THE NEW WORK PROGRAMME OF THE WTO

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I. INTRODUCTION

The new Work Programme of the WTO emerging out of the Doha Ministerial Conference in November 2001 involves a very heavy work load particularly for the developing countries. It is a programme much heavier than that of the Uruguay Round of the Multi-lateral Trade Negotiation. Almost all the major items of the Uruguay Round, like agriculture, services, subsidy, anti-dumping, regional trading arrangement, dispute settlement, industrial tariff and some aspects of TRIPS form part of the negotiations in the Work Programme. Environment has also been included in the subjects of negotiation. Besides, intense work is envisaged on Singapore issues (i.e., the new areas of investment, competition policy, transparency in government procurement and trade facilitation) as well as in the area of electronic commerce. The short time span of three years set for this work makes the task particularly arduous for the developing countries.

II. IMBALANCE ENHANCED

The new Work Programme enhances the imbalance in the WTO system significantly. For several years the developing countries have been drawing attention to the severe imbalances and inequities in the WTO agreements. The Work Programme, instead of eliminating the imbalace, has in fact enhanced it by giving special treatment to the areas of interest to the major developed countries and ignoring the areas of interest to the developing countries. Negotiations have been launched in a new area, viz., environment and the level of work has been enhanced and intensified in the areas of Singapore issues and electronic commerce. All these have been the subjects of deep interest to the major developed countries, while the developing countries have been resisting their being taken up in the WTO. The main proposals of the developing countries were those grouped as "Implementation Issues", where practically nothing has been done, as will be explained later. The issues of great importance to many of them, e.g., textiles and Balance of Payment Provisions do not feature in the main text of the Work Programme.

Even the inclusion of the subjects of finance and technology is hardly significant for the developing countries as the work envisaged in these fields is of a very general and broad nature. Similar is the situation regarding the provision on special and differential treatment for the developing countries which aims at making the relevant provisions more precise, effective and operational. There are very few special and differential provisions reducing the substantive levels of obligations of the developing countries. Hence this provision in the Work Programme is hardly of great benefit to the developing countries.

The Work Programme is a gain for the major developed countries, but the have given nothing in return to the developing countries. This is totally contrary to the GATT/WTO process where reciprocity is expected to be the main guiding principle in negotiations. Reciprocity should not be assessed only in terms of specific commitments in agreements, but also in selection of items for special attention in the work. Sadly, the new phase of the WTO has started with enhancement of imbalance.

Ironically the Work Programme has been sometimes termed as a "development agenda" which is

quite erroneous. As mentioned above and as will be explained below, the agenda of the Work Programme has been totally set by the major developed countries guided by their own economic interests. The priority of the development of the developing countries is not reflected in it.

III. CHANGE IN NEGOTIATING PATTERN

Such a one-sided result of the Doha Ministerial Conference has been made possible by the changing pattern of the GATT/WTO negotiations. The Work Programme is not the result of any serious negotiation among the membership of the WTO. The major developed countries have not engaged in any negotiation of give-and-take type; they just put up their proposals and asked the developing countries to accept them. The reports emanating about the process of the Doha Ministerial Conference have indicated that the developing countries were put under various types of pressures,
particularly towards the end of the Conference. Ultimately their will withered and they gave in. Of course, there was some face saving minor adjustments here and there. This newly emerging pattern of the WTO process is very much disturbing. If the developing countries do not guard against it and defend themselves, they will be losing further ground.

The Work Programme is now in position and the major developed countries will certainly try to build up on it fast. It is therefore desirable for the developing countries to understand the implications of the various elements of the Work Programme, use it to their advantage as much as possible and minimize the emerging damages. The following sections are aimed at assisting them in this process.

IV. IMPLEMENTATION ISSUES (PARA 12)

The Implementation issues are contained in para 12 of the Doha Ministerial Declaration and the Doha Ministerial Decision on Implementation-Related Issues and Concerns. These two sets of provisions have to be considered together. Before examining the action to be taken, it is relevant to consider the background of this subject.

In the process of preparation for the Seattle Ministerial Conference in 1999, the developing countries had listed out a number of proposals in various areas of the WTO agreements. The proposals have been put together in the WTO General Council document JOB (01)/14 of 20 February 2001 with the title "Implementation-Related Issues and Concerns". There are some additional proposals in the WTO document JOB(01)152/Rev.1 of 27 October 2001 with the title "Compilation of Outstanding Implementation Issues Raised by Members". These two documents should be seen together to have a comprehensive picture of the list of the Implementation Issues

These proposals emerged out of the developing countries' experience of the implementation of the agreements in their own countries and also in the developed countries. Some of these proposals involved improvement of the WTO agreements and their operation. The developing countries attached a lot of importance to these proposals and, in fact, during the preparation for the Doha Ministerial Conference they said that these proposals must first be addressed effectively before opening up negotiation in any new area. But the ultimate treatment of these implementation proposals in Doha Ministerial Declaration and Ministerial Decision has been very much disappointing.

The Ministerial Decision on implementation is a long document, but it has very little substance. The only concrete and substantive decisions are the following.

(i) The agreements on Sanitary and Phytosanitary Measures and Technical Barriers to Trade provide for "a reasonable interval" between the publication of a measure or a standard and its coming into force. The Decision says that this interval shall not normally be less than six months.

(ii) The agreement on Sanitary and Phytosanitary Measures provides for "longer time-frames for compliance" with the measures in respect of products of interest to the developing countries. The Decision says that this time-frame shall not normally be less than six months.

(iii) The agreement on Subsidies and Countervailing Measures has given some concessions regarding subsidies to the developing countries having their GNP per capita less than US$ 1000 per year. The Decision says that a developing country will continue to be in this list until it reaches this level of GNP in three consecutive years. Also, if a country has been excluded from this list as a result of its achieving this level of GNP, the Decision says that it will be re-included when its GNP per capita falls below this level. Inclusion of "normally" in items (i) and (ii) above has made the time limit very much voluntary.

The rest of the Decision has the operative phrases like: "reaffirms", (a particular WTO body) "is directed to give further consideration", "urges Members", "takes note of", (a particular WTO body) "is instructed to review", "requests" (a WTO body) "to examine", "confirms the approach", "shall examine with special care", "recognizes", "underlines the importance", "agrees that ..interim arrangements...shall be consistent..", "agrees that (a WTO body) shall continue its review", "directs (a WTO body) to extend the transition period", (a WTO body) "is directed to continue its examination..", etc.

The irony is that with such thin content of the result, paragraph 12 of the Declaration starts with a high sounding resolve, like: "We attach the utmost importance to the implementation-related issues....and are determined to find appropriate solutions to them". And some later reports have commented favourably by referring to the adoption of "around 50 decisions" by the Ministers "involving hard bargaining". As the explanation given above shows, only three decisions are concrete, the rest are in the nature of continuing the consideration of the issues.

Paragraph 12 of the Declaration lays down three tracks of institutional arrangements for continuing the consideration, as given below.

(i) In some of its paragraphs, the Decision has instructed certain WTO bodies to take up/continue the work.

(ii) The issues which are relevant to a "specific negotiating mandate" in the Declaration, will be addressed under that mandate. This provision is somewhat unclear. Most likely it means that the issues which fall in any broad area, like agriculture, subsidies, anti-dumping, etc, where negotiation has been mandated, will be taken up by the body handling that negotiation. Thus the implementation issues relating to anti-dumping, for example, will be handled by the negotiating body handling "Rules".

(iii) The remaining issues will be handled by the relevant existing Councils, Committees, etc.

In respect of the third track mentioned above, there is a direction that these existing bodies will take them up with priority and report to the Trade Negotiating Committee by the end of 2002. In respect of a few issues in the first track also, some final dates have been prescribed in the Decision.

POINTS OF STRENGTH

The points of strength for the developing countries in the Declaration and the Decision in pursuing the implementation issues are the following.

(i) The Declaration says that this exercise is "an integral part" of the Work Programme. Hence it cannot be left by the way side while working on the Work Programme.

(ii) The Ministers say in the Declaration that they "attach the utmost importance" to these issues and "are determined" to find solution to these issues. Further, in the preamble to the Decision, the Ministers declare themselves determined "to take concrete action" on these issues raised by the developing countries. In view of such strong political expressions, it is quite rational for the developing countries to expect that this subject should have the highest priority in the Work Programme. Hence, they will be justified to suggest that these issues should be taken up for consideration and solution as the earliest part of the agenda of the relevant WTO bodies involved in the three tracks mentioned above.

(iii) Specific dates have been mentioned for completion of work in several items. It is thus expected that the consideration of these issues will proceed speedily.

This analysis suggests that these issues cannot be ingnored, rather they should be taken up as priority items in the agenda of the different relevant bodies and should be handled speedily.

POSSIBLE POINTS OF WEAKNESS

There is a reference in paragraph 12 (implementation issues) of the Declaration to paragraph 47 of the Declaration which talks about the overall balance of the negotiations. This has the danger of leading to a suggestion that the solutions of the implementation issues will be included in the assessment of the overall balance in the outcome of the Work Programme. This line of suggestion will imply that the developing countries are expected to pay a price for the solutions of the implementation issues. But such an expectation is not rational, as the implementation issues have been raised by the developing countries in order to reduce the imbalances and inequities in the currently existing agreements. If they have to pay a price, these current imbalances and inequities will not be reduced, rather they will be perpetuated. Hence the developing countries have to guard against any such suggestion regarding including the solutions to the implementation issues in assessment of the overall balance in the outcome of the Work Programme.

