of decision-making at the national level. Therefore, the up-coming negotiations have the potential to affect even further the patterns of international development, especially in developing countries. While expansion of market access for goods and services produced by developing countries could expand the economic opportunities available to them, the negotiations could also threaten the livelihoods of millions of smaller and vulnerable farmers and of small-scale industries, hence adversely affecting employment, income distribution, and poverty reduction.

Therefore, the challenge before the developing country negotiators is to try to maximise their gains from market access, while minimising the potential adverse consequences. The challenge becomes particularly formidable in view of the fact that the WTO negotiations essentially represent power plays between unequal protagonists. A handful of developed countries generally exercise disproportionate influence on the outcomes of these negotiations, while the developing countries, which form the majority of the membership, have little effective say in the process.

To some extent, the lack of good research and analytical back-up from the developmental perspective on different aspects of the negotiations is also responsible for the inability of the developing countries to make their case forcefully. In this context, I believe that it is incumbent on countries and institutions, in the developing world which possess such research and analysis capability to assess the developmental consequences of different issues on the negotiating agenda and to make them available to a wider constituency.

I am glad that the RIS has taken the initiative to launch a series of World Trade and Development Reports on the WTO agenda. With its analysis, and policy implications, on the broader patterns of trade and development as well as select specific sectoral issues, this Report brought out on the eve of the Cancun Ministerial, I believe, will be found useful by the negotiators, policymakers, and civil society in developing countries.
Preface

This Report is the first in a series of new Reports launched by RIS to provide a developmental perspective on the agenda of multilateral trade negotiations. We propose to bring out the World Trade and Development Reports every two years to synchronize with the WTO Ministerial Conferences.

The launch of World Trade and Development Reports is a sequel to the growing activities of RIS on the WTO issues. As part of its work programme on WTO issues, RIS organized several conferences and seminars on the agenda for Cancun Ministerial over the past year. The first such Seminar was organized in July 2002 itself on the World Trading System and South Asia: Post-Doha Challenges. Subsequently, major Conferences and Seminars have been organized in November 2002, December 2002, March 2003, May 2003 and August 2003. RIS has also brought out several research monographs, discussion papers and policy briefs on the specific issues on the agenda of the multilateral trade negotiations, and have set up a special webpage on the Cancun Agenda at RIS website.

This Report represents the collective work and wisdom accumulated at RIS from the different conferences and seminars organized and reports and papers prepared. It examines the trends and asymmetries in the emerging multilateral trading system from a development perspective and outlines an agenda for developing countries for the Cancun Ministerial and beyond to restore the development focus in the multilateral trading system. We argue that trade liberalization should be seen as a means and not the end by itself.

In the preparation of this Report, we have benefited from the overall guidance of Chairman of the Governing Council of RIS, Hon’ble Shri K.C. Pant, Deputy Chairman, Planning Commission. Ambassador S.T. Devare, Vice-Chairman has been a source of inspiration and advice at different phases of its preparation.

This Report is the outcome of an excellent team work of the members of the RIS faculty. I would like to put on record my appreciation to all the members of the Report Team as listed elsewhere.

New Delhi  
27 August 2003  
(Nagesh Kumar)  
Director-General, RIS
World Trading System and Developing Countries: Agenda for Cancun and Beyond

An Executive Summary

I. Introduction

The completion of the Uruguay Round with the setting up of WTO in 1995 marked an important turning point for the world economy. What started as a process of trade liberalization under GATT has come to embrace broader parameters of policy hitherto subject to decision making at the national levels. The Ministerial Conferences of WTO generate a lot of interest among the policy makers and the civil society, given the importance of decisions taken for the development prospects of the member countries.

The express purpose and objective of the multilateral trade negotiations (MTNs) is to liberalize trade so that efficiency gains become available to the world economy at large. However, it has been recognized that there are unequal players in the game and developing countries are limited in their financial and physical capacities to undertake equal commitments. They need flexibilities to pursue their development policy objectives that have been available to developed countries in the early stages of their development. Hence, the concept of special and differential treatment (S&DT) to developing countries on a non-reciprocal basis was built into the process.

In the Uruguay Round (UR), developing countries undertook substantially higher commitments for trade liberalization compared to developed countries. Developed countries continued to impose
peak and high tariffs, specific duties and NTBs on imports from developing countries. A startling example is the fact that tariffs collected by the US on $2 billion worth of imports from Bangladesh are higher than those imposed on imports worth $30 billion from France.

Developing countries were lured into accepting these substantially higher commitments with the promises of additional market access in agriculture, textiles and clothing and movement of natural persons under services. The experience of the past seven-eight years suggests that this promised market access has been a mirage. Precious little has been delivered under any of these areas in real terms. The S&DT provisions were also diluted in the UR.

As a part of the strategic trade policy, developed countries are increasingly subsidizing industrial and innovative activity and are imposing policies akin to outlawed local content requirements. Resort to regionalism and contingent protection has also grown. These trends have adversely affected the place of developing countries in the world trade and their terms of trade. With the liberalization of trade and investment regime, growth rates of developing countries have declined in the 1990s compared to the previous decade and inequalities have increased. These trends do not bode well for the long-term sustainability of the world trading system.

The Doha Ministerial Conference attempted to restore the emphasis on development in the WTO. The Doha Declaration called for positive efforts to ensure developing countries benefiting from enhanced market access and balanced rules. In substantive terms the highlights of the Doha Agenda included a commitment in the area of agriculture to substantially improve market access, progress towards phasing-out of all forms of export subsidies and substantial reduction of trade distorting domestic support. It also accepted the primacy of public health concerns and offered to provide flexibility to poorer countries from the provisions of TRIPs Agreement to import cheaper generic medicines. In the area of market access for industrial products, commitments were made to eliminate or reduce peak tariffs, high tariffs, tariff escalation and NTBs, in particular, on products of export interest to developing countries. Commitments were also made to review the S&DT provisions for developing countries to make them more precise, effective and operational.

However, the progress since the Doha Ministerial has been far from satisfactory. Almost all the deadlines proposed, that were
important from the point of view of developing countries, have been missed. On the other hand, pressure is mounting on developing countries to agree to giving the negotiating mandate on the Singapore Issues at the Cancun Ministerial. The draft modalities for market access in agricultural as well non-agricultural goods that are being proposed by developed countries suggest that the principle of less-than-full-reciprocity as enshrined in the Doha Mandate is being undermined.

