WTO AND 'NEW ISSUES'

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Abstract

The paper argues that WTO has not been functioning in a transparent manner and that the benefits of globalisation have not reached all countries. If Seattle is any indication, WTO is in fact 'a rich man's club'. Developed countries have been adopting the strategy of prying open the markets of developing countries while at the same time, erecting barriers that prevent access to markets in their countries to the products emanating from developing countries. In this regard, the paper looks at the 'new issues' that developed countries are keen to introduce into the WTO agenda through a new round of negotiations and argues that these would act as 'disguised protection'.

By themselves, each of these issues represents an area of concern and interest for the developing countries, such as, investment, competition policy, environment, electronic commerce, etc. However, their relationship with trade is complex and this needs to be comprehensively examined in the first instance. The paper argues that it would, therefore, be both premature and inappropriate to agree to the inclusion of these so-called 'new issues' into the WTO agenda and that it is important to first implement commitments entered into in earlier rounds before taking on board fresh commitments. Much, in other words, could in fact be lost by overloading the WTO agenda.

The paper also looks at the issue of labour standards, better known as 'the social clause', which some developed countries are keen to place on the WTO agenda and argues

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that such insistence and pressure would be counterproductive to the Multilateral Trading System as it would harm both trade and labour standards.

> *This is not the time to bring more issues into the WTO. This is the time, on the eve of the next millennium, to reflect on our responsibilities to each other and to future generations, a time to review and repair. For too long, trade liberalization has been pursued as a goal in itself, regardless of its impact."*
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> *"Millennioum Round, Game Over, No Credit Left"* Friends of the Earth**,** 1999, The World Trade Brief, Agenda Publishers, UK.

I. Introduction

Many have argued that the transition in 1995, through the Uruguay Round (UR), from GATT to WTO was perhaps the single most important development for the global economic system in the 20th century. The emergence of WTO lent a new meaning to the term 'globalization', which till then had remained essentially within the realm of intellectual discourse. It introduced the concept of 'economic globalization' into the vocabulary and its mandate was to integrate national economies into the global economy or the Multilateral Trading System (MTS).

Claims that the MTS would result in enormous benefits for all through global trade liberalization enthused the poorer countries, many of which saw it as a sort of fast track to economic prosperity. This possibly explains, but does not justify, the fact that most developing country delegations were not fully prepared at the time of the UR negotiations, which turned out, as some skeptics argue as being GATTastrophic for the developing and Least Developed Countries.

At the time of the Seattle Ministerial Conference, however, the developing countries took a far more activist role than in previous GATT negotiations. While there was no common South-position or approach to the Seattle Conference, there was general agreement among the developing countries that the UR agreements were unbalanced, in that they imposed significant obligations on the south without providing either sufficient rights or effective access to the markets in the north. The South accordingly demanded that action be taken in the first instance by the developed countries to address these concerns before new issues are put up for negotiations.

At the same time, certain facts spoke for themselves and alerted the developing countries against the false claim that globalization was good for all. Why, for instance, they asked, should developed countries deny market access to imports from Least Developed

Countries when such imports accounted for barely 0.5% of total world trade? How was it that 447 billionaires now have wealth greater than the income of one half of humanity? How does one explain that around 100 multinational corporations control one-fifth of all foreign owned assets in the world and that five corporations now market between 60% to 90% of all wheat, maize and rice and just three corporations control 83% of trade in cocoa? The developing world realized much to its consternation that the system, which was meant to benefit all countries, was so manipulated that the poorest 20% in the world shared just 1% of global GDP.

Indeed, while trade liberalization negotiated in the UR is expected to increase the value of world trade by at least US$200 billion by 2005, around 70% of this new wealth would accrue to the OECD countries alone. Most of the world's Least Developed Countries were expected to be worse off.

As a result, the build-up to the Seattle Ministerial Conference was perhaps the most acrimonious in WTO's brief history. Clear battle lines were drawn well in advance and it was apparent that the Conference was going to be anything but smooth sailing. By the time delegations congregated in Seattle in November of 1999, most developing and Least Developed Countries were openly critical of the MTS. They argued that the negotiations were not transparent and that, as a result, WTO was far from the 'equal club' that it was meant to be. At various WTO meetings, developing and Least Developed Countries repeatedly complained that no serious attempt had ever been made by the richer countries to implement the clauses related to Special &Differential treatment or to fulfill existing commitments.

