

Making Doha a Really Development Round

'It is hypocritical to preach the advantages of free trade and free markets [to developing countries] and then erect obstacles in precisely those markets in which developing countries have a comparative advantage.'

— Sir Nicholas Stern

(formerly Chief Economist, the World Bank)

WTO and Developing Countries: An Uneasy Relationship

The multilateral trade negotiations conducted within the framework of WTO, the successor of the General Agreement on Tariffs and Trade (GATT) provide a rule-based multilateral trading system. Developing countries are attracted to WTO by the rule-based nature of the system being the weaker partners in the trading system. However, the process of rule-making in WTO has been dominated by a handful of industrialized countries, viz. the US, the European Union, Canada and Japan, who have conventionally set the agenda of multilateral trade negotiations in a manner that not only disregards their genuine developmental concerns, but has actively impaired their ability to conduct development policy. The growing discontent against the WTO among the developing countries that comprise the majority of its membership is clear from the failure of two out of five Ministerial Conferences, a widespread resistance to launch of a new Round at the Doha Ministerial which could barely survive because of promises of addressing development concerns by making a 'Development Round'. Ambitions from the Hong Kong Ministerial have been lowered even before it is held. All the indications available suggest that the Round is hardly expected to deliver on the promises made to developing countries. The estimates of potential welfare gains expected from the Doha Round have been dramatically lowered from US\$ 539 billion to just US\$ 90 billion with developing countries' share coming down from 60 per cent to just 31 per cent.¹ It is clear that all is not well with the world trading system. Yet we do not seem to be doing any thing to save the world trading system from extinction and make it more sustainable. In order to be sustainable, the world trading system should appear to promote trade in such a manner that it does not jeopardize the development prospects by squeezing the policy space for developing countries.

Against that backdrop, this policy brief, as a precursor to the *World Trade and Development Report 2006/07*, summarizes some proposals that should be guiding the ongoing negotiations to produce a development-friendly outcome and make the Round a really a Development Round. That will also instill confidence of developing countries in the system thus making it more sustainable.

Ten Years of WTO and Development

The completion of the Uruguay Round (UR) with the setting up of WTO in 1995 marked an important turning point for the world economy.² In this Round, 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. The Round also placed substantial obligations on developing countries with respect to their policy regimes concerning intellectual property rights under TRIPs Agreement, investments under TRIMs Agreement, and trade in services under GATS. These Agreements eroded considerable development policy space.

Developing countries were lured into accepting 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\$ 510 billion-a-year rise in world income with developing countries benefiting to the tune of \$122 billion. Contrary to these claims, it has now been empirically shown that the welfare gains arising from UR have been far smaller and have largely accrued to developed countries. The UR Agreements, such as TRIPs and TRIMs, are leading to significant income transfers from

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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, tariff escalation and NTBs that apply to products of export interest to developing countries, viz. processed foods, textiles, clothing and footwear, among others. 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. 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. Studies have found staggering welfare losses for the world economy from the protected markets for labour. There has been continued resort to quotas and other NTBs, contingent protection against developing countries and proliferation of regional and bilateral free trade arrangements in the developed world that are diverting trade and investments away from developing countries.

Strategic trade policy seems to be driving protectionist tendencies in the developed countries including growing subsidization of industry in the form of huge R&D subsidies and investment incentives and until recently subsidies given under Foreign Sales Corporations Act. The agricultural subsidies too have grown despite the promises of reduction made in the Uruguay Round. Developed countries extensively resort to policies like screw driver regulations, rules of origin, and buy local regulations that are akin to local content regulations that have been outlawed under TRIMs Agreement.

The growing asymmetries have adversely affected the development process in developing countries. The terms of trade of developing countries have come down between 1980-2004 from 100 to 85. The share of developing countries (excluding China) in global exports has fallen from 29 per cent to 26 per cent over the same period. It would have fallen further but for the rising share of South-South trade as a proportion of developing country exports that averaged nearly 41 per cent during 2000-2003 compared to 29 per cent in the 1980s.³

Given this experience with the UR, developing countries were resistant to launch of a new Round of negotiations at Doha. They tended to see the Rounds of WTO negotiations as processes that would further curtail their development policy space without giving them any meaningful market access in return. This 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'. A new Round could be launched at Doha only with a promise to put development at the centre so much so that it is called a Development Round!