It is clear that the multilateral trade negotiations have failed to liberalize the trade and industrial policy regimes in the world’s richest and most developed countries that could have enabled equitable sharing of the fruits of globalization, as articulated in the preamble of the Marrakesh and Doha Declarations. The Cancun Conference provides an opportunity to the WTO membership to seek a redressal of the emerging asymmetries before they take on any new commitments.

Against this background, the *World Trade and Development Report 2003* examines the trends and asymmetries in the emerging multilateral trading system from a development perspective. It also outlines an agenda for developing countries for the Cancun Ministerial and beyond to restore the development focus and, more importantly, popular confidence in the multilateral trading system. In this respect, trade liberalization should be seen as a ‘means’ and not the ‘end by itself’. The ‘end’ beyond any doubt should be sustainable development in all parts of the world, with principles of efficiency and equity providing the basis.

The substantive contents of the Report are organized in eight chapters. Chapter 2 examines the broad trends in the protectionism in the developed world and their implications for development. The subsequent chapters deal with the select important sectoral issues from a development perspective: Chapter 3 deals with the Singapore Issues. Chapter 4 deals with the issues concerning the Agreement on Agriculture. Chapter 5 covers Market Access in Non-Agriculture goods. Chapter 6 deals with TRIPs. Chapter 7 deals with the SPS Agreement and the implementation issues concerning it. Chapter 8 covers the issues and concerns raised by the Dispute Settlement Understanding Rules for developing countries. Chapter 9 summarizes the evolution of the S&DT provisions and highlights the concerns with the provisions.
The rest of this chapter summarizes the highlights of the individual chapters and puts together the key policy recommendations made in these chapters for the governments and negotiators of developing countries for consideration at the Cancun Ministerial and beyond to evolve a multilateral trading system more responsive to their developmental needs.

2. WTO, Rising Protectionism and Development: An Analysis of Trends and Their Implications

The emerging WTO regime has important implications for national development and evolution of trade, investment and technology policies of the developing countries. The UR also placed substantial obligations on developing countries with respect to the liberalization of trade and their policy regimes with respect to intellectual property rights, investments, and trade in services. Developing countries undertook commitments to expand tariff bindings to cover 61 per cent of their imports compared to 13 per cent earlier and have offered $15 billion worth of concessions by way of reducing their trade-weighted average bound tariff on imports from industrialized countries by 28 per cent.

Developing countries were tempted to accept these substantial commitments by the promise of additional market access to them by developed countries through liberalization of agricultural trade, textiles and clothing and movement of natural persons. The gains from the UR proposals of liberalization in these areas were estimated to the tune of US$ 213 to US$ 510 billion-a-year rise in world income with developing countries benefiting to the tune of $86 to $122 billion. Contrary to these claims, it has now been empirically shown that much deeper commitments have been undertaken by developing countries in the UR and the mercantilist balance resulting from trade liberalization has been in favour of developed countries. The UR Agreements, such as TRIPs and TRIMs, are leading to significant income transfers from developing countries besides reducing the policy space for development. The S&DT provisions have been considerably diluted and reduced to just longer transitions for implementation.

The developed countries while preaching the virtues of free trade to developing countries have been resistant to bringing down peak tariffs, high specific duties, and tariff escalation that affect imports
from developing countries. The market access commitments in textiles and clothing have been backloaded and only about 20 per cent of imports under specific quota restrictions have been liberalized in the seven years of implementation till 2002. The agriculture trade liberalization in developed countries has been undermined by dirty tariffification. The average applied tariff rates applicable to agricultural products compared to those on industrial goods have been higher by 641 per cent in Japan, by 353 per cent in the EU, and by 100 per cent in the US.

Despite the promise of improved market access in the services of interest to developing countries, very few commitments have been made by developed countries in Mode 4. Furthermore, almost all these commitments are subject to limitations, such as economic needs test that usually render them ineffective. New barriers to movement of natural persons are being evolved in different parts of the world, such as legislations outlawing business process outsourcing. Studies have found staggering welfare losses for the world economy from the protected markets for labour. Even a limited liberalization of labour markets covering just 3 per cent of work force has the potential to generate welfare gains of US$ 156 billion per year, according to recent studies.

There has been continued resort to quotas and other NTBs. As many as 30 per cent tariff lines in basic metal industries in the US (and 34 per cent in Japan), for instance, are subject to core NTBs. There has been a proliferation of NTBs in the form of environmental and food safety standards much higher than the internationally agreed norms. There has been increased resort to contingent protection against developing countries. There is a proliferation of regional and bilateral free trade arrangements in the developed world that are diverting trade and investments away from developing countries.

There seems to be a protectionist backlash in the developed countries inspired from the strategic trade policy aiming to strengthen the competitiveness of their national champions at the cost of sustainable and equitable growth of world trade. While heavy subsidization of developed country agriculture has become well known from the ongoing debates in the context of WTO’s Agreement on Agriculture, the continued and rising subsidization of industrial sector remains virtually unnoticed. Not only have developed countries
exploited the grey areas available in the multilateral rules, they have included exceptions for the kind of policies and practices that they wish to make use of such as R&D subsidies and huge financial incentives for investment that are as distorting as other actionable subsidies. The US has been giving US$ 4 billion in subsidies to the exporting enterprises under the Foreign Sales Corporations (FSC). These subsidies have been deemed illegal by the WTO’s Panel on a complaint brought by the EU. These are now being replaced by even bigger tax cuts worth US$ 120 billion over the ten years for companies having manufacturing bases in the US.

The agricultural subsidies too are growing despite the promises of reduction made in the Uruguay Round and the Doha Declaration. The US has announced the most generous farm subsidy package in history in its Farm Bill 2002. Arguments like multifunctionality are made to justify ever increasing agricultural subsidies. Even export subsidies (called export credits in the US) are not reduced. While trade related performance requirements such as local content regulations have been phased out under TRIMs Agreement, developed countries extensively resort to policies like screw driver regulations, rules of origin, buy local regulations that are akin to local content regulations.

The process is not leading to growth of world trade either. Quantitative studies do not find the process of GATT/WTO to be leading to either trade liberalization or growth of trade. The developing countries, with the exception of China, have not been able to increase their share in world trade. The terms of trade of developing countries have deteriorated. As a result of these trends, the growth rates in a large number of countries in 1990s has been lower than in the 1980s and inequalities have risen in a large number of developing and transition economies.