Sometimes it is argued that many of the implementation issues are in the nature of changing the rights and obligations; as such the developed countries should not be expected to agree to them. This line of argument is not quite proper. It is true that in the normal GATT/WTO process, an obligation is not eliminated or reduced without having to pay compensation. But these issues are of a special nature. These have been identified by the developing countries as elements of deficiencies and imbalances in the system. Tackling of this problem should be considered a systemic matter, rather than enhancement or reduction of a particular right or obligation. Further, the major developed countries have got commitments from the developing countries on several issues in the WTO Ministerial Conferences without giving any thing in return. Some example are: the framework for zero duty on telecommunications goods in Singapore Ministerial Conference in 1996, stand-still (i.e., zero duty in practice) on duty on electronic commerce in Geneva Ministerial Conference in May 1998 and the entry of a set of new issues in the folds of the WTO in Singapore Ministerial Conference in 1996. They did not pay any commensurate compensation to the developing countries for their agreeing to these proposals. Even going beyond the remedies for the imbalances in the Uruguay Round, the developing countries will be quite justified in asking for compensation for their making these concessions to the major developed countries that were the main demanders in these cases.

SUGGESTED ACTION

(i) These issues will be considered in different relevant bodies in the three tracks, as mentioned above. The developing countries should try to have them placed as the first operational agenda in each of these relevant bodies. As explained above, they will be quite justified in suggesting that these items should be taken up with high priority and speed. In fact, it will be rational to suggest that other items should be taken up in these bodies only after the consideration of the implementation issues is completed.

(ii) These issues should form a separate ensemble in the relevant bodies and should be kept organically separated from the new issues of negotiation in these bodies in pursuance of the other parts of the Work Programme. This process is suggested to ensure that the implementation issues are not mingled with the other issues in assessing the overall balance in the results of the Work Programme.

V. AGRICULTURE (PARAS 13,14)

In this area, negotiation is already going on in the WTO since the beginning of 2000 in pursuance of Article 20 of the Agreement of Agriculture. It is aimed at reducing the protection and support to agriculture. A number of proposals have been submitted by the countries during the course of this negotiation which is mainly focussed at present on working out the modalities for reduction of protection and support.

The Work Programme specifies the aim of negotiation as: substantial improvement in market access, reduction of export subsidies and substantial reduction in domestic support. Further, it intends to "enable the developing countries to effectively take account of their development needs, including food security and rural development". It lays down that the special and differential treatment for the developing countries "shall be an integral part of all elements of the negotiations". It specifies that the special and differential treatment shall be "operationally effective" by embodying them both in the rules and the schedules of commitments. It confirms that the non trade concerns of the Members will be "taken into account" in the negotiations. Then it goes on to provide a time frame for establishment of modalities for commitments and submission of schedules.

In this manner, the Work Programme gives a particular focus and direction to the ongoing negotiation in the area of agriculture.

POINTS OF STRENGTH

1. The aims of reduction of export subsidies "with a view to phasing (them) out" and "substantial reductions" in domestic support prepare a sound base for demands on the major developed countries for commitments in theseareas. They have been providing huge domestic support and export subsidies in agriculture. On the other hand, the levels of export subsidies in the developing countries in agriculture are negligible and those of domestic support are extremely small. Hence this aspect of the aims of negotiations can be considered to be mainly targeted at the policies and measures of the major developed countries. Apart from generally distorting trade and production in this sector, these practices of the major developed countries have been particularly harming the developing countries in two ways. The farmers of the developing countries are exposed to extremely unfair competition from such subsidized import products and stand the risk of being driven out of farming. Also, they face unfair competition in these major developed country markets as well as in third country markets where their prospects of export are unfairly curtailed by highly subsidized products of the major developed countries.

2. The development needs of the developing countries, particularly food security and rural development, have been formally recognized and targeted for relief. It will enable the developing countries to have special provisions in these areas. It has been argued by the developing countries that food security, i.e., domestic production for domestic consumption, is of vital importance to them. They cannot depend on imported food as they may not always have stable availability of foreign exchange for purchasing food in foreign markets. As for the rural development, an important aspect of it is rural employment. The rural economy of a large number of the developing countries is based on such small and household farming. The vast majority of their farmers do not take to agriculture as a commercial venture, but mainly as a traditional occupation and in absence of any more lucrative alternative occupation. If they are faced with

international competition, they will almost certainly lose out. Hence protection of people engaged in such occupation is necessary. If they are driven out of agriculture, they are likely to be reduced to destitution, as these countries will find it extremely difficult to find alternative source of livelihood for them. It is realistic for the Work Programme to recognize these problems and aim to find solutions for them.

3. Going beyond these two important concerns of the developing countries, the Work Programme has decided to make the special and differential treatment for the developing countries operational by deciding to embody it in the text of rules and the schedules of commitment.

4. The "non-trade concerns" that have been mostly raised by some developed countries have been given a different and lower status. The Work Programme "take(s) note" of this item and "confirms" that these "will be taken into account" in the negotiations. The important point is that the Work Programme has drawn a distinction between the development needs of the developing countries and the non-trade concerns of some countries. It thus puts an end to the attempts made in the past, mainly by some developed countries, to mingle these two different objects, resulting in a great deal of confusion. Whereas in respect of the development needs, there is a definite decision to embody the solutions in the body of the rules and schedules, in respect of the non-trade concerns, the decision is to take them into account in the negotiations.

POSSIBLE POINTS OF WEAKNESS

1. One of the aims of the negotiations is: "substantial reductions in trade-distorting domestic support". The qualifying term "trade-distorting" can be used by the major developed countries to suggest that the so-called "green box" domestic support, listed out in Annex 2 to the Agreement on Agriculture and exempted from reduction commitment in the Uruguay Round, are not to be covered by the negotiations on reduction. But these are essentially the subsidies that have given high and unfair advantage to the farmers in the major developed countries. Recent estimates have indicated that the total domestic support, of which the exempted categories constitute a major proportion, are nearly US $ 360 billion per year in the developed countries. Such high domestic support has the potential of causing major damage to the domestic production and export prospects of the developing countries in the area of agriculture.

2. And there is no reason at all why these support measures should be exempted from reduction. Sometimes it is argued that these payments are not based on or related to production or prices; as such these should not be covered by the discipline of reduction (para 6 of Annex 2 to the Agreement on Agriculture), But such line of reasoning is faulty. After all, these payments are not made to the people in general based on some economic or social criteria, but only to the farmers from year to year adding to their economic strength, thus helping them to continue with their uncompetitive farming. Clearly such payments are trade-distorting and help boosting up uncompetitive production. Hence rather than being exempted from reduction commitments, they should be subjected to accelerated reduction and quick elimination.

3. It is well recognized by now that the policies and measures of the developed countries, particularly the major ones among them, are specially responsible for the distortion of agriculture trade and production. Yet, paragraph 13 of the Declaration, does not make a special reference to the policies and practices of the developed countries, rather it makes a geographically neutral enunciation of the aims of reduction of protection and subsidies. In fact, such a generalised statement may have the danger of implying a parity of the aim of reduction of protection and subsidies in the developed countries and the developing countries. Such ignoring of the principal focus of attention, i.e., the policies and measures of the major developed countries, is indicative of the weakness of political will of the WTO membership to tackle the basic problem in the agriculture sector.

SUGGESTED ACTION

1. The negotiation in this area is engaged at present in working out the modalities based on which the commitments will be made by the countries and included in their respective schedules. This is the most important part of the negotiations, as the later part will mostly be an arithmetical exercise to work out the quantitative pictures based on the modalities. Hence it is of utmost importance that the developing countries should play an active role in working out the modalities. A number of specific proposals have already been tabled by the developing countries. There is a need to follow them up and table additional proposals.

2. The developing countries should insist that the negotiations in the three areas, viz., market access, domestic support and export subsidy must be linked together. Already the indications are that the major developed countries would like to have them considered separately and they would like to take up the item of market access first. It has two elements of risk. One, it will shift the emphasis away from the high domestic support and export subsidy of the developed countries. And two, it will not provide effective solution to the problem of trade distortion, as the best of commitments in market access by the developed countries can be almost totally nullified by weak commitments on their domestic support and export subsidy. Hence an effective integration of the negotiations in these three areas is of vital importance to the developing countries.

3. In sequencing the negotiations for the purposes of working out a time schedule, it has been indicated above that the major developed countries have already expressed their preference for taking up the market access first. From the angle of the developing countries, it will not be a right start. They will be fully justified in saying that the export subsidy which really has no justification to exist, particularly in the developed countries, should be taken up first. Then should come the domestic support and finally the market access. Of course, there should be some mechanism to establish linkages in these three areas on a systemic basis and also from time to time. One effective method of linkage will be for the developing countries to make any possible offers on tariff reduction only after knowing the offers of the major developed countries on the reduction of domestic support and export subsidy.

4. The modalities must include the reduction of the so-called green box, i.e., the exempted support given by the developed countries.

5. Considering that the policies and measures of the major developed countries have been the main causes of distortion of trade and production in the world, there is a rational ground to suggest that the work on modalities should start with at least some broad indications by the major developed countries about their possible commitments in the three areas of export subsidy, domestic support and market access. This should be a useful and necessary input into the thinking of the developing countries on their own commitments.

6. Some concrete suggestions should be given by the developing countries regarding taking account of their development needs, particularly the food security and rural development. Initial proposals on these elements will have to come from them. Some preliminary ideas are given below.