Doha Development Round: Addressing the Asymmetries from the Uruguay Round?

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. The modalities for tariff reduction were to be based on less-than-full-reciprocity. 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, were missed. The draft modalities for market access in agricultural as well non-agricultural goods that have been proposed by developed countries suggest that there has been going back on the Doha mandate.

Some Proposals for Retrieving the Development Balance in the Doha Round

As argued above, the spirit of Doha which puts development dimension at the heart of the Round has been lost ever since the Doha Declaration was signed. It needs to be revived by bringing focus on development in all its decisions. Some of the proposals that can be made in this regard are as follows.

Agriculture: clash of interests between rich and poor farmers

Agriculture has emerged as the most contentious of all issues in the Doha Round. Essentially it represents a clash between interests of a handful of rich country farmers who comprise only 3-5 per cent of their population and receive huge domestic support and export subsidies that total about US\$ 1 billion a day and protection from high tariffs and other trade barriers, and those of millions of resource poor

¹ See RIS (2005) *Doha Round's Development Impacts: Shrinking Gains and Real Costs*, Policy Brief #19, for details.

² This section summarizes and updates the analysis presented in RIS (2003) *World Trade and Development Report 2003*.

³ UNCTAD (2005) *Trade and Development Report 2005*.

subsistence farmers in developing countries that constitute the bulk of their population and agriculture is the only means of sustaining their livelihoods.⁴ Developed countries subsidies keep global agricultural prices suppressed and make agricultural activity in developing countries unremunerative. A case in point is cotton subsidies in the US that are leading to starvation in West African countries because of depressed cotton prices. Unable to pay subsidies because of their resource constraints, developing countries tend to protect their agricultural markets through tariffs. Developed countries are resistant to bring down subsidies but seek high level of ambition for market access in developing countries for their agricultural and non-agricultural products.

The bulk of the subsidies are cornered by rich farmers and agribusinesses in developed countries rather than small farmers. The average household income for family farms in 2001 was US\$ 64465, that is 10.7 per cent higher than US average. As much as 68 per cent of all subsidy payments went to only 10 per cent of recipients. Among the largest recipients in the US of agricultural subsidies included Riceland Foods Inc. that received \$68.9 million in 2003 and has included many *Fortune* 500 companies such as Archer Daniels Midland, International Paper, Chevron, Texaco.⁵ Similar is the case in the EU where the recipients included one of the world's richest men, viz. the Duke of Marlborough the royal families of England, Denmark among other countries. Obviously these recipients do not need state subsidies for their survival! Developed countries are artificially sustaining uncompetitive agriculture in their economies at tax payers' expense and thereby creating a major source of distortion in the world economy.⁶ It is causing immense hardships for developing countries where they cannot be competitive even in the sector they have natural comparative advantage because of the subsidies. Quantitative studies have reported substantial welfare gains for developing countries and the world economy from removal of these distortions in developed country agriculture.⁷ It has been shown that elimination of rich countries agricultural support would result in a 24 per cent gain in the value of poor countries from exports that account for a quarter of their total exports and employ roughly half of their population.⁸ Some analysts have argued that withdrawal of subsidies by rich countries will increase food prices and will cause hardships for net food importing LDCs. However, this contention has been questioned by others who argue that these countries are more uncompetitive in manufacturing and will be able to revive agriculture once it becomes more remunerative.⁹ The Doha Agenda, therefore, included phasing out of all forms of export subsidies and substantial reduction in trade distorting domestic support.