This situation is in sharp contrast to the avowed goals of the WTO as set out in the preamble to the Marrakesh Agreement recognizing the ‘need for positive efforts designed to ensure that developing countries... secure a share in the growth in international trade commensurate with the needs of their economic development... mutually advantageous arrangement directed to the substantial reduction of tariffs and other barriers to trade and to the discriminating treatment in international trade’. 
3. Singapore Issues
The effort of developed countries in WTO has been towards expansion of negotiating agenda since its inception. At the first ever Ministerial Conference of WTO, held in Singapore in 1996, itself they demanded the negotiating mandate of WTO be broadened to include trade and investment, trade and competition policy, government procurement, trade facilitation, labour standards and environmental standards. Having undertaken heavy commitments in the just concluded Uruguay Round, developing countries resisted these demands. As a part of the compromise arrived, Working Groups were set up at the WTO on investment, competition policy, and transparency in government procurement to conduct study processes without any negotiating mandate. The Council for Trade in Goods was also directed by the Ministerial Conference to ‘undertake exploratory and analytical work …. on the simplification of trade procedures in order to assess the scope for WTO rules in this area’. Developing countries managed to put labour standards and environment off the WTO agenda for the time being.

These so-called Singapore issues, viz. investment, competition policy, government procurement, and trade facilitation, were the most contentious ones at the Doha Ministerial. Even though the Working Groups set up on these issues by WTO at the Singapore Ministerial have not completed their work, the developed countries wanted to launch negotiations right away. Developing countries resisted a negotiating mandate and wanted the Working Groups to complete their assigned work prior to negotiations. After much deliberations, developing countries succeeded in postponing the decision on the launch of negotiations on these issues subject to an ‘explicit consensus’ on the modalities of negotiations.

Although the four issues are unrelated and raise different types of concerns, they are being bundled together. However, there are similarities in the sense that the North- South divide is quite apparent in each case. Secondly, in most cases there is a wide divergence of views even among the developed countries themselves. Debates at the Working Groups on the subject over the past six-seven years have failed to produce a consensus and establish conclusively the need for binding rules.

Studies find a critical role of host governments’ interventions such as selective policies and performance requirements in
determining the developmental impact of FDI. Evidence on extensive use of such policies by developed countries in different stages of development has also been documented. Given the high opportunity cost of the policy flexibility for the process of development and no reciprocity or gains even in the form of higher inflows of FDI, the most prudent option for developing countries would be to resist a negotiating mandate on investment at Cancun. A compromise solution could be to negotiate a multilateral treaty on investment outside the WTO such as in the framework of UN.

Given the little experience that developing countries have in dealing with competition policy even at the national level, it is premature to consider a multilateral framework. There is also divergence of views even among developed countries on the subject especially with some countries seeking only a non-binding voluntary framework for cooperation among competition authorities. Developing countries also have genuine development concerns in implementing competition policies.

Transparency in government procurement seems to be an intermediate step in evolving a framework providing national treatment. Binding rules on the subject may thus take away valuable development policy space from governments. Similarly, there is hardly any rationale for binding rules in the case of trade facilitation either. Technical assistance and autonomous policy decisions should be preferred over binding rules which will put heavy burden of compliance on developing countries.

4. Agreement on Agriculture
The Doha Ministerial focused on the development dimension of agriculture by bringing on board the issues of food security and rural development. It also emphasized the need to take up the non-trade concerns in the negotiations as provided for in the WTO Agreement on Agriculture (AoA). The emphasis was also on phasing out of domestic support to agriculture and export subsidies in the developed countries. The Doha Declaration expressed concerns about the possible negative effects of reforms on the LDCs and net food importing developing countries. S&DT was considered to be an integral part of all elements of agricultural negotiations.

In the post-Uruguay Round phase, developing countries have provided most of market access in agriculture. On the other hand,
expanded access to markets of industrialized countries promised to developing countries under the AoA has been very slow in materializing. There have been tendencies to either under-implement these commitments or to implement in a manner that makes the fruits of liberalization unavailable to the developing countries. Developed countries continue to provide significant domestic support to agricultural production along with substantial of export subsidies. The agricultural subsidies by OECD countries have increased from $266 billion during 1997-99 to US $311 billion which added up to as much as 31 per cent of the gross value of agricultural output in these countries. In addition, the industrialized countries have increasingly used provisions of anti-dumping and other restrictive measures to deny the benefits of trade liberalization in agriculture to their trade partners, especially in the developing world.

The proposed changes in the AoA need to be attempted in a manner that ensures equitable distribution of gains. The US-EU proposal of August 13, 2003, however, does not go far in this direction. Prior to this, the Harbinson’s proposals in the form of an ‘Overview Paper’ were presented on December 18, 2002 (HT1) for possible negotiation. However, based on the feedback and responses from the member countries two more drafts, viz. Harbinson-2 (HT2) and Harbinson-3 (HT3) were presented in February and March 2003. All these deliberations intend to lay down the modalities in agricultural negotiations. The finalization of the modalities is an important step towards agricultural negotiations themselves as issues left out for consideration during finalization of modalities cannot be retrieved in the later stage of agricultural negotiations.

5. Non-Agricultural Market Access
A major concern of developing countries with the process of trade liberalization for non-agricultural products in the Uruguay Round has been the persistence of high and peak tariffs, specific duties, tariff escalation and non-tariff barriers in developed countries on goods their export interest. It has also been shown that process of trade liberalization has been asymmetric with developing countries taking deeper commitments compared to developed countries. The Doha Ministerial Conference sought to address this asymmetry by proposing negotiations on the market access for non-agricultural goods on the
basis of the modalities to be agreed by May 2003 to eliminate barriers to market access in particular on products of export interest to developing countries. Subsequently, a Negotiating Group on Market Access (NGMA) has been set up at the WTO and different countries have presented proposals on modalities for trade liberalization. Following these proposals, the Chairman of NGMA has proposed draft modalities in May 2003 and on 19 August 2003. Broadly the approach to modalities proposed by developed countries is to undermine the concept of less-than-full-reciprocity and seeking sharp reduction in tariff rates in developing countries using non-linear formulae.

Market Access for the non-agricultural products thus has been one of the principal agenda items in the WTO negotiations in post-Doha phase. The basic mandate in the Doha Declaration under the category ‘tariff and trade of industrial products’ is both broad and comprehensive. Developing countries should concentrate on reduction in peak tariffs and tariff escalations. They should also demand that all the countries should define their binding rates in the form of ad valorem rates, because it has been noticed that ad valorem equivalence of non-ad valorem duties are very high.

While discussing tariff elimination the implications of revenue losses for developing countries need to be kept in mind, besides the competition to domestic industry. The revenue losses could affect the developmental effort in developing countries that is highly dependent on public investments. As endorsed in the Doha mandate, the principle of “less-than-full- reciprocity” needs to be respected.