Food security for the developing countries essentially implies in this connection adequate domestic production for domestic consumption. This would simply in turn that the developing countries having the possibility of producing adequate food should not be constrained in this regard by the current or potential disciplines of the Agreement on Agriculture. Such constraints may come in two ways: one, through the disciplines on import control, and two, through the disciplines on production subsidy. Thus there may be a proposal for an enabling provision that

the developing countries may undertake import control measures (either through tariffs or through direct quantitative limits on imports or through a combination of the two) for protecting their domestic production for domestic consumption. Naturally a question will arise how to distinguish production for domestic consumption from that for export. One simple solution will be to apply the enabling provision to the developing countries having no export or only marginal proportion of export of food products compared to consumption.

Similarly for rural development, particularly for the protection of rural employment, similar enabling provisions may be applied. A question may arise how to link the import control to the rural employment. A simple solution may be to apply the enabling provision to the developing countries that have a predominant proportion of the small farmers among the farmers as a whole. Some criteria based on the comparative size of the holdings may be evolved.

7. Besides, some other solutions and criteria may also be worked out and proposed, as necessary. For example, enabling the developing countries to use the Special Safeguard provisions or some other suggestions contained in this writer's booklet "Some Suggestions for Improvements in the WTO Agreements", published by the Third World Network in 1999.

VI. SERVICES (PARA 15)

Negotiations in this area have been going on since the beginning of 2000 in pursuance of the General Agreement on Trade in Services (GATS). The Work Programme takes this process further and prescribes time schedules for requests and offers in the negotiations for liberalization in specific sectors. An important step in the ongoing negotiations has been the adoption of the Guidelines and Procedures for the Negotiations (the Guidelines) by the Council for Trade in Services on 28 March 2001 (WTO document S/L/93 of 29 March 2001). The Work Programme reaffirms the Guidelines and also aims to achieve the objectives contained in Articles IV and XIX of the GATS. These two Articles contain specific provisions for the developing countries. The former calls for liberalization of market access in sectors and modes of supply of export interest to the developing countries. The latter provides for flexibility for the developing countries to liberalise fewer sectors and fewer transactions. It also enables them to put conditions in specific sectors for strengthening their domestic services capacity, efficiency and competitiveness and for access to distribution channels and information networks.

The trend of the negotiations so far and the Guidelines as also this paragraph of the Work Programme indicate that the negotiations will take place on the usual basis of requests and offers in various sectors. There is no specific recognition of the fact that the liberalization process undertaken so far has clearly been one-sided in the sense that the benefits have mainly accrued to the major developed countries, because of their having enormous supply capacity in the services area. A quantitative assessment would have helped to know the benefits of liberalization. But the Services sector does not have a proper system of relevant data. However, even in the absence of a quantitative assessment of the effects of liberalization, one can draw such a qualitative conclusion based on the vast differential in the supply capacity in the area of services as between the developed and the developing countries. This differential is specially pronounced in the services sectors that were taken up for accelerated negotiations, viz., financial services and telecommunication services.

Naturally the pressures from the major developed countries will be to continue with the negotiations on the pattern of the past, and thus to push the developing countries into making further commitments on liberalization. This will result in enhancing the imbalances in this area more and more. There is a need for changing the old method of offer and request type of negotiations. And it can be achieved within the mandate of the Work Programme, as will be explained shortly.

POINTS OF STRENGTH

1. Specific mention in this paragraph of the aim to achieve the objectives stipulated in Articles IV and XIX of the GATS gives strength to the developing countries to pursue their goals in this area. The Guidelines, confirmed by the Declaration, asks the Council for Trade in Services to examine to what extent Article IV has been implemented and to make suggestions for promoting the implementation. All this strengthens the case of the developing countries in asking the developed countries to liberalise the sectors and modes of interest to the developing countries. It also weakens the case of the developed countries in asking for liberalization in the developing countries on a large scale.

2. The Guidelines specifies that the existing structure and principles of the GATS shall be respected including the right to specify sectors in which commitments will be undertaken. Thus the current practice of a country choosing the sectors for commitments will continue. It is particularly significant as the major developed countries had tried during the negotiations for the guidelines to alter this basic approach. Confirmation and retention of this principle together with the flexibility allowed to the developing countries in Article XIX as mentioned above gives them the right to choose a limited number of sectors for further commitments.

POINTS OF WEAKNESS

1. As mentioned above, no explicit notice has been taken of the grave imbalance in this area arising of the vastly differing supply capacity. No specific method has been suggested nor guidelines given to overcome this serious deficiency.

2. No explicit notice has been taken of the lack of assessment of the effects of liberalization in this area. The Guidelines is also weak in this respect as it calls on the Council for Trade in Services merely to continue to carry out an assessment. There is no specific sequential relationship between the assessment and further negotiations. If negotiations continue without an assessment of the effects of the liberalization so far, the developing countries will be particularly harmed. Qualitatively, however, one can easily say that they have not got any significant gain so far because of their weak supply capacity. If they go on making commitments without first having an assessment of the current results, they will be put to further loss in the negotiations.

3. The Guidelines says that "the starting point for the negotiation of specific commitments shall be the current schedules, without prejudice to the content of requests". It may lead the developed countries to ignore the current imbalances in the commitments.

SUGGESTED ACTION

1. In the current phase of placing requests and offers, the developing countries should try to invoke the flexibility permissible under Article XIX. They should draw attention to the current imbalance in the commitments because of their limited supply capacity in the services liberalized in the developed countries. On this basis it will be quite rational for them to argue that they should not be called upon to make offers of new commitments.

In any case, it will be quite irrational for them to make offers of new commitments without an assessment of the effects of the current commitments. The Guidelines says that the negotiations "shall be adjusted in the light of the results of the assessment". Of course, it refers to the new negotiations; but its spirit should also be followed in respect of the current balance/imbalance. If there is imbalance at the starting point now, as is apparent at least qualitatively, the negotiations should be adjusted at the present stage in order not to enhance the imbalance. In fact, efforts should be made to eliminate or reduce the imbalance.

A point is sometimes made whether it is practical for the developing countries to take a stand that they should not be called upon to make new commitments in this area because of the existing imbalance. It should, in fact, be quite practical, as Article XIX prescribes liberalization in fewer sectors and fewer transactions. Furthermore, the Guidelines calls for the examination of the implementation of Article IV. Both in substance and in strategy, it will not be proper for the developing countries to go on making offers of commitments at this of the negotiation without insisting on some balancing of the current unbalanced situation.

2. The developing countries should submit their own requests. Some of them have already identified some sectors of their interest and they should include these sectors in their requests. In this respect they should identify the constraints in the developed countries in these sectors and include them in the requests for liberalization by the developed countries. A large number of the developing countries have identified the movement of persons as an important factor in improving their export prospects in service sectors. They should therefore include this mode of supply in these sectors in their requests for liberalization in the developed countries.

3. The ongoing work in the area of Recognition (Article VII of the GATS) have an important bearing on the utilization of the opportunities provided by the market access commitments made by others. By now, the developing countries have some experience of the actual situation in this area in the major developed countries. Hence the evaluation of the offers of the developed countries should be made in the light of the relevant Recognition rules and practices in those countries. They should also keep it in view while preparing the requests to be made to the developed countries.

4. For operationalising Article IV, some specific suggestions have been given in this writer's booklet "Some Suggestions for Improvements in the WTO Agreements", referred to earlier.

VII. MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS (PARA 16)

Paragraph 16 of the Declaration launches negotiations in the areas of market access for non-agricultural products. Though non-tariff barriers have also been included for negotiation, the exercise will be mainly focusing on the negotiations on industrial tariff. The aim of the negotiations is to reduce industrial tariffs. Tariff peaks, high tariffs and tariff escalation have also been specifically identified as targets for reduction. The stipulation is that the product coverage shall be comprehensive, which means that the negotiations will not be limited to any particular areas. Also, the paragraph says that no area will be excluded a priori. All this makes the negotiation on industrial tariffs a massive exercise similar to the tariff negotiations in the various recent rounds of the multi-lateral trade negotiations.

It is likely that some formulae may be worked out for general reduction of industrial tariffs. Usually the formulae include criteria for maximum tariffs, average tariff targets, pace of reduction, etc. Side by side, there may also be some bilateral exercises for reduction of tariffs on specific products of interest to specific countries.

Compared to the previous tariff reduction exercises, the current one has deeper implications for the developing countries. It has the potential of having adverse effects on the process of industrialization and upgradation of industries. As direct import control measures have been almost totally abolished in the developing countries (the major developed countries still maintain some direct import control measures, e.g., in the sector of textiles) and as the Balance of Payment (BOP) measures under Article VIIIB of the GATT 1994 have been put under severe discipline, tariff is the only instrument of protection in the industrial sector. Indiscriminate lowering of industrial tariffs in the developing countries can impede industrialization and upgradation of industries and it can even lead to de-industrialisation. Some recent studies have brought to light the adverse effects of rapid reduction of industrial tariffs on the industrial development of African

countries. Hence it is imperative that the negotiations for the reduction of industrial tariffs should be approached and handled by the developing countries with great care.

POINTS OF STRENGTH

1. The Work Programme aims at reducing the tariffs, "in particular" on products of export interest to the developing countries. Hence even though there is a stipulation of comprehensive product coverage in the paragraph, the products of export interest to the developing countries has to be given special attention. The major developed countries have high tariffs on such products compared to their tariffs on other products. Hence it will be rational for the developing countries to argue that the developed countries should specially lower their tariffs on such products.