Against the above background, a development-friendly Round should focus on the followings:

- **Phase-out of all export subsidies within three years or latest by 2010 with substantial frontloading** especially for crops like cotton and sugar. Considering that total export subsidies add up to only

about US\$ 5 billion, it would be only a small step towards reduction of distortions in agriculture markets.¹⁰

- **Substantial reduction in actual applied domestic support:** developed countries should undertake commitment to substantially reduce applied (rather than bound) amber box subsidies to really reduce distortions rather than making them appear so. The bands for reduction proposed by the US and EU may appear impressive but will make little difference to applied subsidies. The ceiling for Blue Box subsidies should be substantially reduced from current 5 per cent to no more than 1.25 per cent. Overall reduction of amber box support should be substantially front-loaded and *de minimis* provision should be removed for developed countries. Some Green Box payments such as decoupled support and investment subsidies are equally trade distorting should be reduced as well in an ambitious manner.

- With respect to market access pillar, **in the case of developed countries, agricultural tariffs should be brought down with the application of Swiss formula so that higher tariffs are cut more than proportionately.** In addition, tariff peaks applicable to agricultural commodities should be subject to a cap that should be no more than twice the average tariffs. Sensitive products in developed countries should be limited in number to no more than 1 per cent of tariff lines. In the case of developing countries, the market access issue needs to be sensitive to the importance of agriculture for livelihood. Developing countries should be able to identify an appropriate number of products as Special Products based on food security, livelihood or rural development criteria, as agreed in the July 2004 Framework. These products will not be subject to any tariff reduction commitments. An effective Special Safeguard Mechanism (SSM) should be established for use by developing countries applicable to all products. They should be allowed to use trade defence measures against subsidized or dumped agricultural products by developed countries.

- **For addressing the NTBs in agricultural trade, flexibility available in the Agreement on Sanitary and Phytosanitary Measures (SPS) needs to be curbed.** This flexibility is being misused as an NTB by developed countries for evolving highly stringent food safety norms making compliance difficult and expensive. Often very minute risk assessments are used to justify imposition of these higher standards. Developing countries should seek a review of SPS Agreement to seek universal application of international standards evolved by Codex Commission. Countries wishing to adopt higher than Codex standards should undertake to financially compensate potentially affected developing countries.

An important point is that elimination of export subsidies and reduction in domestic support are long overdue steps to be taken by developed countries to remove distortions in the world trading system created by their policies and not gestures to favour any partners. In any case, developing countries have paid in terms of accepting additional obligations in UR against

⁴ See RIS (2003), *op. cit.* which found agriculture to be the source of livelihood for over half of population in over 50 developing countries.

⁵ Griswald, Dan *et al.* (2005) *Ripe for Reform*, Trade Policy Analysis #30, September 14, Cato Institute, Washington D.C.. for details.

⁶ See Carla Hills (2005) 'The Stakes of Doha', *Foreign Affairs*, December 2005.

⁷ See Diao *et al.* (2005), IFPRI Discussion Paper #84; Cline (2004), *Trade Policy and Global Poverty*, Institute of International Economics Washington D.C., among others.

⁸ A US Department of Agriculture study quoted by Carla Hills (2005), *op. cit.*

⁹ See Cline (2004), *op. cit.*

¹⁰ See Panagariya A. (2005), 'Liberalizing Agriculture', *Foreign Affairs*, December 2005.

agricultural trade liberalization. Hence, developed countries should not seek reciprocity from developing countries in return for delivering these promises in other areas.

Non-agricultural Market Access (NAMA)