6. TRIPs, Public Health, Traditional Knowledge and Geographical Indicators
The international environment with respect to intellectual property has changed considerably with the conclusion of the TRIPs Agreement in the Uruguay Round. The TRIPs Agreement accommodates the demands of the industrialized countries for higher international standards of protection by mandating the extension of patentability to virtually all fields of technology recognized in developed country patent systems, by prolonging the patent protection for a uniform term of twenty years, and by providing legal recognition of the patentee’s exclusive rights to import the patented products.
An Executive Summary

Besides its wide-ranging adverse effects on the technological capability, balance of payments and economic growth of developing countries, the implementation of TRIPs has raised three sets of negotiating concerns in recent times. Firstly, its impact on prices and availability of essential medicines in the context of HIV AIDS drugs controversy in South Africa. It led the Doha Ministerial Conference of WTO to adopt a Declaration on TRIPs and Public Health, recognizing the supremacy of public health concerns over IPRs and allowing the members some flexibility. However, the US under pressure from its pharma industry is dragging feet from signing an Agreement based on the 16 December 2002 draft text.

Secondly, TRIPs Agreement created an anomalous situation where the knowledge created from traditional and communities innovation systems is left free for commercial exploitation without any compensation as against intellectual property resulting from formal innovation systems being protected from unauthorized commercial exploitation. This resulted in private enterprises obtaining patents on the traditional knowledge of particular communities/countries without the prior informed consent of the owners of knowledge. Developing countries which happen to be rich in genetic resources and traditional knowledge, have been seeking a redressal of this asymmetry. In recognition of this concern the Doha Ministerial instructed the Council for TRIPs to examine ‘the relationship between the TRIPs Agreement and the convention on Biological Diversity, the protection of traditional knowledge and folklore’. The TRIPs Agreement needs to be amended to provide a framework for prior informed consent of the holders of traditional knowledge or biological resources and a system of benefit sharing.

Finally, the provision in the TRIPs Agreement for additional protection of geographical indications (GI) for wines and spirits under Article 23 has also created an anomalous situation as geographical indications for other products are not protected. The EU, Switzerland and India, among many others, have sought the extension of protection of GI for other products. The Doha Ministerial agreed to address the issue of extension of the protection of GI to products other than wines and spirits in the Council for TRIPs as an outstanding Implementation Issue. This needs to be addressed.
7. Agreement on Sanitary and Phyto-Sanitary Measures

One important concern of the South in recent years has been the stringent food safety standards and other environmental standards imposed by the North. The WTO Agreement on SPS (Sanitary and Phytosanitary Measures) aims to ensure that these standards and regulations are not used for protectionist purposes and do not cause adverse impacts on trade. However, there is considerable discretion available to importing countries to impose their own rules regarding these standards and other regulations, such as inspection of imported products, specific treatment or processing of products, fixing of minimum allowable levels of pesticide residue, labelling and packaging requirements, good manufacturing practices, etc. provided there is a scientific basis. There is evidence that this flexibility has been exploited by using very minute risk assessments sometimes in a non-transparent manner. The standards are constantly changing and vary across countries even between the partners in a regional trading bloc leading to substantial costs of compliance. The promised technical assistance is often not adequate or arrives too late.

The Doha Ministerial Declaration while recognizing the right of countries to take measures for the protection of human, animal or plant life or health, has argued against their application ‘in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade. In addition, the Ministerial Conference in its Decisions on Implementation-related Issues and Concerns adopted at Doha under Para 12 of the Declaration, included six points concerning SPS Agreement. However, the progress has been very unsatisfactory.

8. Dispute Settlement Understanding

The Dispute Settlement Understanding (DSU) is one of the most important developments in the WTO. Although the conflict resolution provision was provided in the GATT, the DSU introduced number of other effective provisions for the setting up of trade disputes. The DSU provides for panels to examine complaints from Member countries, appellate review of panel decisions, and the ability to render binding decisions. The DSU
An Executive Summary

mechanism has gained credibility among the Members Countries. However, the participation of developing countries and LDCs in the DSU has not improved due to some existing lacunae in the current dispute settlement procedure. For example, the lack of effective sanction in DSU System, owing to which the complaining party is largely left alone in its struggle against violator. Consequently countries that are economically and politically weak stand at a relatively disadvantageous position.

The DSU is a principal tool which could potentially help developing countries protect and promote their interests. Reforms are needed to improve its effectiveness for developing countries.

9. Special and Differential Treatment (S&DT) for Developing Countries

S&DT has been an integral part of the multilateral trading system right from the 1950s in recognition of the inherent inequality between the players. Despite the strong conceptual basis for S&DT stemming from the infant industry argument, the Uruguay Round Agreements have tended to dilute them and reduced them into best endeavour clauses. Developing countries have expressed concern about the non-mandatory nature of some of the important provisions, lack of specificity and also over the rigid nature of some provisions that fail to take into account the specific needs of these countries. They have demanded a framework agreement to make these provisions binding. The developed countries have been resistant to operationalize the S&DT provisions beyond a longer transition period.

Although the Doha Ministerial agreed to review the S&DT provisions to make them meet demand of developing countries, the progress has been unsatisfactory. All the proposed deadlines for reviews have been missed. The case for S&DT, that may foster growth and development in developing countries allowing policy flexibility to pursue development policy objectives, today is stronger than in the 1960s. In the age of global economic interdependence, rapid development of developing countries eventually supports growth in developed world by creating demand for their goods and services. Hence, WTO needs to pay attention to implement the Doha Mandate on S&DT in the letter and spirit.
10. Some Issues for a Developing Countries’ Position at Cancun and Beyond

The Report outlines a number of recommendations for developing country position at the Cancun Ministerial and beyond on specific issues. In what follows, some major recommendations are recapitulated.

10.1. Systemic Reforms

a) An Independent Commission to Make a Development Review of the Multilateral Trading System

Given the key importance of the emerging world trading system for the development and sustainability of the world economy, it is important to pause and undertake a thorough review of the type of asymmetries that have crept in; as outlined in the Report. The Cancun Conference provides an opportunity to the WTO membership to seek a redressal of the emerging asymmetries in the world trading system before moving forward to expand its agenda. The developing countries should call for appointment of an Independent Commission to review the developmental consequences of Uruguay and Doha Rounds before moving forward. This Commission should identify asymmetries that have crept into the system and recommend directions of reform of the priorities, procedures and rules to giving a real meaning to development on the trade agenda.