2. The paragraph says that the negotiations "shall take fully into account the special needs and interests of developing and least-developed country participants". In actual operation, it will have two tracks of implementation, viz., one, the developed countries will be required to make substantial reduction in the tariffs on the products of export interest to the developing countries, including the least developed countries, and two, the developing countries, including the least developed countries, on the other hand, will not be required to have the coverage of products and depth of tariff cuts that may be detrimental to their development needs.

3. The paragraph goes on to say that there will be "less than full" reciprocity in the reduction commitments by the developing countries, including the least developed countries. Though the term "less than full" does not specify quantitatively what should be the relative expectation of reduction from the developing countries, the direction and approach in the reduction is clear from such a stipulation.

4. The tariff reduction exercise will be based on "modalities to be agreed". Hence the first task in the negotiating process will be to work out the modalities. The developing countries will have the opportunity to include their special concerns at this stage of the negotiation right in the beginning.

POSSIBLE POINTS OF WEAKNESS

1. The main targets will be the developing countries in this exercise of tariff reduction. The developed countries have low average industrial tariff, though the tariffs on some individual items (particularly on the products of export interest to the developing countries) are relatively high. A large number of the developing countries have comparatively higher average industrial tariffs, because of the need of protection of their industries and other development needs. Hence the developing countries are particularly vulnerable in this area of negotiation. However, the qualifications mentioned in this paragraph as indicated above may give them some defensive strength.

2. There may be a tendency to work out the formulae for the reduction based on past practices. This may be harmful to the developing countries. Hence some new alternative formulae should be evolved. Some suggestions on this point are given below.

SUGGESTED ACTION

1. There should be a detailed and comprehensive exercise right in the beginning for working out the modalities for tariff reduction. The modalities should include: identification of products of export interest to the developing countries, including the least developed countries, manner of giving them special consideration in tariff reduction in the developed countries, identification of tariff peaks and tariff escalation in the developed countries, manner of eliminating or substantially reducing them, elucidation of special needs and interests of developing countries including the least developed countries in respect of their own tariffs and tariff structure, elucidation and operationalising the concept of "less than full reciprocity", studies to assess the impact of earlier

tariff reduction exercise on the developing countries' industrialization and development, studies to assess the possible potential impact of future tariff reduction on industrialization and development, etc. Negotiations should be undertaken on tariff reduction exercise only after the modalities have been fully worked out.

2. Before getting into the exercise of working out the formulae for general tariff reduction, an exercise should be undertaken on a priority basis for elimination or substantial reduction of tariff peaks, high tariffs and tariff escalation in the developed countries. The modalities mentioned above will help in this process. There is a justification for attending to this problem on priority basis as the Declaration itself lays particular emphasis on it. It will be proper to separate out the tariff peaks, high tariffs and tariff escalation in the developed countries from the general tariff reduction exercise and address them for solution before attending to general tariff reduction.

3. While working out the formulae for general tariff reduction, the differences in the current structure of tariffs in the developed and the developing countries should be kept in view by the developing countries. The average industrial tariff in the developed countries is comparatively low and that in the developing countries is generally comparatively high. In the background of such tariff structure, it is prudent for the developing countries to have a formula that reduces the gap between the average tariff and the higher tariffs, rather than having a formula which primarily aims at reducing the average tariff. Moreover, the highest permissible tariff level should not be indicated as a specific number; it should rather be prescribed
as a specified multiple of the average tariff.

VIII. TRIPS (PARAS 17,18,19)

The provisions of the Work Programme relating to the Trade Related Aspects of the Intellectual Property Rights (TRIPS) are contained in paragraphs 17,18 and19 of the Declaration and also in the Ministerial Declaration on the TRIPS Agreement and Public Health contained in WTO document WT/MIN(01)/DEC/W/2 of 14 November 2001.

The Work Programme envisages: (i) negotiation on establishment of a multilateral system of notification and registration of geographical indications for wines and spirits, (ii) examination of the relationship between the TRIPS Agreement and the Convention on Biological Diversity, (iii) examination of protection of traditional knowledge and folklore, and (iv) finding expeditious solution in the TRIPS Council to the problems faced by countries with insufficient manufacturing capacity in the pharmaceutical sector in effectively using the provision of compulsory licensing.

There are 9 proposals on TRIPS under the heading of "Implementation Issues" contained in items 87 to 95 of the General Council document of 20 February 2001 referred to above [JOB (01)/14].

Apart from all these items specifically mentioned in the Work Programme, the ongoing work will continue on the review of Article 27.3(b) and the review as contained in Article 71.1. Already some proposals have been made by the developing countries on Article 27.3(b).

The developing countries have been quite active in this area and also very well prepared. The follow up of the Work Programme has already started in the TRIPS Council with the proposals and discussion on the problems of countries in compulsory licensing in the pharmaceutical sector. The developing countries have already placed some proposals in the Council.

SUGGESTED ACTION

1. The Declaratioin on TRIPS and Public Health contains some important elements and the developing countries should build up on them. Paragraph 4 says that the TRIPS Agreement "can and should be" interpreted and implemented in a manner that is supportive of the rights of countries to promote access to medicines to all and to protect public health in general. It is a

guiding principle, but by itself it does not give interpretations to the relevant provisions. It is very uncertain how the developed countries will implement it or be guided by it. It is also uncertain how the panels and the Appellate Body will use it for their interpretation exercise whenever needed. It is desirable that the developing countries take the lead and identify some specific points for interpretation and place such specific proposals of interpretation in the TRIPS Council which will send them to the General Council with its recommendation.

2. As mentioned above, the developing countries have placed some proposals regarding use of the compulsory licensing for pharmaceutical products in countries with insufficient manufacturing capacity. They have also impressed on the major developed countries that their proposals are in accordance with the paragraph 4 of the Declaration on the TRIPS Agreement and Public Health mentioned above. It will be useful to pursue this line and see if the major developed countries are willing to respect the letter and spirit of this provision of the Declaration.

3. The proposals of the developing countries in connection with Article 27.3(b) of the TRIPS Agreement should naturally be pursued. In fact there can be a continuing process of identifying issues and placing proposals on this matter and other relevant matters. The process of the review has already started. The TRIPS Agreement does not prescribe any time limit for closing this review. The review as required in Article 71.1 should have started in 2000, and thereafter every two years. But this review has not been taken up effectively. The developing countries should take the lead and place proposals for this review. There need be no sequencing of the two reviews, viz., the one under Article 27.3(b) and the other under Article 71.1. Both should be undertaken together, so that the developing countries are able to table their proposals in a comprehensive manner.

Some suggestions have been given in this writer's booklet "Some Suggestions for Improvements in the WTO Agreements" referred to earlier, which can be used by the developing countries in formulating their proposals.

IX. RELATIONSHIP BETWEEN TRADE AND INVESTMENT (PARA 20,21,22)

RELATED PART OF DECLARATION AND CHAIRMAN'S STATEMENT

This is one of the four Singapore Issues (called in this manner as these four subjects entered the WTO frame in the first Ministerial Conference held in Singapore in November-December 1996). The other three issues are: Competition policy, Transparency in government procurement and Trade facilitation, which will be dealt with in later sections. The decisions on negotiation in these four areas taken in the Doha Ministerial Conference are similar. As there has been some controversy on the exact content of the decision, it is examined in the next few paragraphs in detail. It is applicable to all the four Singapore Issues.

The relevant sentence in the Declaration and the related statement of the Chairman of the Doha Ministerial Conference should be considered together to examine this matter. In the Declaration, it is "agree(d) that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations". This provision appears in all the four Singapore Issues. Then there was a statement made by the Chairman of the Conference at the closing plenary session, which is quoted below.

"I would like to note that some delegations have requested clarification concerning Paragraphs 20, 23, 26 and 27 of the draft declaration. Let me say that with respect to the reference to an 'explicit consensus' being needed, in these paragraphs, for a decision to be taken at the Fifth Session of the Ministerial Conference, my understanding is that, at that session, a decision would indeed need to be taken by explicit consensus, before negotiations on trade and investment and trade and competition policy, transparency in government procurement, and trade facilitation could proceed.

In my view, this would also give each member the right to take a position on modalities that would prevent negotiations from proceeding after the Fifth Session of the Ministerial Conference until that member is prepared to join in an explicit consensus." Statement by Conference chairman, Hon'ble Mr Youssef Hussain Kamal, Minister of Finance, Economy and Trade, Qatar at the closing plenary session of the Doha Ministerial Conference, 14 November 2001

The Chairman has made this statement in response to the requests of some delegations to have "clarification concerning paragraphs 20,23,26 and 27". Hence his statement is in the nature of the "clarification" of the language in these paragraphs. Also the Chairman has termed the first part of it as "(his) understanding". Normally a chairman gets such understanding by a process of consultations with the participants in the meeting and he/she includes agreed formulations in his/her understanding. If there is no objection or reservation from the participants after the chairman has expressed his/her understanding, it is considered to be the collective wish of the meeting. In this plenary during this Conference, there was no objection or reservation from the participants after the Chairman expressed his understanding. All this makes this part binding on the WTO process unless it is modified by a later WTO Ministerial Conference.