Tariffs have been used as a tool of development policy by most of the developed countries in the early phases of their development. It has been documented that the US tariffs were four times the Chinese tariffs at the same level of development.¹¹ The case of infant industry protection is very well established. The small and medium enterprises emerging in developing countries face several handicaps on account of access to global capital markets, technology, scale, brand names, experience, and additional constraints of underdeveloped infrastructure, high input costs, among others. Hence they need protection until they grow up and mature to take on competition from more established and much larger rivals from developed countries. Developing countries, therefore, need flexibility to pursue trade liberalization in a calibrated manner rather than an across-the-board or indiscriminate liberalization. They also need flexibilities for future changes in policies that they might need in subsequent phases of their development. Contrary to assertions made by protagonists of trade liberalization, there is hardly any rigorous evidence of a systematic relationship between average level of tariff and other trade barriers and subsequent economic growth. The only systematic relationship is that countries reduce trade restrictions as they get richer.¹² A recent quantitative study covering pooled cross section dataset for 22 developing countries found that import liberalization increases imports more than exports and worsens growth.¹³ Evidently developing countries such as China, Vietnam, India following sequenced industrial and trade strategies have had much greater success in expediting growth and reducing poverty compared to Latin American and Sub-Saharan African countries that followed orthodox structural reform agenda.¹⁴ The Sub-saharan African countries have seen their share in world exports decline from nearly 6 per cent to under 2 per cent over 1980-2002. A recent study has estimated that trade liberalization has cost Sub-Saharan Africa US\$ 272 billion over the past 20 years in terms of lost output, which is more than their entire accumulated debt of US\$ 204 billion.¹⁵ Indiscriminate trade liberalization, therefore, can be devastating for fledgling economies and can marginalize them further. **Proponents of trade liberalization should lead by example by first addressing the high tariff peaks, specific duties, tariff escalation and NTBs in developed countries on products of export interest to developing countries.** Therefore, the Doha Declaration put a high priority to elimination of high peak tariffs, specific duties, tariff escalation and NTBs on products of export interest under the NAMA agenda.

Against that backdrop, a development-friendly outcome of the Doha Round will address the tariff

peaks in developed countries but will leave considerable flexibility or policy space for developing countries to employ tariff policy to develop their industries to create jobs and income to fight poverty and hunger. The approach may involve the following:

- The greatest priority of the negotiations should be on leveling the tariff peaks applicable to products of export interest to developing countries and LDCs in developed countries. These could be leveled to no more than two times the average tariff rates. Then the developed countries could use a formula approach to bring down tariffs including the *ad valorem* equivalents of specific duties.

- In case a non-linear or Swiss type formula is adopted, the coefficients applicable for developed and developing countries need to be widely different at least by a multiple of 10. An alternative is to use the average tariff rates of the country as the coefficient for applying the formula. This will make formulae specific to each country. Argentina, Brazil and India (ABI) have favoured such an approach. Developing countries should have flexibility to identify an appropriate proportion of their tariff lines that are considered sensitive and will not be subject to formula cuts. The EU's demand that applied tariff are cut should be firmly rejected. Ability to fix applied tariffs is a sovereign right of the governments and cannot be compromised.

- LDCs should have duty-free-quota-free access to markets of developed countries and of those developing countries that are in a position to do so. Developing countries may employ GSTP route to liberalize their trade with other developing countries.

- Sectoral approaches for tariff reduction may focus on products of export interest for developing countries. However, the less-than-full-reciprocity enshrined in the Doha Agenda implies that developed countries will cut their tariffs to zero while developing countries will reduce their tariffs to a level they are comfortable with.

- A high priority should be attached to addressing the NTBs affecting exports of developing countries. In particular, there is growing evidence that the flexibility available in the Agreements on SPS and TBT is being exploited for protectionist ends and hence should be curbed. Developing countries should seek a review of these Agreements to seek universal application of international standards as evolved by international bodies such as the Codex Commission. Countries wishing to adopt higher than international standards should undertake a legally binding commitment to financially compensate potentially affected developing countries.

Services

Developing countries had been resistant to inclusion of services in the agenda of the Uruguay Round as their service industries are relatively less developed and had little supply capacities. However, they were prompted to agree to the General Agreement on Trade in Services (GATS) by the promise that the liberalization would be on a positive list basis and a country will be required to undertake commitments

¹¹ See for evidence, Y. Akyuz (2005), *The WTO Negotiations on Industrial Tariffs: What is at Stake for Developing Countries?* RIS Discussion Paper #98; Chang, Ha-Joon (2005) *Why Developing Countries Need Tariffs*, South Centre, Geneva.

¹² See F. Rodriguez and D. Rodrik (1999) *Trade Policy and Economic Growth: A Skeptic's Guide the Cross-National Evidence*, WBER WP#7081, Cambridge Mass; UNDP (2003), *Making Global Trade Work for People*, Earthscan, London; and Kamal Malhotra (2005), *Trade, Growth, Poverty Reduction and Human Development: Implications for the Design of the Global Trade Regime*, Presentation at RIS Regional Conference on WTO Hong Kong Ministerial, 11-12 August.