The Director-General of WTO Secretariat has recently appointed a consultative group to advise him on the world trading system. However, a high powered Independent Commission appointed by the Ministerial Conference will have greater credibility, influence and authority for action and suggesting a thorough reform of the system.

b) Reform of Decision-making Process

The decision-making process in WTO clearly needs a reform for its long-term sustainability. The general perception is that the decision-making process in WTO is non-transparent, and not inclusive. The will of a handful of powerful countries, viz. Quad countries, is imposed on the entire membership in the name of ‘Consensus’. In an organization whose membership comprises of countries at varying levels of development, their concerns and interests are expected to be different. Obviously these differences limit the possibilities of arriving at a consensus. In order to arrive at the ‘consensus’ sometimes
powerful members push relatively poorer members to accept their position by several means including diplomacy and even arm-twisting.

Members have also complained of the lack of participation in decision-making process where informal consultations between few powerful players have far greater influence on WTO decision-making than the formal processes.

A more democratic system of decision-making based on secret voting and decision based on majority would serve the organization better and make it more participatory. All negotiating texts and drafts should be introduced in open ended meetings and late night meetings and marathon sessions should be avoided. No decisions should be imposed on members without wide consultations and discussions. Chairpersons drafts should be representative of all the interventions. The Ministers may consider changing the statute to bring about this profound change in the decision-making process in the interest of its long-term survival.

c) Broadbased and Representative Secretariat

Given the large stakes of different players in the multilateral trading system, vested interests begin to operate. In this context the role of the Secretariat becomes critical. It has some times been observed that Secretariat is not discharging its role with the kind of objectivity that it should be. As of now the WTO Secretariat is highly dominated by the developed countries. More than 80 per cent of the staff members of the Secretariat came from the OECD countries with over 61 per cent coming from just six developed countries, viz. France, the UK, the US, and Canada, Spain and Switzerland. There is hardly any representation from a large number of developing countries. It is important that the WTO Secretariat has a proportionate representation of developed and developing countries. A more representative Secretariat will be able to discharge its mandate much more objectively.

d) A WTO Watch Dog of Developing Countries

Developing countries, individually, lack the capacity – physical, analytical and financial – to identify and pursue the cases of non-implementation or unilateral policy decisions concerning trade policy on the part of developed countries and seek their redressal under the existing framework. The recent case of the trade distorting export
subsidy valued at $4 billion under Foreign Sales Corporations (FSC) by the US government which was successfully brought by the EU to the DSB is a case in point. Needless to mention that no developing country possesses the capability to do the same.

There is a need for setting up a WTO Watchdog by developing countries. In the interest of building a fair and just world trading system, developed countries should create a trust fund for maintaining the WTO Watchdog. This body should be equipped with the necessary professional, analytical, legal and financial expertise to scrutinize the implementation of commitments by developed countries and where appropriate to bring them to DSB on behalf of developing countries.

e) Strengthening the Provision of Technical Assistance

Developing country implementation of their commitments often implies major changes in their legal and institutional framework and involves substantial technical and financial resources that may be beyond the capability of many countries. In this regard it is often being felt that the WTO should provide major technical and financial assistance not only to least developed countries but also to the developing countries for implementation of their commitments in an effective manner.

This would require that the WTO’s Trust Fund for Technical Assistance needs to be augmented. In this regard the three Geneva based agencies (ITC, UNCTAD and WTO) have endorsed the launching of the new phase of the Joint Integrated Technical Assistance Programme (JITAP). JITAP seeks to build capacity to understand the emerging trade issues and help comply with them, and also to derive benefit from it. However, the proposed support of $ 12.6 million dollar, over a period of four years is rather modest.

The Doha Development Agenda Global Trust Fund was created following the WTO Ministerial Conference in Doha, in November 2001. In December 2002, the General Council has approved a budget for this fund.

The G-8 countries should augment their contributions to these Funds.

f) Mobilising Support for ‘Trilateral Cooperation’

It is often being observed that though different developing countries which are at different stages of economic development are better
placed to help and cooperate with fellow developing countries than any other countries from developed part of the world. However, owing to lack of resources the potential for South-South cooperation has remained untapped.

In this regard, adopting a different strategy of trilateral cooperation may help to a great extent. In this a multilateral agency or a donor agency from North may step in to support technical assistance among developing countries.

10.2. Substantive Issues

**a) Emphasis on Outstanding Implementation Issues rather than expansion of negotiating agenda**

Developing countries should firmly seek full implementation of all outstanding implementation issues before a negotiating mandate on any other issue could even be discussed. Any organization that cannot even handle implementation of the decisions already taken is obviously not justified in asking for more responsibilities.

**b) Proactive Initiatives by Developing Countries**

*A Framework Agreement on Movement of Natural Persons:* Given the reluctance of developed countries to make meaningful commitments on the movement of natural persons, developing countries could seek a framework agreement to provide for movement of natural persons.

*A Framework Agreement on S&DT:* In order to provide a legally binding framework to various S&DT provisions, there is need to negotiate a Framework Agreement, as demanded by developing countries at Doha. Such an Agreement would provide for the notifications requirements and inclusion of commitments in country schedules and for dispute settlement. The framework Agreement should clearly lay out an objectively defined economic criteria for S&DT provisions rather than just longer transition periods. For instance, an objectively defined criteria could be evolved to provide a greater flexibility to countries having a greater proportion of population dependent on agriculture in AoA.

*A Framework Agreement on Transfer of Technology:* At the request of developing countries a Working Group on Transfer of Technology has been established at WTO. They should now seek a Framework Agreement on Transfer of Technology that would provide
for policies and interventions to be taken by governments to facilitate transfer of technology. These could include performance requirements on foreign enterprises, among other policies.

**Phase-out of R&D Subsidies and Investment Incentives:** The extensive financial subsidies provided by developed countries to their enterprises should come under an international discipline as they are no less distorting than those that have been phased out.

c) **No Negotiating Mandate on Singapore Issues**
There is very little rationale to support a negotiating mandate on any of the Singapore Issues at the Fifth Ministerial Conference. There does not seem to be an emerging consensus even among the developed countries. Several groups of developing countries such as the least developing countries, the African Union, and the African, Caribbean and Pacific (ACP) countries, at the Meetings of their Trade Ministers have expressed opposition to launch of negotiations on these issues. A group of 13 African countries have even suggested draft Ministerial Text on the subject which should be endorsed. However, the study processes could continue. This seems to be the best course of action as of now for developing countries at large.

d) **Issues for Negotiations on Agriculture**
Some key issues for Negotiations on Agriculture are as follows:

**Economically Active Population Dependent on Agriculture (EAPA) as a Criteria:** In 50 developing countries more than half of the population is critically dependent on agriculture for livelihood. Countries with such high dependence on agriculture for livelihood should get a special dispensation under S&DT provisions in agriculture.