This part of his statement will be considered to interpret the meaning of the language in these paragraphs (i.e., paragraphs 20,23,26 and 27). Hence it is necessary to have an explicit consensus before negotiations in these four respective areas "could proceed". The text in the relevant paragraphs in the Declaration speaks about the decision by explicit consensus on modalities of negotiations. A question arises whether the negotiation will automatically proceed when the modalities are agreed to by explicit consensus. Here the text in the Chairman's statement comes into play. It speaks about decision by explicit consensus on the negotiation to proceed. All this considered together suggests a two-stage decision by explicit consensus, one stage for the modalities for negotiation and another stage for the negotiation to proceed. It should be noted that there is no prescribed sequencing in these two stages; for example, even before the modalities are taken up for a decision (by explicit consensus), the matter of negotiation itself can be taken up for decision (by explicit consensus).

Decision by consensus is defined in the footnote 1 to Article IX of the Marrakesh Agreement Establishing the WTO as a situation when "no Member, present at the meeting when the decision is taken, formally objects to the proposed decision". Thus technically speaking, even one Member can withhold consensus on modalities and thereby withhold the negotiation in this area thereon. Also even one Member can withhold consensus on negotiation to proceed. In actual practice, it will depend on the motivation of the Members and the political situation existing at that time. The Fifth Ministerial Conference will be technically within its rights to alter the situation created by this understanding.

WORK UPTO FIFTH MINISTERIAL CONFERENCE

It is given in paragraph 22 of the Declaration. The Working Group on the Relationship between Trade and Investment has been examining this relationship since 1996. Now the Declaration says that the Working Group will focus on certain specific elements. Besides, as mentioned in paragraph 20 of the Declaration and also in the Statement of the Chairman, "modalities of negotiations" will be worked out. What will be the essential subjects of the "modalities" has not been spelt out. The Declaration is silent on this point.

Paragraph 22 of the Declaration asks the Working Group to focus on the clarification of certain elements, viz., (i) scope and definition, (ii)transparency, (iii) non-discrimination, (iv) modalities for pre-establishment commitments based on GATS-type positive list approach,(v) development provisions, (vi) exceptions and balance of payment safeguards, and (vi)consultation and dispute settlement.

Then the Declaration goes on to give some guidelines on the possible framework, for example, the framework should reflect balanced interests of home and host countries, take account of development policies and development objectives of the host governments, take into account the special development, trade and financial needs of developing countries including the least developed countries, etc. It should be noted that these are the guidelines for a "framework", and negotiation on the "framework" can take place only after the Fifth Ministerial Conference, if the conditions mentioned above are fulfilled. Hence the relevance of these guidelines to the current work of the Working Group is not clear.

SUGGESTED ACTION

Background

The objective of the proponents of this subject in the WTO is to ensure and strengthen the protection of the rights of foreign investors in the host countries and to curtail the role of the host government in putting conditions on foreign investors' entry and operation. It has serious implication for the developing countries. They have priorities of development and they would like to channelise foreign investment in the areas of their priority, for example in building of infrastructure, in production of exportable goods and services and in sectors which will instill innate strength to the country's economy. They would also like to have proper geographical spread of the foreign investment so that the under-developed regions of the country get priority attention. Further, they will prefer that the operation of the foreign investment is carried out in such a way that it links with the domestic economic activity in a positive manner with mutual benefit to both the investor and the domestic economic activities. They will be keen to guard against any adverse effects of the foreign investment on their economic, social and political process. All these objectives need concrete government policies and measures.

The objective of the proponents of this subject is to restrict the options of the government in this regard so that the investor has freedom of entry and operation. It can have serious adverse impact on the host country's economy and its economic structure. The developing countries are particularly vulnerable in this regard. Hence it is quite natural that a large number of them have been extremely reluctant to let this issue enter the WTO, where the binding commitments cannot be annulled or modified without giving commensurate compensation. The approach of the developing countries to the work in the Working Group should be guided by these real apprehensions.

Elements for clarification included in paragraph 23 of the Declaration

The Work Programme has identified certain elements for clarification as the focus of the work. Two important points need to be emphasized. Firstly, the items are mentioned for "clarification". Thus the existence of an item here does not mean that it has already been accepted as an appropriate subject in a multilateral framework. After the exercise of clarification, it may be decided that the item should be treated in a certain way or that it should not be included at all. Secondly, it should be noted that these are not the exclusive elements for clarification, since these have been identified for the focus of the work and not as exclusive work. Hence if the developing countries identify some other elements for consideration or clarification, this paragraph of the Declaration does not prevent them from doing so. In fact, it will be useful if the developing countries, apart from giving their ideas on these elements, also put up some other elements which they consider important from their point of view.

There may be a doubt whether the developing countries should actively engage in this exercise as they have been objecting to an expansion of the work on Investment and Competition Policy in the WTO. It is important for them to engage fully in this exercise at this stage; otherwise the work on clarification of these elements will go on without their contribution and they will thus lose an opportunity to place their ideas on the table and have an effective say in determining the content and relevance of these elements. The advantage for them lies in active participation and placing

other elements for clarification which they may consider relevant.

Some preliminary ideas are given below in respect of the points for clarification identified as the focus of work in the Work Programme.

Scope and definition

Considering that this whole exercise is aimed at curtailing the government's options and role, it is important for the developing countries to have the scope and definition in such a way that it is limited, well defined and not amenable to future expansion. For example, it is desirable to limit the scope to foreign direct investment (FDI) and not to include portfolio investment, loans or credit, short term deposits, speculative funds and other such flow of funds. It should be ensured that the definition of foreign direct investment is fully clear and totally unambiguous.

Transparency

Transparency should be limited to automatic or easy availability of the relevant rules, procedures and decisions. It should not transgress into the area of substantive decision making process.

Non-discrimination

Non-discrimination has two elements, viz., one, non-discrimination as between the investors of the territories of different Members (MFN principle) and two, non-discrimination as between the foreign investor and domestic investor (national treatment principle). Both these principles are dangerous in respect of the developing countries; and, between the two, the second is much more dangerous. They should have the flexibility to give preference to investments from particular countries, based on the past experience and past linkages as also on the basis of the perception of future trends of cooperation. It will be extremely harmful for the developing countries to include national treatment, i.e., non-discrimination as between the foreign investor and domestic investor, in a possible framework for investment. Domestic investors stand on a different footing altogether. For example, they do not repatriate the returns on investment to foreign countries, they are more inclined to have domestic linkages with their investment, thus generating further domestic economic activities, etc.

It will not be enough if the developing countries are given some differential treatment in this respect. Past experience in the GATT/WTO system has shown that differential treatment do not have the safeguard of real and stable protection. What should be ensured is that the principle of non-discrimination as seen in the WTO sense, as explained above, should not have a place in a framework for investment at all.

Modalities for pre-establishment commitments based on GATS-type positive list approach

Here the reference is to the specific commitments in the GATS. A country chooses which sector to include in its commitments and what conditions to apply for the entry and operation. In the context of investment, it would perhaps imply that a country will undertake obligations on the entry of investment in areas specified by it and also will be able to prescribe conditions for entry and operation. At the surface it may appear safe. But the experience with the GATS negotiations on specific commitments has shown that it does not give adequate protection to the developing countries.

Though in theory a country is free to choose sectors for inclusion in its commitments, in actual practice, its commitments, including its choice of sectors, will be the result of a series of bilateral and plurilateral negotiations with other countries, in particular the major developed countries. In these negotiations, individual developing countries are put to intense pressures from the latter and are often unable to limit their commitments to the sectors of their choice.

Development provisions

A desirable development provision will be that a developing country will be totally free to apply conditions on the entry and operation of the foreign direct investment in accordance with its own perception and decision on its development process. A developing country should have total freedom to make its own autonomous decision and thus it should not be required to justify it either bilaterally or multilaterally.

Also, a developing country should be enabled to apply domestic content requirement that is at present prohibited under the Agreement on TRIMs and Article III of the GATT 1994.

Exceptions and balance-of-payments safeguards

If a developing country has full discretion and flexibility about putting conditions on entry and operation of the foreign direct investment, it will not need exceptions and balance-of-payment safeguards. While allowing the entry of investment it will be retaining its options of actions in the situations needing exceptions or balance-of-payment safeguards.

Consultation and dispute settlement between Members

A possible framework will have a dispute settlement process to resolve the disputes between the Members. The investors should have no role in this process. The dispute settlement mechanism should be separated out from the normal Dispute Settlement Understanding of the WTO, in the sense that there should be no provision of cross-retaliation as is contained in Article 22.3 of the Dispute Settlement Understanding of the WTO.

Elements for clarification to be placed by the developing countries

As mentioned above, these are not the exclusive elements for clarification. Surprisingly, the selection of these elements has been very much one-sided. Several specific points made by the developing countries in the Working Group which could have formed part of this list of elements have not been taken into account. Hence it is important for the developing countries to place their own points for clarification in this part of the work of the Working Group. Some proposals of this nature had been included by the developing countries in the draft for Seattle Ministerial Conference (para 56 of that draft). Suggestions are given below for some elements to be introduced by the developing countries in the Working Group .

Obligations of foreign investors

The foreign investors should have the obligation not to undertake what are considered restrictive business practices, for example, restrictive conditions on consumers or other users, transfer pricing, collusive pricing, predatory practices, etc. They should also have the specific obligation of total transparency in their dealings, particularly in respect of their raising of resource, sale of products and services, purchase of products and services, distribution and use of profits, etc. Further they should have the obligation not to act prejudicial to the social norms and economic interests of the host countries. There should be a provision for international blacklisting of the investors found to be defaulting on their obligations.