At the same time, several developed countries advocated the imperative for a new round to correct some of the imbalances of earlier rounds and further, to "address issues of concern to the broader public". They sought accordingly, to expand the coverage of WTO issues through the introduction of non-trade issues into the trade agenda to make the negotiations more "comprehensive and inclusive". Catchy titles were suggested like 'Millennium Round', 'Development Round' etc.

Developing countries opposed this attempt because they saw this as yet another protectionist attempt aimed at restricting and denying market access. They also argued that before any new commitments were taken on board, it was necessary that what was already agreed to was first implemented in full. In a Joint Statement that issued on August 8th (Bandos Islands, Maldives) prior to the Seattle Ministerial Conference, the SAARC Commerce Ministers said *inter alia*

> *"C. There is a move to further overload the WTO agenda with 'new issues' such as social clauses, environment, 'governance', labour standards, etc.* ***Since these are not trade related, they should be kept out of the multilateral trading system.***
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> *D. The SAARC region should strongly emphasize that expeditious action be taken* ***for the full and fair implementation of existing agreements and commitments made thereon,*** *with special reference to the impact on developing and Least Developed Countries, and* ***that imbalances and asymmetries in these Agreements be addressed on a clear priority.*** *This would enhance the credibility of the multilateral trading system among the developing and Least Developed Countries."* (emphasis mine)

This paper critically examines the 'new issues' that developed countries would like to insert into the WTO Agreement. Only a Ministerial Conference can decide on the inclusion of new areas into the WTO agenda. This paper suggests that renewed and invigorated attempts would be made at the forthcoming Ministerial Conference in Qatar by the developed countries to include some, if not all the new issues, into the WTO agenda.

II. The 'New Issues'

The Singapore and the Geneva Ministerial Conferences decided to include in the WTO work programme, *for study and analysis* only, six new subject areas:

- Trade and Environment
- Trade and Investment
- Trade and Competition Policy
- Trade Facilitation
- Transparency in Government Procurement and
- Electronic Commerce

It is relevant to mention that while working groups or other bodies are studying the above-mentioned six subject areas, there is no commitment at this stage on the part of member countries on the desirability or otherwise of engaging in WTO negotiations on rule making in these areas.

2.1 Trade and Environment

Background

Discussions related to the environment tend to be highly emotive. The debate has become highly contentious and politicized, especially in recent times.

There are basically two opposing perspectives. First, there are those that advocate enhanced environmental degradation as an inevitable consequence of rapid trade liberalization. Globalization, this view argues, would unleash a 'demon', focused on profits that would unhesitatingly sacrifice 'public good' unless of course, something was done urgently. Environmentalists and NGOs support this view. Governments in developed countries have taken the cue from them and sought to establish that trade issues and environment protection are intrinsically linked and that we are all collectively (and morally) obliged to 'save the planet'. The other view argues that placing trade issues and environmental concerns in the same basket would be counter-productive, as it would harm both trade and environment. This group argues that a trade-environment linkage in WTO is nothing but a protectionist measure aimed at denying market access to products emanating from developing countries. They stress that the concept of sustainable development cannot be achieved unless environmental issues are viewed in the context of poverty and development[1]. The debate has only intensified and has, so far, not shown any signs of compromise between the different sides.

Unlike GATT which does not carry direct references to environmental matters[2], the preamble to the WTO agreement states that its objective of "raising standards of living and ensuring full employment" by "expanding the production of and trade in goods and services"

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1 This was agreed in Rio de Janeiro in 1992 at the United Nations Conference on Trade and Development, also known as the Earth Summit.