**Food security:** As large number of developing countries have an unstable food security system, a food security box is, therefore, of extreme importance. A more pragmatic approach has to be adopted from the point of view of integrating developing and least developed countries in the international trade regime. In this context, the mere flexibility in terms of a time frame alone under the S&DT may not suffice as against the continuously expanding Green Box.

**Facilitating developed country market access for developing countries:** The experience of the last six years of implementation of AoA suggests that the developed country policies of high domestic
support, coupled with high tariffs, tariff peaks, tariff escalation and a plethora of non-tariff barriers, restrict market access of developing country agricultural exports. It is important that an appropriate formula with a cap on tariff binding is evolved to effect reduction in all tariff levels across commodity lines.

**Tariff Rationalisation:** For tariff reduction, the principle of higher reduction rates for higher tariffs may be applied, which would cover a large number of products of the developed countries. Further, a ceiling on tariff peaks of developed countries is also a necessity. Developing countries should demand for the conversion of specific tariff to ad valorem tariff for transparency and administration of tariff.

**Tariff Rate Quotas (TRQs):** It is very unlikely that the TRQ will be abolished. The interest of developing countries would be to have increased volume of the TRQs. Such enhanced TRQs should be available to Member countries on the basis of non-preferential terms and also at the MFN rate. The modalities regarding administration of the tariff rate quotas also need to be ascertained and evolved to the satisfaction of all members.

**Special Safeguard Measure for the SP products:** In the First Draft of Modalities for Future Consideration (HT2), it is distinctly mentioned that developing countries shall have flexibility to apply SSM in case of Special Products. In the HT3, it is mentioned that the issue “… currently subject to technical work ….”. It is developing country position that the proposal made in the HT2 should be made as the basis for negotiation. The developing countries may also negotiate for applying direct import control measures in respect of the products from the developed countries maintaining export subsidy and/or domestic support.

**Domestic Support:** The Green and Blue Box subsides of developed countries have to be subject to reduction commitments, aim at a complete elimination. Such reduction may be effected uniformly over a period of five years.

**Export Subsidies:** The AoA text enables those countries with export subsidies in the base year period (1986-90) to continue with this support. On the other hand, it does not allow any country to provide export subsidies afresh which did not have the provision of export subsidy during the base year nor notified about such provisions for the base year in the country schedule. The regime, therefore, is
an extremely uneven in the area of export promotion measures. It is important that the developing countries should re-negotiate this provision and emphasize a progressive elimination of export subsidies.

**Expansion of the Sectoral Product Coverage:** In the AoA, many primary and agricultural products are not included under the broad sector of agriculture. These products are otherwise eligible for being a part of the agricultural sector, but they are now in the manufacturing sector. Since negotiations in the manufacturing sector are different from that of agriculture, many countries are facing difficulties in gaining market access in these products. A large number of countries from Asia, Africa and Latin America are the victims of this arrangement in the trade regime. In this Round, products like shrimp, rubber, etc. should be included in the agricultural sector, so for making the sector comprehensive for negotiation.

**Linking up the three pillars:** It is important that the three pillars of AoA, viz. market access, domestic support and export subsidy should have a strong linkage. There has to be a correlation between the disciplines to be adopted on domestic support and agenda for other streamlining measures. The market access commitments which AoA seeks to secure would be viable only if domestic support reduction commitments are ambitious. The continuous effort to enlarge the scope of Green and Blue Boxes is a major concern for the developing countries. Moreover, some of the domestic support measures under Green Box are as trade distorting as the tariffs. In this regard, a clear definition of various components of Green Box which are “non-or minimally trade distorting” is needed.

**Special and Differential (S&D) Treatment:** Under the provision of S&D, developing countries especially those with more than half of population dependent on agriculture (EAPA) should ask for more liberal terms for reduction commitments and also for a more prolonged implementation period. There should be a downward adjustment of the reduction commitment schedule in the HT3 to accommodate the development requirements of developing countries.

e) **Non-Agricultural Market Access**

Key consideration in evolving the modalities for market access in industrial goods should be as follows.

**Addressing the Peak Tariffs, Specific Duties, and Tariff Escalation in Developed Countries:** As per the Doha mandate, the
focus of trade liberalization should be on elimination of peak tariffs, high specific duties and tariff escalation on products of export interest to developing countries. A reduction based on differential linear cut or a non-linear formula with significantly different coefficient values for developed and developing countries taking into account of the average base rates should be applied. Developing countries should not accept tariff liberalization on the basis of a Swiss formula.

Preserving the Less-than-full-reciprocity in the Modalities for Tariff Reduction: The Doha mandate promises less-than-full-reciprocity to developing countries. This principle should be preserved in any modality that is agreed to by developing countries.

Retaining the Flexibility to Apply Tariffs in Sector-by-sector / zero-for-x approach: In order to protect small and medium enterprises, developing countries should seek flexibility to apply tariffs in zero-for-zero modality by proposing zero-for-x where x could vary across countries depending upon the level of development.

Addressing the NTBs in Developed Countries: Major barriers for market access for many products are the NTBs in developed countries. Hence, negotiations should evolve modalities to bring down the NTBs as well.

Flexibility to keep Tariff Lines Unbound for Sensitive Products: Developing countries may have concerns about tariff bindings in sensitive products due to small scale enterprises or other reasons. Hence, some flexibility to keep 15-20 per cent tariff lines unbound should be available to developing countries.

Moderating the Effects of Revenue Losses: Besides protection, tariffs are also important sources of revenue in developing countries. A drastic reduction in tariffs will have implications for public finances and fiscal situation in developing countries. Provision should be made for financial assistance to developing countries.

f) TRIPS
An International Framework for Protection of Traditional Knowledge under TRIPs Agreement: The member states should establish *sui generis* systems for protection of traditional knowledge and genetic resources. The protection of TK at national levels will not be complete until there is an international framework for use of TK outside the country of origin. The framework should establish a procedure that requires patent or other IPR applications to disclose
the source or origin of TK or genetic resource used and enclose a certificate from a competent authority in the source country of prior informed consent and benefit sharing conditions. This would require an amendment in the TRIPs Agreement.

**Delivering the Doha Promise on Public Health:** The developed countries, particularly the US, should accept the draft Agreement on TRIPs and Public Health of 16 December 2002. This would be of great symbolic value for developing and least developed countries who are feeling let down on the commitment made at Doha Ministerial.