Foreign investors may also be obliged to: undertake technology transfer (including to domestic firms), train domestic personnel, allow domestic firms/persons participation in equity, bring specified amounts of capital, retain certain levels of profit in the country, etc

Obligations of home government

The home government of the foreign investor should have the obligation to ensure that the obligations of the foreign investor are discharged fully.

These are only some examples. There may be other elements based on the experiences of the developing countries with the foreign investment over the years.

X. INTERACTION BETWEEN TRADE AND COMPETITION POLICY (PARAS 23,24,25)

The explanation of the status of the decision on negotiations as explained above for Relationship Between Trade and Investment applies to this subject too.

BACKGROUND

The objective of the proponents of this subject is to provide full freedom of operation of their trading firms in other countries, particularly the developing countries. They argue that foreign firms should have effective equality of opportunity as domestic firms in the domestic market. This is really the crux of their approach to competition policy in the WTO context. Towards this end their aim is to curtail the discretion and flexibility of the host government to guide the entry and operation of foreign firms and to prohibit the enjoyment of any special advantage by the domestic firms. For example, a developing country may like to give special treatment to its domestic trading firms in the matter of taxation, use of domestic distribution channels, etc, while denying these advantages to the foreign trading firms. The proponents of Singapore Issues in the WTO would particularly target these and other similar flexibilities available to the> governments at present. The developing countries have been opposing the entry of this subject in the WTO, as, among other reasons, they feel that it will expose their own domestic firms to intense competition from the big multinational foreign firms in the domestic market. Competition policy is an integral element of the development policy of the developing countries. The experience of some developed countries indicates that they have modulated their competition policy over the years to suit their conditions at various stages of their development. It is prudent for the developing countries to do likewise. If they lose their flexibility and option in respect of their competition policy, it will operate against their process of development. The intention of the proponents of this subject in the WTO implies loss of their flexibility and option. The work in the Working Group until the Fifth Ministerial Conference should be approached in this context.

ELEMENTS FOR CLARIFICATION INCLUDED IN PARA 25

The Work Programme specifies some elements for clarification in the Working Group on Competition Policy. As in case of Investment, these are not in the nature of being the exclusive elements, these are mentioned for focus of work. Consideration of other elements are not prohibited. Hence the developing countries should place some other elements of importance to them for clarification. Also, as explained in the section on Investment, the inclusion of these elements for clarification does not imply accepting them in any possible framework.

The point whether the developing countries should engage in the exercise of clarification of these elements has been discussed in the section on Investment and the suggestion made there applies to this subject too.

Some brief comments are given below on the elements mentioned in paragraph 25.

Transparency, non-discrimination

The comments given on these elements above in the section on Investment are applicable here too.

Procedural fairness, provisions on hardcore cartels

The content of these elements is not clear. Perhaps these elements have been taken over from the practices of the major developed countries, as has often been the case with framing the rules in the GATT/WTO. The developing countries may seek clarification from the relevant countries on the exact content of these elements and prepare their position.

Modality for voluntary cooperation

This element is also not quite clear. Clarification may be sought by the developing countries from the major developed countries having provisions for voluntary cooperation, and responses may be prepared based on the information.

ELEMENTS TO BE PROPOSED BY DEVELOPING COUNTRIES

As suggested above in the section on Investment, the developing countries should make their own proposals for additional elements for clarification in the Working Group. Some suggestions are given below.

Obligations of the firms

The suggestions given above in the section on Investment are applicable here too. All those elements may be included in this subject as well.

Obligation of home government

The suggestions given above in the section on Investment are applicable here too. All those elements may be included in this subject as well.

Competitiveness of domestic firms

In the context of rapidly liberalizing domestic and external economic environment, continuance and growth of competitiveness of the domestic firms, particularly small firms, becomes a challenging task. It is important to consider the relevant measures to be undertaken by the domestic firms, by the government and by a possible multilateral framework in this regard.

Competition impeded by government action

Government policies and measures impeding competition directly or indirectly should be included in the list for clarification. For example, anti-dumping action should be considered, as has been proposed by the developing countries in the past.

Competition impeded by IPR protection

The protection of intellectual property by giving exclusive and monopoly rights to the IPR holders results in severe limitation to competition. It severely limits production and sale.

Global monopolies and oligopolies

In several areas and sectors, there are small number of producers and/or traders. It results in monopoly or near monopoly situation in the world market.

Big mergers and acquisions

Almost every day we have news in the economic journals about mega-mergers. Such moves impede competition. It should be an important element for inclusion in the role of a possible multilateral framework on competition. These are only some of the examples. The developing countries may identify other elements based on their experience over the years.

XI. TRANSPARENCY IN GOVERNMENT PROCUREMENT (PARA 26)

The explanation to the decision regarding negotiation as explained earlier in the section on Investment applies to this subject also.
The work in the Working Group until the Fifth Ministerial Conference will continue on the elements of an agreement and on the modalities of negotiations for an agreement. There is a specific commitment in this paragraph that the negotiations must be "limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers".

BACKGROUND

The subject of government procurement was introduced by the major developed countries primarily to have access of supply to the foreign government purchases, particularly in the developing countries. Governments have flexibility and options in these purchases regarding the source of supply. Government procurement, i.e., the purchases for the use of the government, are not covered at present by the rules of MFN and national treatment. Hence a country can prefer supplies from a particular country over that from another. Also, a country can prefer supplies from domestic suppliers over the supplies from foreign suppliers. These flexibilities and options are very important for the developing countries. Government procurement forms a sizeable market in many developing countries. They can use it as a lever to get some advantage in a foreign country. More importantly, they can use it for encouragement of domestic production. Hence it is important for them that these rights are retained by the government.

But the major developed countries have been viewing it as an obstacle to the expansion of their market opportunities in the developing countries. There is a plurilateral agreement on government procurement where just a couple of the developing countries are members. The rest are out of it, because they would like to retain their flexibility and options for the purposes mentioned above. The developing countries opposed severely any attempt to start negotiations on an agreement which would cover the area of market access in government procurement. The major developed countries then lowered their target and proposed working out elements for an agreement on transparency in government procurement. It was agreed in the Singapore Ministerial Conference in 1996.

SUGGESTED ACTION

The Working Group will be continuing with its work on the elements for a possible agreement on transparency in government procurement. The developing countries have been actively participating in this exercise. They should continue to do so. They should ensure in this process that: (i) the elements for transparency in government procurement for a possible multilateral agreement do not overburden the government machinery entrusted with the task of government procurement, and
(ii) the exercise does not in any way transgress into the area of market access. The relevant paragraph of the declaration already reaffirms, as mentioned above, that a possible future negotiation in this area must be limited to transparency. Transparency means automatic and easy availability of information on the rules and practices and also the final decisions. It may also include easy availability of information on tenders and specifications of products to be procured. It must not include the areas of evaluation of offers, decision making process and relief to the unsuccessful tenderers, as these are the elements of substantial decisions and not transparency.

During the work in the Working Group in 1999, some major developed countries had placed proposals in this area which went much beyond transparency and tried to cover the area of decision making. This type of effort should be resisted.

Whatever provisions are worked out for transparency in government procurement should be applicable only as guiding principles or best endeavor provisions not enforceable through the dispute settlement process.

XII. TRADE FACILITATION (PARA 27)

The decision regarding negotiations explained earlier in the section on Investment applies to this subject as well.

BACKGROUND

The work in this area until the Fifth Ministerial Conference will be conducted in the Council for Trade in Goods. This work will be on review, clarification and improvement of Articles V (freedom of transit), VIII (fees and formalities connected with import and export) and X (publication and administration of trade regulations) of the GATT 1994.This subject coming at the residual end of the Singapore Issues has not received really serious attention of the developing countries. It should
be realized that there are grave dangers involved in the potential agreements in this area if the proposals of the proponents are incorporated in the form of binding commitments. The main objective of the proponents is to have the rules and procedures similar to theirs adopted by the developing countries. It ignores the wide difference in the administrative, financial and human resources between the developed countries and developing countries. Also it does not give weightage to the wide difference in social and working environment.

For example, one set of proposals would like to have physical examination of goods by the customs authorities only in a small number of cases selected on random basis. It will improve the flow of goods through the customs barrier, but increase the risk of avoidance of payment of adequate customs duties. Such a practice may be appropriate for the major developed countries where the chances of leakage is negligible, but it may not be appropriate for the developing countries where leakage is higher.

Clarification and improvement of the rules in these areas will add to the commitments of the developing countries in the WTO. For the developed countries too, there will be commitments, but it may not be much burdensome for them as most of them are already following these practices.

For the developing countries on the other hand, it may add new burdens and may have adverse implications too, as illustrated in the example given above.

SUGGESTED ACTION

The negotiating structure of the developing countries should be in close contact with the administrative machinery involved in these areas. The input based on their experience should be given high weightage in determining their positions on assuming new commitments. Past experience has shown that the administrative machinery in the developing countries often finds it difficult to implement the commitments made in the GATT/WTO. During the negotiations, it should be emphasized that in these areas it will be more proper and practical to have national efforts, aided by technical assistance, to bring about improvement, rather than by imposing obligations through additional commitments in the WTO.

If the consideration of the problems in these areas results in some solutions, these should, at best, be adopted only as guiding principles or as flexible best endeavour provisions, not enforceable through the dispute settlement process.