2 While there are no references in the preamble, GATT allows for action at the national level to protect the environment, provided it is in compliance with its basic rules and regulations. Article XX of the GATT Agreement, the Agreement on Sanitary and Phytosanitary Measures, and the Agreement on Technical Barriers to Trade all permit each country the right to set the level of environment protection that it deems necessary, provided it does not violate the principles of Article I (Most Favoured Nation Treatment) and Article III (National Treatment). In addition, it should not constitute a barrier to trade. Countries may therefore, take recourse to Article XX and adopt trade measures for the attainment of environmental objectives, if the conditions laid down are met. The Article permits use of prohibition or other restrictions not otherwise allowed under the GATT 1994 provisions provided they (i) are necessary to protect human, animal or plant life and health [Article XX (a)], and (b) relate to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production and consumption [Article XX (g)]. Such measures may be invoked only if, they do not constitute means of unjustifiable discrimination where the same conditions prevail (GATT principle of non-discrimination) and second, they are not a disguised restriction on trade.

is to be achieved by making "optimal use of the world's resources in accordance with the principles of sustainable development, seeking both to protect and preserve the environment…in a manner consistent with…needs and concerns at different levels of economic development." The Marrakesh Declaration also carries a separate decision to begin a comprehensive work programme on trade and environment through the Committee on Trade and Environment (CTE), the work programme of which was to look at ten identified issues[3].

The Issues Involved

While the clauses of Article XX of GATT 1994 enabled countries to invoke its provisions for environmental protection, it introduced the element of unilateralism. Each country could make up its own mind about the environmental objectives to pursue. Furthermore, different countries could have different priorities resulting in considerable variance[4]. Such unilateralism could seriously jeopardize the functioning of the MTS.

Second, the chapeau[5] of Article XX is ambiguous and open to different interpretations. There is concern that the Article provides shelter to disguised protection and does not provide a scientific basis for distinguishing between genuine environmental concerns (for instance) and arbitrary discrimination.

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[3] The ten issues are: (1) the relationship between the provisions of the MTS and trade measures for environmental purposes, including those pursuant to Multilateral Environmental Agreements (MEAs); (2) the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provision of the MTS; (3) the relationship between the provisions of the MTS and (a) charges and taxes for environmental purposes and (b) requirements for environmental purposes relating to products including standards and technical regulations, packaging, labeling and recycling; (4) the provisions of the MTS with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects; (5) the relationship between the dispute settlement mechanisms in the MTS and those found in MEAs; (6) the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions; (7) the issue of exports of domestically prohibited goods; (8) environment-related provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights; (9) the work programme envisaged in the 1994 Uruguay Round Decision on Trade in Services and the Environment; and (10) appropriate arrangements for relations with non-government organizations referred to in Article V of the WTO and transparency of documents.

[4] See Rio Declaration, Principle 11: "…Environmental standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries."

[5] The chapeau or start of Article XX is as follows: "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures…"

Third, the concerns of environmental lobbies emphasize production and process (PPMs). In other words, they deal more with the way in which a product has been produced rather than the product itself. This is in clear violation of the rules of SPS and TBT Agreements, which do not allow countries to prohibit or restrict imports, on the grounds that the imported product has not been produced according to the PPM standard imposed on domestic industries.[6] However, an importing country may not restrict imports solely because a product has been produced in a plant which does not meet its national standards for water or air pollution, or because the product has not been made according to the methods of production the country prescribes. Despite WTO law, governments in developed countries are introducing domestic legislation, which restricts imports on the grounds that they have not been produced in accordance with the production methods required under the domestic legislation of the importing countries [7]. Such trade restrictive domestic legislation is not based on scientific principles but reflects the value preferences of importing countries.

Most developing countries argue that PPMs are in clear contravention of the WTO Agreement. Trade restraints, it may be recalled, are included in several Multilateral Environmental Agreements and are consistent with commitments made at UNCED (1992). Environmental treaties for instance, severely limit trade in endangered species of flora and fauna (CITES), and impose conditions on the transboundary trade in hazardous waste (Basel). These treaties have been generally accepted and with no challenge to date in the WTO.

On the other hand, the insistence by some countries on PPMs has created considerable controversy because PPMs question the basic principle that 'like' goods must be treated 'alike'. What PPM advocates is that goods are not alike *because the process of their manufacture and the production methods are not alike*. For example, can we scientifically distinguish between two cans of tuna fish, where the tuna in the first can is caught through a technique that has resulted in the accidental death of a dolphin and where, in the second can, no dolphin has been caught or killed?

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6 The Agreement on TBT makes a single exception to this rule: A country may prohibit imports of a product when the PPM used affects its characteristics or quality.

7 The Netherlands is proposing for instance to allow imports of wood and wood products only if they are accompanied by a certificate issued by the competent authorities stating that the wood raw material has been obtained from forests that are managed sustainably. The European Union bans imports of furs from animals caught with leg-holds. The United States prevents import of tuna from countries whose fishing techniques result in dolphins being killed. The US also prevents imports of shrimps from countries whose shrimp trawling techniques result in sea turtles being caught.