**Granting Flexibility to Developing Countries in Implementing the Provisions of TRIPs on the basis of an Objective Criteria:** Most of the adverse effects concerning TRIPs on poor countries arise not because of IPR regimes per se but from the attempt to harmonize them across the countries at different levels of development. There is also a discussion going on whether TRIPs should fundamentally belong to WTO. However, the least that could be done in this connection is to allow flexibility to developing countries to implement the provisions of the Agreement as and when their level of development has reached a certain stage. This could be achieved if a consensus among the developed countries is built on the differential need of developing countries for IPR regime.

Apart from this, a possible revision of TRIPs could incorporate a provision that grants developing countries the flexibility to implement the TRIPs obligations until they reach a certain level of development defined in terms of some objective criteria, such as per capita income. One possibility in this respect is to adopt a threshold of US$ 1000 of per capita income as the Agreement on Subsidies and Countervailing Measures (SCM) adopted, as it would be easier to agree to, having been adopted in one of the WTO’s Agreements. This would bring in an element of graduation in the treatment of countries as the preferential treatment would cease as they cross the developmental threshold. Another possibility could be to shorten the term of product patents applicable to low income countries. This way the Agreement will have incorporated development dimension.

**Extending the Geographical Indications Coverage to Other Products:** Steps should be taken to expeditiously implement the extension of scope of protection of GIs beyond wines and spirits, which is an outstanding implementation issue from the Doha Ministerial.
Moratorium on Further Strengthening of IPR Regime: There is a tendency in some developed countries to treat provisions of TRIPs as the minimum standards and are constantly attempting to evolve stronger norms through unilateral or bilateral approaches. A consensus needs to be built on the need to put a moratorium on such approaches for the next couple of decades or so.

g) Agreement on SPS
Linking Implementation with Effective Technical Assistance: The SPS Agreement in WTO contains provisions for technical assistance to be provided by the importing countries to assist the exporters in their compliance with the new standards imposed by them. Furthermore, the SPS Agreement provides that ‘where substantial investments are required in order for an exporting developing country Member to fulfill the sanitary and phyto-sanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Members to maintain and expand its market access opportunities for the product involved’ (Art. 9.2).

However, available evidence suggests that promised technical assistance is not delivered in an adequate or timely manner. In this light, it may be useful to seek through reviews of the Agreements in the WTO, effective implementation of standards that are different from international norms, only after technical assistance has been provided.

Restricting the Discretion to Follow International Norms: Developing countries may consider seeking reviews of the Agreement on SPS at the WTO Committee on Sanitary and Phyto-sanitary Measures to reduce the discretion and flexibility available under the Agreement that is being misused; to ensure universal application of international standards; and to bring about greater transparency in the imposition of standards, good manufacturing practices and all other regulations. Countries wishing to adopt higher than international standards should undertake to financially compensate potentially affected developing countries.

Substantive S&DT Provisions: Like other WTO Agreements, S&DT in the case of SPS Agreement has also been reduced to a longer transition period for developing countries. However, the longer transition period provided under these Agreements is of hardly any
use because the importing enterprises start insisting on the new product standards due to high consumer consciousness for these standards. Therefore, the SDT has to be of a more substantive type. It could be, for instance, in the form of additional financing (along with technical assistance) to cover the costs of compliance by the developing country exports of the new standards.

**Enhancing the Scope of ‘Standards and Trade Development Facility’:** In light of the extremely vocal criticism from the developing countries about the health and environment related standards and the difficulties the developing countries are facing in meeting the disease and contaminant related standards for their food exports to richer countries’ markets, the WTO and the World Bank have launched a new fund called Standards and Trade Development Facility. The World Bank has proposed an initial US$ 300,000 to establish the new fund, and the WTO will allocate funding from the Doha Development Trust Fund to launch the Facility.

At present the facility only proposes to help developing countries for better implementing the food safety and plant and animal health measures in the area of sanitary and phytosanitary (SPS) regulations. The developing countries have been finding it difficult to implement stringent standards being implemented by the developed countries. However, one of the factors behind this failure of developing countries in meeting these standards was their lack of participation in the existing institutional mechanisms for setting global standards like Codex Commission and other food safety standards-setting organizations, run jointly by the FAO and WHO. The scope of this facility should be enhanced to facilitate the participation of developing countries in the meetings of such organisations as well. Apart from providing the first hand information to the developing countries this will also ensure the long needed rationalisation of standard setting exercise itself.

**h) Dispute Settlement Understanding**

Some of the issues that may facilitate more effective use of DSU by developing countries are as follows.

**Adjustment of time-period:** At present the period between the start of a dispute and its final determination may go up to three years. This period is too long for complainant developing countries as their capacity to absorb the adverse effects of measures taken against them is considerably low. This can be improved by making suitable
amendments in the time-frame of the relevant provisions of Articles 4, 5, 6 and 12 of the DSU, especially in all the complaints brought by a developing country against a developed country.

**Provision of compensation for loss during the pendency of the dispute:** Developing countries that are dependant on a limited number of export products/markets may suffer heavy trade losses during the course of a dispute regarding a measure taken against them by a developed country. The damage is not limited to foregone exports. The market may be lost permanently to competitors and substitute products. Article 22 (Compensation and the Suspension of Concessions) of the DSU can be extended to provide for compensation for the loss suffered by a complainant developing country during the pendency of a complaint against a developed country. The Panel should be mandated to determine the amount of compensation in all cases where measures by developed countries against developing countries are found to be violative the WTO rules. This will help prevent the initiation of trade-related measures on frivolous grounds by developed countries.

**Implementation of decisions:** Hardly any developing country is in a position to take retaliatory action against a developed country even if it is authorized to do so by the DSB. This seriously limits the implementation of the DSU rulings. In cases brought and won by developing countries against developed countries, DSU provisions can be amended to provide payment of compensation to the developing country, or joint retaliatory action by all WTO members against the offending member; or mandatory removal of the measure violative of WTO rules.

**Making S&D Provisions Effective:** A review of the existing S&D provisions should also involve a comprehensive analysis of the implementation of all S&D provisions. This thorough analysis should lead to the elaboration of an implementation mechanism wherever such a mechanism is missing in the present provisions. For example, the “special attention” mentioned in Article 4:10 may be interpreted to mean, inter alia, that consultations initiated against a developing country by a developed country are held at a place convenient for the developing country concerned. This would certainly help the developing country because owing to financial constraints they are often unable to bring experts from their capitals during the consultation period. It should identify the reasons as to why certain special and differential
treatment provisions, for example, Articles 12.10, 12.11, 21.7, 21.8 (panel procedure and surveillance of implementation), have so far not been used by developing countries. Such an analysis will also enable improvements that would lead to a more extensive use of these provisions by developing countries.