¹³ A. Santos-Paulino and A.P. Thirlwall (2004), 'The Impact of Trade Liberalization on Exports, Imports and the Balance of Payments of Developing Countries', *The Economic Journal*, 114: F50-F72.

¹⁴ Nancy Birdsell, D. Rodrik and A. Subramanian (2005), 'How to help Poor Countries', *Foreign Affairs*, July/August 2005.

¹⁵ Christian Aid (2005), *The Economics of Failure*, Briefing Paper, June.

that are commensurate with their level of development. Furthermore, it was shown that developing countries could benefit from liberalization under Mode 4, viz. temporary movement of natural persons where they may have some supply capacities. Subsequent experience has shown that very few offers have been made under Mode 4 most of them subject to limitations such as economic needs tests which render them ineffective. The bulk of the commitments made include inter-corporate transferees, or business visitors in charge of setting up a commercial presence. Very few commitments relate to movement of independent professionals. Furthermore, there are other barriers that impede movement of natural persons such as recognition of educational qualifications, withholding of social security payments, etc. Barriers to movement of natural persons have emerged as a distortion causing staggering welfare losses in the world economy. 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 according to recent studies.¹⁶ Furthermore, temporary movement of natural persons benefits developing countries and directly spreads the gains of global integration among people in developing countries. A significant liberalization of movement of natural persons has the potential of increasing the development balance of the Round.

In view of that background, the Doha Agenda emphasized on the objective of negotiations on trade in services as promoting economic growth and development of developing and least developed countries. Members were required to make requests for commitments and their offers by certain deadlines. In the July 2004 Package, members agreed to pay a special attention to sectors and modes of supply of interest to developing countries, viz. Mode 4. Therefore, the priorities of a development-oriented outcome of the Doha Round should be as follows:

- Developed countries should agree to make substantially improved offers under Mode 4 independently from inter-corporate movement of natural persons.
- They should also bring down limitations and other barriers to movement of natural persons to allow efficiency and welfare gains to be reaped.
- An objective and transparent definition of economic needs tests need to be evolved.
- The development friendly architecture of GATS based on requests and offers needs to be preserved rather than devising new modalities for liberalization of trade in services which is not the mandate of the Doha Round.

Trade Facilitation

Trade facilitation is the only Singapore issues that still remains in the Doha Round as the other three, viz. investment, competition policy and government procurement have been dropped out of the Round following the July 2004 Package. Although the trade facilitation may appear innocuous, establishment of binding rules in this area may create problems for

developing countries. Developed countries are seeking relaxation of customs procedures in developing countries and universal application of the rules and procedures evolved by them; this would give them a headstart. Developing countries have limited financial, and administrative resources to implement the kind of rules and procedure that are being sought to be evolved. Hence, they will impose major burden of compliance on them. While technical assistance may be promised, the experience with SPS/TBT Agreements suggests that it is not easily available. The Para. 27 of the Doha Declaration provides that the Council for Trade in Goods “shall review and as appropriate clarify and improve relevant aspects of Articles V (Freedom of Transit), VIII (Fees and Formalities Connected with Importation and Exportation) and X (Publication and Administration of Trade Regulations) of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least-developed countries.” The July Package adopted modalities for negotiations on trade facilitation that shall aim to clarify and improve relevant aspects of the three articles with a view to further expediting the movement, release and clearance of goods. The members agreed that developing and least developed countries (LDCs) would not be obliged to undertake investments in infrastructure projects beyond their means. They also recognized that S&DT in this area would need to extend beyond longer transitional periods for implementing commitments. Against that background, the priorities for the Round would be to ensure that there is a binding commitment to provide technical and financial assistance for meeting the resource requirements of developing countries and LDCs. The outcome of the negotiations on the subject could be adopted as guidelines but not enforceable through DSU. Finally, some developed country members are trying to extend the scope of negotiations beyond the Doha mandate of three Articles. This tendency should be curbed and developing countries should not succumb to pressure.¹⁷

TRIPs and Traditional Knowledge

The TRIPs Agreement has created an anomalous situation where 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 (TK) of particular communities/countries without the prior informed consent of the owners of knowledge. The examples of cases like turmeric and neem illustrate the issues that can arise when patent protection is granted to inventions relating to traditional knowledge which is already in the public domain. 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, *inter alia*, the

¹⁶ Winters, L. Alan, Terrie L. Walmsley, Zhen Kun Wang and Roman Grynberg (2002), *Negotiating the Liberalization of the Temporary Movement of Natural Persons*, Commonwealth Secretariat, London.