There has been a long line of disputes[8] over environment-related trade measures since the 1980s, which GATT/WTO under the dispute settlement mechanism has consistently resolved as being discriminatory and trade-restrictive[9]. In the case of the shrimp-turtle dispute, which is among the most recent in this regard, the Appellate Body said that the US embargo was applied in a manner that would constitute a means of both unjustifiable and arbitrary discrimination between countries where the same conditions prevail, contrary to the requirements of the chapeau of Article XX. The Appellate Body further said that unjustifiable discrimination includes the unilateral application of a trade measure, such as the US embargo, that does not allow for any inquiry into the appropriateness of the regulatory programme for the conditions prevailing in the exporting countries.

Fourth, several of the proposals ostensibly aimed at protecting the environment negatively impact on the export opportunities of developing and Least Developed Countries. Eco-labelling, packaging requirements, 'green taxes' and charges, raise the cost of production and change the conditions of competition as they discriminate against the overseas suppliers. The apprehension is that such labeling programmes put developing countries in a position of competitive disadvantage since the foreign suppliers are not able to participate in the negotiations on product selection and eco-labelling criteria. This problem may be further exacerbated if the criteria (especially those related to PPMs) are influenced almost entirely by domestic industry and the environmental values of groups adopting the system. The problem is compounded since the criteria may differ from country to country. The net result is a denial of market access for products from developing and Least Developed Countries.

Fifth, to argue that poorer countries have a perverse lack of interest in preserving and protecting the environment because it gives them an "unfair competitive advantage" ignores the impact that poverty has on environmental degradation and thus, the inability of such countries to bear the related adjustment costs. Issues related to transfer of appropriate environmentally sound technologies and products (ESTs&P) and funding for capacity building are core issues that cannot be delinked when discussing environmental protection. Additionally, the provisions of the TRIPS (Trade Related Intellectual Property Rights) Agreement need to be considered, particularly those that deal with the transfer of technology and the protection of biodiversity. Developing countries are concerned that the implementation of the agreement does not promote the dissemination of ESTs or the protection of diversity and furthermore, that it does not give due importance to indigenous technologies, knowledge or preservation of species preservation which are critical to

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[8] The first case decided by a dispute settlement panel under the new WTO examined the US anti-air pollution laws which banned oil imports from some South American countries on the grounds that they were harmful to the environment and ruled that it was contrary to GATT obligations.

[9] For a synopsis of trade-environment cases in the GATT/WTO see Philippe Sands, Principles of International Environment Law, Volume 1, Manchester University Press, 1995.

protecting biodiversity. It is also argued that the provisions are loaded in favour of developed countries[10].

Sacrificing the Environment through Obfuscation

The developed countries appear adamant about seeking to force an environment-trade linkage in the WTO. Most developing countries on the other hand have emphatically opposed such a linkage. The confrontation shows no signs of abating. As the debate intensifies, developing countries are even questioning the 'real' motives behind the sudden concern that the developed world is showing for the environment when they, in fact, were instrumental to substantial and irreversible damage to the environment. On the subject of greenhouse gases for instance, according to the United Nations Environment Programme (UNEP), the United States is on the top with emission levels of 20 tonnes per capita per annum compared with India, which is at the bottom of the scale with less than one tonne. The European countries are somewhere in the middle with emission levels of 10 tonnes per capita per annum[11]. A cynical view may even go so far as to suggest that the inevitable fallout of modernization and globalization is environmental degradation and that it is now in any case too late to 'save the planet'; we can only delay the inevitable.