**Legal and Financial support to Developing Countries:** It is important to ensure that the costs associated with using the dispute settlement process do not act as barriers for gaining access to the process for the developing and especially the least-developed countries. It will require making provision for adequate legal assistance to both the complainant and defendant developing countries by strengthening and expanding the coverage of present Article 27.2 of the DSU. The Advisory Centre for WTO law has recently been set up by WTO. It is, however, yet to be used effectively by developing countries. Besides increasing the number of consultants, setting up an independent legal unit within or outside the Secretariat, appointment of a permanent Defence Counsel, or establishment of special arrangements with private lawyers, adequate financial resources, etc. should be made available.

**Strengthening the existing Legal Provisions in the various WTO Agreements:** Owing to the asymmetric legal and economic capacities of developed and developing countries, the former may bring a large number of disputes, some even on frivolous grounds, against the latter. There have also been instances where developed countries brought repeated cases, on the same grounds, against developing countries. The proposals to address these issues should include:

(i) The complainant developed country may be asked to pay the cost of the dispute incurred by the defendant developing country, if the case brought by the former is not maintained by the panel/Appellate Body.

(ii) WTO members may be prohibited from bringing cases against a developing country member once a case on similar grounds involving the same developing country has been decided by a panel/Appellate Body.

(iii) The panels and the Appellate Body should be directed to give, to the extent possible, transparent and clear rulings that are less prone to conflicting legalistic interpretations so that once the case decided, it should not be appealed on the similar grounds again.
10.3 An Agenda for Cooperation among Developing Countries on WTO-related Issues

The emerging WTO regime is important for the national development, trade, investment and technology policies of member countries. The ongoing round of negotiations will have an important bearing on the developmental process of the developing countries. Therefore, the developing countries need to deliberate over the mandate given by the Ministerial Meetings and prepare themselves to take part in the ensuing negotiations effectively to safeguard their interests. Issues of preparedness on their part would also include taking advantage of the emerging multilateral regime rather than passively implementing their commitments. This calls for strategic thinking and concerted action at different levels.

Not only do developing countries lack strong analytical capabilities in fully comprehending the developmental implications of the commitments implicit in the negotiations, the situation is further complicated by the mis-information that is promoted by developed countries to achieve their strategic objectives. Very often the training courses offered by international organizations in the name of technical assistance are also influenced by the view-point of the donors, viz. the developed countries and fail to highlight the concerns of developing countries.

The technical cooperation among developing countries could cover the followings:

**Exchange of Experiences in Implementation of Commitments:**
Developing countries should fully exploit the policy spaces that may be available in the WTO Agreements. An example in this regard is the TRIPs Agreement where several flexibilities are available to be exploited to moderate the potential adverse effect of the Agreement such as provisions for compulsory licensing, research exception, Bolar provisions, grey market imports, anti-trust regulations, breeders exceptions, among others. Exchange of experiences and professional expertise among developing countries may facilitate such possibilities.

**Technical Assistance and Cooperation in Implementation or Compliance of Commitments:** Compliance with some SPS standards require huge technical and financial costs. Cooperation among developing countries may be in sharing the services of experts, setting up the common testing and verification laboratories, translations of standards, etc.
**Effective Coordination of Positions:** WTO negotiations are power games. Any coordination between developing countries at the issue level or regional levels would be more effective than individual country positions. Developing countries should establish communications among their respective trade ministries and their missions at WTO to facilitate such coordination.

**Vigilance and Active Participation in the Proceedings:** Given the high stakes involved, developing countries need to participate in the negotiations effectively and with extreme vigilance. They need to back up their preparations with adequate legal and analytical expertise. Introduction of small phrases which may appear innocuous may eventually lead to some burdensome commitment, as is clear from the example how a reference to counterfeit goods in the Punta del Este Declaration snowballed into the TRIPs Agreement.

Proactive Agenda: Developing countries generally confine themselves to defensive and reactive strategy. They should have their own positive and proactive agenda. They should identify and articulate their concerns with the asymmetries creeping into the multilateral trading system and seek their redressal with effective coalition-building.

*******

To sum up, therefore, these are some of the many issues that may be kept in mind by developing country trade diplomats in negotiations at the Cancun Ministerial and subsequent meetings in the WTO. The length of this policy agenda gives an indication of the complexity and enormity of the challenges before them.
The completion of the Uruguay Round with the setting up of WTO in 1995 marked an important turning point for the world economy. What started as a process of trade liberalization under GATT has come to embrace broader parameters of policy hitherto subject to decision-making at the national levels. The ministerial conferences of WTO evoked a lot of interest among the policy makers and the civil society given the critical effect of their decisions for development patterns.

The Uruguay Round also signified a new trend in the multilateral trade negotiations. In this Round, developing countries undertook far heavier commitments than developed countries. Developed countries not only have emerged as beneficiaries of the Round, they have been resistant to giving any market access that had been promised. In fact, signs of a protectionist backlash are visible. The effects of the asymmetries in the process of trade liberalization are clearly evident in the form of declining shares of world trade, terms of trade, growth and equity in the developing world. These trends do not bode well for the long-term sustainability of the world trading system.

The Doha Ministerial Conference attempted to restore the emphasis on development in the WTO. The progress since the Doha Ministerial, however, has been far from satisfactory. Almost all the deadlines proposed have been missed. On the other hand, pressure is mounting on developing countries to agree to give the negotiating mandate on the Singapore Issues at the Cancun Ministerial.

It is clear that the multilateral trade negotiations have failed to liberalize the trade and industrial policy regimes in the world’s richest and most developed countries that could have enabled equitable sharing of the fruits of globalization.

The World Trade and Development Report 2003 examines the trends and asymmetries in the emerging multilateral trading system from a development perspective. It also outlines an agenda for developing countries for the Cancun Ministerial and beyond to restore the development focus and - more importantly - popular confidence in the multilateral trading system.

The Report argues that the trade liberalization should be seen as a ‘means’ and not the ‘end by itself’. The ‘end’ beyond any doubt should be sustainable development in all parts of the world, with principles of efficiency and equity providing the basis.

RIS

RIS is an autonomous policy think-tank, based in New Delhi, specialized in trade and development issues. Its work programme focuses on multilateral trade negotiations, regional economic cooperation in Asia, new technologies and development, among other issues. The work of RIS is published in the form of research Reports, books, discussion papers and journals. For more information about RIS and its work programme, please visit its website: www.ris.org.in.