¹⁷ See RIS (2003), *Initiative for Closer Economic Cooperation with Neighbouring Countries in South Asia*, Policy Brief #2, for details.

relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by Members pursuant to Article 71.1.” (para. 19).

In the TRIPS Agreement, there is nothing that specifically prevents countries from developing systems to protect TK at the national level. However, the concerns about TK cover a wide range of issues. Developing countries have made a number of proposals to incorporate provisions related to the protection of TK and avoidance of misappropriation in the TRIPS Agreement. These relate to Articles 27.3(b), 29 and 71.1. These proposals seek, among others, incorporation of provisions making it obligatory in all patent applications for biotechnological innovations to include the country of origin of the germplasm and whether prior informed consent was obtained for the biological genetic resource or traditional knowledge so as to facilitate benefit-sharing arrangements.

The pressure for better protection of traditional knowledge has led, for example, to the creation of an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore in WIPO. The protection of traditional knowledge and folklore is also being discussed within the framework of the CBD and in other international organisations such as UNCTAD, WHO, FAO and UNESCO.

Developed countries do not, in general, contest the right of countries to protect TK. They generally hold the view that the TRIPS Agreement and the CBD are mutually supportive and object to the idea of disclosure requirement of genetic resources in the process of patent applications. Some developing countries such as Brazil and India have underlined the need to explore *sui generis* systems for the protection of TK. The Commission on IPRs set up by the British Government has also endorsed the need for protection of TK and genetic resources of developing countries with electronic libraries and endorsed the requirement of prior informed consent and sharing the benefits of commercial exploitation. Given the importance of the issue for developing countries, the Doha Round needs to fulfil the mandate and evolve approaches within TRIPs Framework.

Transfer of Technology: Retrieving Policy Space

Transfer of technology was included in the Doha Agenda at the instance of developing countries and a Working Group was set up under the auspices of the General Council to examine ‘the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries’. Like other development issues in the Doha Round, very little work has been done so far within the framework of the Working Group on transfer of technology leading to operational provisions. The problem arises because

a lot of policy mechanisms employed by developed countries and newly industrializing countries to facilitate transfer, absorption and diffusion of technology in the process of their development have been already eroded under some of the WTO agreements concluded in the Uruguay Round, viz. TRIPs and TRIMs Agreements.

Many developed countries of today have employed soft patent regimes in their period of underdevelopment for absorbing the knowledge spillovers by reverse engineering of known chemical and pharmaceuticals compounds.¹⁸ It has been argued that industrial countries (Japan, Switzerland, Italy etc.) adopted patent protection for pharmaceuticals at levels of per capita income of about US\$ 20,000 whereas developing countries are required to adopt it at levels between US\$ 500 and \$ 4000. Therefore, forcing TRIPs on developing countries is about 50-100 years premature from developed country standards.¹⁹ Soft patent regimes in countries like India have helped in development of capability to produce more affordable generic medicines for the poor. In fact the amendment of Indian Patents Act in early 2005 to comply with the TRIPs obligations attracted worldwide attention in view of the potential it had to adversely affect the supply and affordability of life-saving drugs for the poor.