The starting point of the debate would be to enquire whether environmental issues can legitimately be part of the WTO agenda or whether the richer countries, to suit their requirements, are politically manipulating WTO's mandate. The tragedy is that obfuscation will not protect the environment. In this regard, it may be recalled that when the CTE was set up, its work was based on two important principles[12]:

1. ***The WTO is only competent to deal with trade****. In other words, in environmental issues its only task is to study questions that arise when environmental policies have a significant impact on trade. The WTO is not an environmental agency. Its members do not want it to intervene in national or international environmental policies or to set environmental standards. Other*

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[10] It is argued for instance, that the TRIPS Agreement seems to contemplate only the model of innovation in the North and that it fails to address the more informal, communal system of innovation through which the farmers in the South produce, select, improve and breed a diversity of crop and livestock varieties. Furthermore, granting protection to plant varieties would result in its sale at exorbitant prices and also create a dependence. The full impact of such products on health, culture or environment has not yet been fully analysed. Difficult questions arise which are not only related to 'ethics'. Who, for instance, should be held responsible for the mad cow disease or BSE? Are soya seeds developed recently by Monsanto (that increase the yield by 5%) good for food security which is desperately needed in the developing countries or should they be prohibited for their adverse impact on the environment?

[11] "*UNEP clears India on greenhouse gases"* The Indian Express, February 25th 2001.

[12] Introduction to the WTO: Trading into the Future, WTO Secretariat, Geneva, 2000; English version.

agencies that specialize in environmental issues are better qualified to undertake those tasks.

2. *If the committee does identify problems, the solutions* ***must*** *continue to uphold the principles of the WTO trading system.* (emphasis mine)

It is clear, therefore, as to what the WTO can and cannot do. Environmental issues *cannot* be brought into the trade agenda other than where they have a significant impact on trade and *not* where trade has an impact on environment. This being the case, the insistence by developed countries to link trade and environmental is at best a reflection of a hidden agenda, which developing countries have argued is nothing short of protectionism.

It would be churlish however, to be nonchalant about environmental damage and destruction. The question arises as to which agency should deal with it. Since WTO deals with trade, it was logical to assume that the competent organization would be the UNEP. Unfortunately, for a variety of reasons, UNEP has been unable to take up such a role. The individual MEAs have also been somewhat like stand-alones, since there has been no institutional mechanism to bind them together. Renato Ruggiero, a former Director General of WTO, taking into account the difficulties in incorporating environmental issues within WTO (other than to a limited extent) had argued for a separate multilateral organization along the lines of the WTO - a World Environment Organisation - which would act as the institutional mechanism for dealing with environment related issues[13]. Such an organization could also create and manage a multilateral fund, on the lines of the Multilateral Fund under the Montreal Protocol for helping Developing and Least Developed Countries respond to environmental challenges, both through the acquisition of appropriate ESTs as also capacity building.

2.2 Trade and Investment

Overview

Some 50 years ago when GATT came into existence, it was negotiated on the basis of the trade provisions of the Havana Charter, which contained chapters on foreign direct investment and restrictive business practices[14]. The Charter failed to enter into force because of conflicting negotiating positions. The United States was keen to provide protection to

[13] Magda Shahin, *Trade and Environment: Seattle and Beyond*, CUTS Briefing Paper No 2/2000; www.cuts-india.org

[14] The Havana Charter of 1948 was intended to establish an International Trade Organisation and dealt mainly with international trade. In fact, the original General Agreement on Tariffs and Trade(GATT) was based on its trade provisions. It also included, however, important provisions that addressed, directly or indirectly, other issues such as investment and competition.

investors, whereas developing countries (particularly Latin American) opposed this[15]. When the deadlock could not be broken, the United States refused to ratify the Havana Charter. A comparable effort at the regional level[16] also did not succeed.

At the 1955 Review, following the operationalization of GATT, a Resolution on International Investment for Economic Development was adopted, which recognized that increased flow of capital into developing countries in need of such investment would have the net impact of furthering the objectives of GATT. The Resolution concluded that in order to attract investment, it was necessary to create conditions[17] that were conducive for the stimulation of such international capital flows and recommended that the member countries negotiate bilateral or multilateral agreements in this regard.

The early 1960s saw the beginning of the process of negotiating bilateral investment promotion and protection agreements. Specialized bilateral treaties, however, dealing solely with investment protection (and to a lesser extent with investment promotion), proved to be more successful, although it was only in the late 1980s and 1990s that they proliferated[18]. During the period 1959-69, there were 72 bilateral investment treaties (BITs) as compared to 1726 BITs in the period 1990-98[19].