XIII. WTO RULES AND DISPUTE SETTLEMENT (PARAS 28,29,30)

Paragraph 28 deals with subsidies and anti-dumping, paragraph 29 with regional trading arrangement (RTA) and paragraph 30 with dispute settlement. The negotiation in subsidies and anti-dumping is aimed at clarifying and improving the disciplines in these respective areas. The negotiation in the area of RTA is aimed at clarifying and improving the disciplines and procedures. The negotiation in the area of dispute settlement is aimed at clarifying and improving the Dispute Settlement Understanding (DSU). The scope of negotiations in all these areas extends to clarification and improvement. Clarification involves interpretation, whereas improvement may involve amendment. Hence this part of the Work Programme envisages comprehensive negotiations in these areas involving rights and obligations and may even involve reopening of some of the provisions. Paragraph 28 puts in a qualification in respect of subsidies and anti-dumping to the effect that the basic concepts, principles and effectiveness of the respective agreements and their instruments and objectives will remain preserved in the negotiations.

Clarification may be necessary when there is, for example, a case of differing interpretation or the existence of a range of options which needs being narrowed down or widely differing permissible practices needing harmonization. Improvement may be called for when the implementation of some provision has been creating serious difficulties or when the existence of some provision is considered to be improper. It should be noted that "improving discipline" does not necessarily imply enhancing the discipline; it may even mean lowering the level of discipline in some cases, depending on the objectives to be achieved.

POINTS OF STRENGTH

The comprehensive negotiations in these areas provide an opportunity to the developing countries to eliminate or substantially reduce the imbalances in these rules and also eliminate or substantially reduce the harassment of the developing countries arising out of the operation of some of the rules in the developed countries. There need be no hesitation in making proposals for amendment of the provisions which have proved to be iniquitous or irksome. The qualifying clause in paragraph 28 in respect of subsidies and anti-dumping do not prevent consideration of proposals for amendments of the rules. The developing countries have been complaining for some years about the deficiencies, imbalances and iniquities in these agreements. Now an

occasion has come when they can place their proposals for changes in these agreements to their advantage.

POINTS OF WEAKNESS

The qualifying clause in paragraph 28 about preserving the basic concepts, principles and effectiveness of the agreements on subsidies and anti-dumping may be used by the major developed countries to resist consideration of the proposals for the improvement of the agreements. But such efforts by them will not be logical. For example, in the area of subsidies, the basic concepts and principles are that domestic production should not be injured by unfair trade aided by subsidies and if there is such trade, the importing country has the right to introduce correctives in the form of additional duties. This should in no way prevent the consideration of proposals for elimination of defects and deficiencies in determining the amount of subsidy and existence of injury. The major developed countries may try to limit the use of these paragraphs to bringing about small changes in the procedures in these areas. But the Work Programme set out in these paragraphs does not call for such limitation. Hence, such restrictive moves can be easily defeated, if the developing countries are prepared with their substantial proposals for improvement of these agreements.

There may be a lurking fear in the minds of some developing countries that unraveling of these agreements may not be safe for them, as it may result in still more unfair results in the negotiations. But this fear may not be quite material. If they have found some parts of these agreements operating against their interests, there should be no hesitation in presenting proposals for correcting the situation. And in these areas, a large number of the developing countries may have some commonly shared experiences which may inspire them to have a common and joint approach. This will reduce the dangers of the final results going against their interests.

SUGGESTED ACTION

The main exercise in these areas of the Work Programme for the developing countries will be to prepare their proposals and place them in the appropriate negotiating bodies. Already a lot of work has been done by them in the recent three years. They may pool all this work for preparing their proposals and also the arguments to back up the proposals. Some suggestions in this regards are given below. A large number of the proposals of the developing countries have already been included under the heading of "Implementation Issues". These are contained in the General Council document of 20 February 2001, i.e., JOB(01)/14. There are 15 proposals (serials 41 to 55) on anti-dumping and 20 proposals (serials 64 to 83) on subsidies. These proposals may be included in the exercise of clarification and improvement of these two agreements. Another source of the proposals in the areas of subsidies, anti-dumping and dispute settlement is this writer's booklet "Some Suggestions for Improvements in the WTO Agreements" , published by the Third World Network in 1999. This booklet gives 8 suggestions in the areas of subsidies and anti-dumping and 6 suggestions in the area of dispute settlement. The developing countries may consider these suggestions while making their proposals.

Besides, the developing countries have their own experience of the working of these agreements for nearly seven years. These experiences may bepooled, and new proposals may be prepared on that basis. In the area of RTA, there is only one proposal (serial 98) under the heading of Implementation Issues in the General Council document of 20 February 2001 referred to above. This proposal is about granting waivers to RTAs between developed and developing countries. Other proposals based on the experiences of the developing countries may be prepared. Some important elements which may be covered by their proposals are the following. i. RTAs among the developed countries must not reduce the market access of the developing countries in those developed countries. The related existing

provision in Art XXIV.4 and Art XXIV.5(a) of the GATT 1994 needs to be refined and specified in relation to the effect on the developing countries. In fact, the burden of proof should be on the developed countries members of the RTA to demonstrate that the market access of the developing countries has not been reduced. ii. In case of the developing countries forming RTAs among themselves, there should be flexibility about the coverage of trade by the agreement. Towards that end, the provision regarding elimination of duties and other restrictions with respect to "substantially all the trade" should be relaxed. The developing countries are in the process of preparing proposals while earning from their experience. Also they do not have the type of support and resources which the developed countries have. Hence the programme of work in the negotiating bodies should not put an early embargo on the new proposals from the developing countries.

XIV. TRADE AND ENVIRONMENT (PARAS 31,32)

This is a new area of negotiation included in the WTO as a part of the Work Programme. The provisions on environment are contained in paragraphs 31 and 32 of the Declaration. Paragraph 31 starts negotiations on the relationship between WTO rules and specific trade obligations in Multilateral Environment Agreements (MEAs) and on reduction of tariff and non-tariff barriers to environmental goods and services. The procedure for information exchange between the MEA Secretariat and WTO committees will also be negotiated. Paragraph 32 gives a comparatively lower level of treatment to three other issues to which the Committee on Trade and Environment will give particular attention. The work in the Committee will include identification of need to clarify WTO rules. The Committee will make recommendation to the Ministerial

Conference on future action in these three areas including negotiations.

These three subjects are: effect of environmental measures on market access particularly for the developing countries, consideration of the relevant provisions of the TRIPS Agreement and labeling requirements for environmental purposes.

This subject is coming on from Marrakesh and has been under intense consideration in the WTO since then. The major developed countries, particularly the EU, have been anxious to dilute the disciplines of Article XX of the GATT 1994 in respect of trade restrictive measures taken in pursuance of the provisions of MEAs. The developing countries have been resisting this attempt. Now a formal negotiation will take place on this subject. Article XX of the GATT 1994 prescribes that trade restriction for environmental reasons should satisfy the test of necessity and must not be a disguised tool of trade restriction. A country taking these measures will be required to satisfy these conditions. The idea behind the proposals of the major developed countries is to have an automatic acceptance of the validity of the trade measures taken in pursuance of the provisions of the MEAs. The fear of the developing countries has been that such a move is dangerous, as it will encourage application of trade restrictive measures in the prevailing atmosphere of protectionist pressures in the major developed countries.

It is surprising that the reduction of tariffs and non-tariff barriers on environmental goods and services has been included in the negotiation under the heading of "environment". Already a major negotiation has been launched in area of tariff and non-tariff measures in the industrial products area as discussed earlier. These negotiations will automatically cover all industrial goods of interest to the various participating countries. Hence the so called "environmental goods" will also be covered by these negotiations. There is no reason why this negotiation should be placed under the heading of environment. It should be covered by the normal negotiations in the area of industrial goods. In similar manner, the negotiation on environmental services should be the subject of the body handling liberalization of services.

It is important to clarify what types of goods and services are to be covered under the title of environmental goods. If the idea of the proponents is to include in this class such goods which are produced in conformity with certain environmental standards, the implication is dangerous for

the developing countries. It will amount to acceptance of the classification of goods based on the processes and production methods (PPM) not "related" to the goods, i.e., even when these goods themselves do not contain anything harmful but have been produced in a manner which is perceived as harming the environment at the place of production. If, however, the idea is to include in this class such goods and processes which help in improving the environment, e.g., relevant machines, equipments, chemicals, etc., it is not proper to negotiate market access in respect of them separate from the general market access negotiation explained earlier. This point will be elaborated later.

Paragraph 32 (i) and (ii), i.e., the subjects of the effect of environmental measures on market access and the provisions of the TRIPS Agreement are important for the developing countries. There is a tendency in the major developed countries to curb imports on the environmental grounds. There is a risk that trade restrictive measures ostensibly for environmental reasons may become a new tool of protectionism in trade. The past experience has shown that usually the victims are the developing countries. It is in this context that the effects of environmental measures on market access, particularly of the developing countries, assumes importance.

The second sub-paragraph on TRIPS and environment has been brought in because of the experience of some developing countries that the rights of the patent holders flowing out of the TRIPS Agreement have sometimes operated against the capacity of the developing countries to protect or improve environment. Taking advantage of their monopoly position, the patent right holders sometimes dictate very severe terms for using the patented machines, chemicals and equipments. Hence a serious consideration of the subject of environment should rationally include identification of handicaps created by the patent rights and the ways to solve this problem. Besides, there may be other issues regarding the linkage between TRIPS and environment, for example bio-diversity and other matters covered by Article 27.3(b) of the TRIPS Agreement.