Much more seriously perhaps, the TRIMs Agreement has taken away some of the valuable policy space, viz. the ability to impose some performance requirements like local content regulations on incoming foreign investors to build local production bases and localization of technology. Local content regulations have been extensively employed by most of the developed countries until recently in particular, in auto industry to promote backward integration and localization of production of value added. For instance, Italy had imposed 75 per cent local content on Mitsubishi Pajero, US had imposed 75 per cent rule on Toyota Camry and UK 90 per cent on Nissan Primera, Australia imposed 85 per cent local content rule on motor vehicles until 1989. The form of these local content requirements employed by developed countries in the 1990s has, however, changed in favour of trade policy measures that achieve objectives similar to those of provisions but are consistent with the provisions of TRIMs. These include screw-driver regulations, voluntary export restraints (VERs) and anti-dumping. The US and EU have employed VERs against Japanese cars and consumer electronics. The European Union countries have also extensively used the screw-driver regulations which are in effect like local content regulations to deepen the local commitment of Japanese corporations in consumer goods industries. In the US provisions of the Buy American Act have also been used as local content requirements. Studies have shown that local content requirements have served to promote transfer and diffusion of technology in auto industry, among others, by prompting vehicle assemblers to develop and upgrade the domestic vendor base.²⁰

¹⁸ see N. Kumar (2003), *Intellectual Property Rights, Technology and Economic Development: Experiences of Asian Countries*, RIS Discussion Paper #25 for evidence.

¹⁹ see Birdsell *et al.* (2005), *op. cit.*

²⁰ see N. Kumar (2005), ‘Performance Requirements as Tools of Development Policy: Lessons from Developed and Developing Countries,’ in *Putting Development First* by Kevin P Gallagher (ed.), Zed Books, London and New York, for details.

In the light of this evidence, a development-friendly outcome of the Doha Round would provide flexibility from the TRIPs and TRIMs obligations for transfer of technology to developing countries.

Special and Differential Treatment (S&DT)

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 tended to dilute them and reduced them into best endeavour clauses. Although the Doha Ministerial agreed to review the S&DT provisions to make them precise, effective and operational in meeting the requirements of developing countries, the progress has been unsatisfactory. The case for S&DT that may foster growth and development in developing countries by 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. A Development Round has to deliver on S&DT in the letter and spirit. In what follows, some proposals for reform of S&DT are summarized:

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 for inclusion of commitments in country schedules and dispute settlement. The Framework Agreement should clearly lay out an objectively defined economic criteria for S&DT provisions, as longer transition period is not adequate.

Granting Policy Flexibility to Developing Countries based on Objective Economic Criteria

S&DT provisions under different Agreements need to be further strengthened as longer transition period is not adequate. The S&DT provisions need to take cognizance of the varying levels of development of the member states. For instance, in the case of TRIPs, it has been found that most of the adverse effects on poor countries arise not because of the IPR regime but from the attempt to harmonize them across countries at different levels of development. In this regard, Agreements such as TRIPs and TRIMs may be amended to grant flexibility in implementing obligations to developing countries until they reach a certain level of industrial development defined in terms of some objectively defined criteria such as a US\$ 1000 per capita manufacturing value added. Similarly, under Agreement on Agriculture, the countries with more than one fourth of population dependent on agriculture, could enjoy flexibility in implementing their minimum market access commitments.

Effective Technical and Financial Assistance

Empirical evidence available suggests that exports of developing countries have significantly declined due to difficulties in complying with sanitary and phytosanitary measures imposed by importing countries. It has been shown that the promised technical assistance as provided in the Agreement is not provided in adequate or timely manner. There are two proposals in this context. Firstly, implementation of the new standards is linked to provision of technical assistance. A complaint by a developing country on the lack of technical assistance should make the importing country liable to compensation of damages. Secondly, the adoption of standards higher than international norms should be linked to financial compensation to potentially affected developing countries in view of the fact that developed countries have been part of the process of formulating the international standards.

Transparency

It is important to promote transparency while S&DT provisions are being implemented. In order to enthruse developing countries about S&DT, a review mechanism to assess the performance of different donor agencies and the commitments made by them has been called for in the Doha Declaration. In this regard, greater convergence of various initiatives launched by international agencies to assist developing countries may also be initiated. This would help developing and least developed countries in honoring their commitments. This would also help in minimizing the compliance cost for developing countries.

South-South Cooperation

As observed earlier, South-South trade has grown faster than global exports of developing countries. There is need for revitalizing the South-South trade as an engine of growth of developing countries besides their cooperation in making the world trading system more development friendly. Here, we identify select major issues for promotion of South-South Cooperation.