The energy crisis in the early 1970s had a major impact on the international economic environment and on Foreign Direct Investments (FDIs), partially swinging the pendulum in favour of developing country interests. For awhile, developed countries were not negotiating from a position of strength. Where the control over the energy resources would lie were a cause of considerable anxiety for them especially when they saw the developing countries acting as a group and becoming increasingly assertive. At the International Economic Conference[20], representatives from 27 developing (including oil-exporting) and developed countries conducted negotiations related to energy, trade and

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15 Article 12, Clause 1 (c) of the proposed Havana Charter is relevant in this regard and reads as follows:

"1. The Members recognize that:…(c) without prejudice to existing international agreements to which Members are parties, a Member has the right: (i) to take any appropriate safeguards necessary to ensure that foreign investment is not used as a basis for interference in its internal affairs or national policies; (ii) to determine whether and to what extent and upon what terms it will allow future foreign investment; (iii) to prescribe and give effect on just terms to requirements as to the ownership of existing and future investments; (iv) to prescribe and give effect to other reasonable requirements with respect to existing and future investments…"

16 The Economic Agreement of Bogota of 1948.

17 These would include providing security for existing and future investments, the avoidance of double taxation, and facilitating repatriation of earnings on foreign investments.

18 For a historical overview, see Trends in International Investment Agreements; An Overview, UNCTAD, 1999.

19 Source: UNCTAD Database on BITs.

20 Paris, 1975-77. This Conference was a direct result of the energy crisis.

financing, and FDIs. At around the same time, developing countries demanded a radical restructuring of the world trading and financial system and called for the Establishment of a New International Economic Order. The positive fallout of the energy crisis and the solidarity among the developing countries was an evaluation of the role of transnational corporations (TNCs)[21] and the formulation of international codes of conduct of TNCs.

But by the late 1970s, while the developed countries had recovered from the "oil shock", the developing countries were confronted by the onset of the debt crisis. The debt crisis brought about relative scarcity of indirect investment and made FDI more desirable. Developing countries competed with one another to attract FDI. Their cohesion gradually eroded.

At the same time, a shift took place in the way in which FDI was perceived. Initially, developing countries had sought to put hurdles in the way of FDI as a means to 'control' FDI and the TNCs. Indeed, the last two decades of the twentieth century saw increased investment liberalization, which included a more favourable climate for FDI through the softening and elimination of screening requirements and other entry formalities, freer regimes for the repatriation of profits and capital, liberal laws for the promotion and protection of FDI, and the acceptance of international arbitration for the resolution of disputes arising between investors and host Governments.

FDI came to be increasingly accepted as a critical variable for stimulating growth and an integral input in a globalizing world economy. There was broad agreement that foreign investment contributes to economic development and that it was complementary to trade. As the table below shows, there was a marked growth in FDI flows over the years.

FDI Inflows to LDCs, 1980-1998
(in millions of current US Dollars)

Region	1980	1985	1990	1995	1997	1997	1998
Africa	370	451.5	266.5	1217.0	1294.8	1954.5	2236.0
Latin America and the Caribbean	13.0	5.0	-	7.4	4.1	5.0	6.0
Asia	43.6	5.1	51.0	149.8	440.4	447.6	658.4
The Pacific	5.2	6	30.5	36.8	40.6	72.7	48.2
Grand total : 44 LDCs	431.7	467.4	347.9	1411.0	1779.9	2479.8	2948.5
FDI inflows to devel. countries	7965.5	15562.6	35410.5	106224.0	135343.0	172533.0	165936.0

Source: The Least Developed Countries 1999 Report, UNCTAD

[21] This tended, in the initial years, to be partisan and less informed.

WTO and 'New Issues'

In its early years, GATT imposed obligations on host governments only in respect of foreign goods. It did not concern itself with the treatment of foreign persons, operating in their territories. Over the years, the rules changed and addressed the treatment of foreign companies. The General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) negotiated in the UR, impose important obligations on the host governments regarding the treatment of foreign nationals or companies operating within their territories. Similarly, the Agreement on Trade-Related Investment Measures (TRIMS), also negotiated in the UR, requires host governments not to place conditions on investors, such as local content requirements that are inconsistent with the provisions of GATT.

WTO and Investment Agreements

The Singapore Ministerial Conference (1996) decided to set up a Working Group on the Relationship between Trade and Investment. The Working Group adopted the following agenda at its first meeting (in June 1997):

1. The effect of trade and investment on development and economic growth
2. The economic relationship between trade and investment
3. Stocktaking and analysis of existing international instruments and activities regarding trade and investment
4. Conclusions about
    a. Gaps in existing international instruments
    b. Assessment of bilateral, regional and multilateral rules on investment
    c. Rights and obligations of home and host countries and of host countries and investors and
    d. Possible future cooperation on investment policies and how it might relate to cooperation on competition policy.