Paragraph 32(iii) has been brought in at the instance of some developed countries because of their need of the labeling requirement on goods with possible environmental hazards. They argue that a labeling of this nature will alert the consumer to the possible risks. The danger is that the labeling requirement may cause severe strain on the exporters of the developing countries who are not well informed of the requirements and on whom the burden of providing labeling may be onerous. There is also the issue of the developing countries wanting to require labeling on environmental or safety grounds, e.g., for genetically modified foods or seeds, but which face pressures from some major developed countries to refrain from doing so.

SUGGESTED ACTION

The developing countries should ensure that the subject of tariffs and non-tariff measures on environmental goods is not handled in the negotiating body on environment, but, in stead, by the negotiating body handling market access in industrial products. The definition of what will be termed as environmental goods should, of course, be the first step. If there is an attempt by the proponents to include in the definition the concept of "unrelated" PPM, explained above, it should be opposed in line with the existing stand of the developing countries. If, however, the machines, equipments, chemicals, etc helping in production of environment friendly goods are categorised as environmental goods, the major developed countries will naturally be the main exporters of such goods, hence reduction of tariff and non-tariff measures will be benefiting them. This exercise should thus be included in the normal negotiation on tariff and non-tariff measures on industrial products, so that the balance of concessions is properly struck. If, on the other hand, it is handled in the negotiating forum for environment, it is feared that the developing countries will not be able to get the reciprocal benefit for their reduction of the tariff and non-tariff measures on such goods.

In the negotiation on the relationship between the WTO rules and the trade obligations contained in the MEAs, which is a code word for diluting the disciplines of Article XX of the GATT 1994, the

developing countries should be careful that the disciplines should not be diluted. As mentioned above, there are two essential requirements for taking trade restrictive measures under Article XX of the GATT 1994, viz., the measures should be necessary and should not be disguised restrictions on trade. These requirements have a good rationale and have a long history of actual implementation in the GATT/WTO. MEAs will not be in a position to weigh fully the pros and cons in respect of these two essential criteria. Hence, any suggestion that the trade restrictive action under MEAs should have automatic acceptance in the WTO without ensuring that the criteria mentioned above are satisfied, will be extremely risky. The countries whose trade will be restricted by such measures will be losing an important WTO right. And as the experience has shown, the developing countries will be the main victims. Also it is not right in principle to hand over the examination of the fulfillment of these trade criteria to some other organization.

The WTO and the MEAs have been negotiated in quite separate contexts and constitute separate sets of obligations and rights. It is not correct now to mix up these rights and obligations emerging out of two completely separate sets of agreements. More over, an international agreement should have its own mechanism of implementation. It should not depend on another international agreement for this purpose. Thus the MEAs should themselves work out how to implement their provisions effectively. If the rights and obligations inscribed in the WTO are now made subservient to those in the MEAs, a wrong precedent will be set. There may be a call in future to make them subservient to the provisions of yet other multilateral agreements.

There is a possibility that this line of argument may possibly result in the major developed countries arguing that the Biodiversity Convention should not, for the same reason, be expected to modify the obligations in the TRIPS Agreement. One line of approach may be to refer the conflicting obligations in the GATT 1994 and MEAs to a body like the UN for working out a reconciled position.

Apart from these basic issues, there are also some important practical problems which should be raised by the developing countries in course of the negotiation. What should be the definition of the MEA? Multilateral agreements can be formed by even a small number of countries. Should all of them covering some aspects of environment be given the status of an MEA for this purpose? If not, what should be the basis of the criteria and what should be the elements of the criteria for selecting particular agreements to be given this status? In what manner will the rights of the Members that are not parties to the particular MEA be preserved? If we distinguish between the Members of the WTO in respect of the implementation of the trade measures taken in pursuance of some MEA, will it not hit the basic MFN principle of the GATT 1994? These are only some examples; there may be several such problems.

In respect of paragraph 32 (i), the developing countries may collect their own experience of the recent past few years of their trade being restricted for environmental reasons in several major developed countries. This information will form the background for assessing the effects of environmental measures on market access of developing countries. In respect paragraph 32(ii), they should propose qualifications to the rights of patent holders in respect of environmental products and processes.

On the labeling requirement, care should be taken that the exporters of the developing countries do not have to carry heavy burden.

XV. ELECTRONIC COMMERCE (PARA 34)

BACKGROUND

This paragraph has two operative points. One, the General Council has been asked to consider the most appropriate institutional arrangements for handling this subject in the Work Programme. Two, the Members have made commitment not to impose customs duties on electronic

commerce until the next Ministerial Conference. Considering that there are already too many bodies in the WTO handling different subjects, it will not be proper to create yet another body. A preferred option may be to entrust this task to one of the existing bodies. The Council for Trade in Goods may be given this work. In the ongoing work in this area which will continue, the major problem is with regard to the proposal for zero duty on electronic commerce. It is not in the interest of the developing countries to continue their commitment of zero duty on electronic commerce. Some reasons are given below.

In the electronic commerce covered by the proposal, the exporters are generally the developed countries, whereas the developing countries are generally the importers. Except for a very few of the developing countries, they hardly have much prospect for export in this area. Hence they should not apprehend any adverse effect arising out of other countries imposing a tax in this area. In such a situation, a pragmatic trade policy in a developing country will be more in favour of levying a tax, rather than giving up the option of tax altogether, as is called for by the proposal on zero duty.

Even the few developing countries which have any prospect of exports in this area, will perhaps not suffer from the import tax in other countries, as their cost of production of such items is generally very low compared to that of the major exporters, i.e., the developed countries. Hence in spite of the import tax in other countries, they will generally remain competitive compared to the suppliers from the developed countries, and as such they need not apprehend adverse impact from such a tax in other countries.

Also, there is an important angle of revenue. This is a vastly growing activity, as is evident from the anxiety shown by the main proponent. And taxing this type of transaction can bring considerable resources to the government in a developing country. Committing zero tax will foreclose all options to raise revenue from this source resulting in huge potential loss to the government. Generally developing countries are having problems of resources; and foreclosing this option may be harmful.

Taxing this type of transactions is also fully rational and desirable from the angle of equity, particularly in the developing countries. The users of these transactions are likely to be those in higher income brackets, and as such it will appear to be totally iniquitous to make a multilateral commitment not to impose tax on them for such transactions. It is very likely that serious questions on the grounds of equity may be raised in those developing countries that make such a commitment.

And finally there is a serious systemic question also. This proposal for zero duty constitutes a discipline on a particular mode of transaction and not on goods or services. Agreeing to it will open a totally new chapter in the WTO. The systemic implication of it needs a careful study before there is an agreement on continuing with the commitment of zero duty.

SUGGESTIONS

There should not be a continuation of the commitment on the stand-still on electronic commerce. Rather there should be a negotiation on this request of the major developed countries, as it generally happens in the GATT/WTO process when there is a request for some concession or new commitment.

In this negotiation, the proponents, i.e., the major developed countries, should put on table their offers of reciprocal concessions. And then there should be a negotiation on these request and offer.

XVI. TRADE, DEBT AND FINANCE (PARA 36)

There is a broad objective in this paragraph that there will be an examination of the relationship between trade, debt and finance. Then there are two specific tasks: one, to prepare some possible recommendations on steps to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of the developing countries including the least developed countries, and two, to strengthen the coherence of international trade and finance policies with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability.

That there are close linkages between trade and finance has been well recognized. Also the effects of one on the other have emerged prominently in the recent experiences of some developing countries. Several experts say that trade policies and measures can get neutralized by the developments in the area of finance. Hence working on improving trade policies cannot be done in isolation from that on improving finance policies. Moreover, there is close linkage between some parts of the WTO agreements and finance policies. For example, liberalization of financial services, examination of the elements in the area of investment, subsidization of interest on capital, change in tariffs, etc are in several ways linked to movement of capital and exchange rate fluctuations. The examination of this issue in the Working Group may aim at two types of results. One, there may be one set of results which will involve clarification and improvement of the WTO agreements. For example, in respect of the problem of indebtedness, the provisions in the area of market access may be very much relevant. Two, there may be a set of results which should be in the form of recommendations for consideration outside the WTO.

XVII. TRADE AND TRANSFER OF TECHNOLOGY (PARA37)

Paragraph 37 is very broad without specific focus for attention. But it gives a possibility to consider how the development of technology in the developing countries can be facilitated through the use of trade instruments. It will necessarily involve consideration of the rules which can be linked to the development of technology. The agreements on TRIMs, Subsidies, Services and TRIPS can be easily identified for examination as to how they can be clarified and improved to encourage transfer of technology to the developing countries. Some illustrative examples are given below.

The prohibition on domestic content requirement by the TRIMs Agreement and Article III of the GATT 1994 can be considered as impeding technology transfer. If the developing countries are enabled to use this measure, it will encourage firms to build up domestic capacity adopting higher technology, so that the relevant domestic products are not inferior to imported products, which is often the reason for the firms not to use domestic products. Hence it is rational to propose abolition of this restriction in the TRIMs Agreeement and Article III of the GATT 1994. The relevant provisions in the Subsidies Agreement may be improved to enable the developing countries to provide subsidy for adoption of higher technology in production without attracting counter action. Such subsidy should be non-actionable.

The GATS and the TRIPS Agreement may be improved to enable the developing countries to put technology transfer conditions on the service providers and IPR holders without attracting any counter action in the WTO.