Cooperation in the WTO Issues

The multilateral trade negotiations essentially represent power games. Therefore, for developing countries attempting to protect their interests in these negotiations, it is not enough to articulate their interests. They need to build effective coalitions of like-minded countries to protect their interests in these negotiations. At Cancun Ministerial, developing countries were able to cooperate effectively by building issue-based coalitions, viz. Group of 20 on agriculture, Group of 16 on Singapore Issues, and G-33 on Special Products and Special Safeguard Mechanism (SSM).

G-20 has emerged as a highly effective coalition formed by developing countries on the key issue of agriculture. It has played an important role in Geneva when the July Package was negotiated. Brazil and India represented the G-20 in the group of Five Interested Parties (FIPs) that arrived at the

agreed text. In the run up to Hong Kong Ministerial, Brazil and India have continued to take part in negotiations with developed countries on behalf of G-20. The importance of coalitions like G-20 for protecting interests of developing countries in the negotiations and in general building a development-friendly world trading system cannot be over-emphasized.

The agenda of G-20 has been dominated by defending their interests against powerful countries in the key area of agriculture. It may be argued, however, that a longer-term sustainability of the coalition will require it to have a more constructive proactive agenda. The Grouping should be increasingly seen not only responding to a given agenda but also setting the agenda of the negotiations with its own innovative proposals. G-20 might also consider formulating its own proposals of the broader reform of the world trading system to counter those that seek to further consolidate the existing asymmetries. G-20 could establish its own **Consultative Group** to come up with a set of comprehensive proposals for reform of the trading system and bringing greater equity and transparency in the process of decision-making. These proposals can then be taken up proactively by the Group in the WTO negotiations on behalf of its members. Formation of such a group would also foster linkages between the trade policy think-tanks of the member countries. The G-20 could also extend its **coordination to international financial issues** now that WTO has a working group on trade, debt and finance.

G-20 could play an important role in seeking strengthened provisions for special and differential treatment and technical assistance for developing countries that will make the current Round a truly Development Round. G-20 could also consider setting-up a **watchdog of developing countries** on the implementation of WTO commitments by developed countries and bringing complaints against any cases of under-compliance. Finally, G-20 could also become a

forum for promoting South-South Cooperation in other areas such as **mutual cooperation in implementation of commitments, technical assistance for compliance of emerging standards**, etc. besides promoting South-South trade and exploiting their synergy for mutual benefit.

Promoting South-South Trade

South-South trade has grown very fast over the past two decades and now constitutes nearly 41 per cent of total trade of developing countries. However, the bulk of this intra-South trade is intra-regional facilitated by various regional trading arrangements besides obvious gravity factors. There is need for an institutional promotion of inter-regional trade between developing countries.

One may argue that multilateral trade negotiations in the framework of WTO take care of promotion of South-South trade between the regions. However, it has been contended in RIS studies that promotion of South-South trade through mutual trade preferences rather than multilateral approaches would be more beneficial and would assist them in building their supply capabilities and help them attract investment from developed countries. RIS studies have shown substantial complementarities characterizing their trade structures and hence the potential of expanding mutual trade. In this context, the Global System of Trade Preferences (GSTP), a scheme of trade preferences among developing countries signed in the 1980s could be reinvigorated. Two Rounds of GSTP have been completed in the past. A third Round of GSTP has been launched at the UNCTAD XI in 2004. Developing countries should take advantage of this opportunity to bring down tariffs on intra-South trade by 50 per cent with eventual elimination subject to appropriate rules of origin. Furthermore, in place of the positive list approach adopted by the previous GSTP Rounds, the Third Round could be built on sector-by-sector approach on negative list basis.

These are some of the challenges that the Doha Round has to address as a Development Round. There are a number of other development issues such as implementation issues, dealing with the preference erosion for LDCs, challenges of building supply capacities in developing countries and LDCs, among others. Very little progress has been made on any of the development issues. Considering that so little has been achieved in the past four years, especially on development issues, it will really be a formidable challenge to conclude the Round in 2006. However, it can be done if developed countries demonstrate leadership and restore the spirit of Doha to make the Round a really Development Round!

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