It is relevant to recall that in December 1998, the negotiations on a Multilateral Agreement on Investments (MAI) collapsed. The UR had not made any headway on a multilateral investment agreement and in 1995, the green signal was given to begin negotiations on a MAI. The OECD countries began discussions in right earnest so that efforts to liberalize foreign investment may be brought under a single roof. Unfortunately, because of an overtly ambitious agenda[22], the negotiations failed[23].

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[22] The MAI agenda sought to achieve liberalization and protection of all kinds of investment (FDI, portfolio, privatization, etc) and to provide a dispute settlement procedure.

[23] The main outstanding issues related to the topics of definition of investment, exceptions to national and most favoured nation treatment, intellectual property, cultural exception, performance requirements, labour and environmental issues, regulatory takings, and settlement of disputes. In addition, there were political

A number of provisions in WTO related to investment issues. For instance, the TRIMS Agreement lists five prohibited trade related investment measures[24] as these are considered inconsistent with GATT provisions[25]. Where countries were found to be in violation of GATT obligations, transition periods were recognized (2, 5 or 7 years, depending on the level of economic development). The TRIMS Agreement was limited in its scope because it covered only five trade related investment measures and allowed members to resort to other investment measures such as technology transfer requirements, export performance requirements, etc to direct investment flows in accordance with national objectives. Similarly the Agreement on Subsidies and Countervailing Measures (SCM) defines the concept of 'subsidies' and establishes disciplines on the provision of subsidies.

A subsidy is a sort of 'incentive', which may be used for development objectives but has the potential to distort the economic benefits of investments. Some incentives are now 'actionable' under the WTO agreement on SCM. There are however, a number of incentives which are 'non-actionable' such as those applied for R&D expenditure, regional supports and environmental protection. Furthermore, several of the GATS provisions affect investment policies. At present the agreement does not confer rights of establishment with full national treatment. Under the TRIPS Agreement, investment liberalization is affected only indirectly. It is anticipated that protection to property rights, as provided for under WTO, would promote FDI.

The Working Group that is studying the relationship between trade and investment, noted that bilateral treaties had an important advantage over a regional or a multilateral treaty because they could be tailored to the specific circumstances of the parties involved and could address specific concerns, such as development issues and further, could be concluded quickly. In comparison to multilateral agreements, regional agreements were found to be politically more feasible.

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problems; first, NGOs opposed the underlying philosophy, the process of the negotiations and some of the substantive provisions under discussion; and second, initial support from the business community waned once it became clear that the issue of taxation was to be excluded from the rules. For a detailed analysis of the MAI and why it failed, see Lessons from MAI, UNCTAD, 1999.

[24] These are (1) Local Content Requirement, (2) Trade-balancing Requirements, (3) Foreign Exchange balancing Requirements, (4) Exchange Restrictions and (5) Export Performance Requirements.

[25] Inconsistency is especially with regard to national treatment (Article III) and those prohibiting the use of quantitative restrictions (Article XI).

Problems facing Developing Countries

There is acceptance today that FDI brought the host country a package of tangible and intangible assets. Furthermore, a high degree of correlation existed between trade and investment. There were however, several issues and areas that needed further study and investigation, which the Working Group needs to address.

Since FDI plays an important role in economic development, it is the developing and Least Developed Countries that are going to be most keen to attract FDIs. Initial reticence about TNCs and hence, FDIs was primarily prompted by the view that TNCs would have no interest in the development dimension and that investment would essentially flow into non-priority sectors. Investment agreements need to address the development dimension therefore, and in this regard, the role of FDI in technology transfer becomes important.

Secondly, given the failure of OECD countries to move further on the MAI, it is necessary for the Working Group to analyse the causes why the negotiations collapsed.

Thirdly, how would one reconcile the different treatment applied to investments in service sectors (GATS) and in goods' production (GATT, 1994)?

Till these different questions are dealt with in detail, introduction of investment issues (beyond TRIMS) into the WTO agenda would be counterproductive. The Working Group was constituted after the Singapore Ministerial Conference to study the relationship between trade and investment. It is therefore premature, to begin negotiations on the subject when the full import of the implications are still ambiguous and unclear.

2.3 Trade and Competition Policy

Polar Opposite Concerns

The 1996 Ministerial Conference in Singapore decided on the need to set up a Working Group for the study of the interaction between trade and competition policy, including anti-competitive practices. It may be recalled that in the earlier paragraphs it had been pointed out that the decision to set up a Working Group on examining the relationship between trade and investment had also been taken at the Singapore Ministerial Conference. Given the close interplay between investment policy and competition policy, the Singapore Ministerial Conference decided that the two Working Groups would draw upon each other's work as also draw upon the work done in UNCTAD and other intergovernmental fora. Indeed, it would not be an exaggeration to say that a viable multilateral investment policy cannot exist without a multilateral competition policy. In other words, discussions on the

relationship between trade and investment cannot be divorced from a discussion on the relationship between trade and competition policy.

Developed countries have placed increasing emphasis on competition policy because they see it as an integral component in a rapidly globalizing trade environment. However, it is not an entirely 'new' subject. The subject came up at the time the formation of the International Trade Organisation (ITO) was under discussion. The Havana Charter had provisions regarding restrictive business practices[26] (RBPs). When GATT came into being, it included the provisions under RBPs. Issues such as RBPs and a code of conduct for TNCs have been studied for quite awhile but no international instrument has so far been evolved. This is because initially the objective was to draw up an international framework to regulate the business practices of large corporations so that their actions and presence in the South would complement national developmental efforts. Today however, the earlier emphasis stands forgotten and concern is focused more on how to promote the goals and objectives of the TNCs globally.

The 1990s saw a merger boom. Between 1990 and 1998, the value of worldwide mergers and acquisitions rose nearly five-fold. Most of this merger activity took place within the US. Of the total worldwide merger activity of nearly $2.5 trillion, almost $1.6 trillion represented takeovers and mergers within the United States alone[27]. A significant characteristic of this merger wave is the large incidence of cross border takeovers and mergers, which has become progressively important with increasing integration of world markets through trade and finance.

It is relevant in the first instance, to distinguish between *law* and *policy*. Competition law is a subset of competition policy and comprises anti-competitive practices of firms. Competition policy on the other hand, encompasses all government policies that affect competition in markets. A key distinction between competition law and competition policy is that the latter pertains to both private and government actions, whereas antitrust rules pertain to the behaviour of private entities (firms) only.

The support for international discipline in competition policy was originally sponsored by the US, but has now been joined by the EU, both of whom feel that the lack of such discipline would adversely impact on the ability of US/EU firms to contest external markets. They argued accordingly on the need to have an international competition policy

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[26] Restrictive Business Practices refers to acts or behaviour of enterprises which through abuse or acquisition of a dominant position of a market power, limit access to markets or otherwise unduly restrain competition, having or likely to have adverse effects on international trade, particularly that of developing countries and on the economic development of these countries.

[27] *Financial Times*, October 25, 1999.

and to bring the subject within the jurisdiction of WTO. Essentially, the US and EU position is predominantly a market-access driven agenda. What they argue is that if competition laws do not exist or if there is a lack of enforceability where such laws do in fact exist, they hinder market access or increase the cost of market entry. The main interest or focus of the US and EU is therefore, producer-driven and is meant to use the competition policy discipline as an export-promoting device.

When the Working Group was set up in April 1997, the non-paper by the chair categorically drew attention to 'the development dimension'[28]. Regrettably, it is the development dimension that appears to have been paid scant attention to[29]. As a result, while there is recognition of the need to have a competition policy, the question is *what kind of policy*. As far as developing countries are concerned, it cannot be a policy that gives licence to the market at the detriment of national and developmental interest.

There are in fact, several issues of developing country concern that needs consideration. First, it is a matter of fact that countries are not equal and that it would be naïve, for instance, to compare Nepal or Sierra Leone with the US or for that matter, with any of the EU Member States. This suggests the need to recognize the existence of unequal competition between large TNCs and big domestic corporations in these countries. Indeed, the largest developing country corporations tend to be much smaller than most TNCs. The US and EU advocacy of competition policy assumes that corporations like Microsoft or Boeing have a counterpart in domestic industry of developing countries. This is simply not true.

Second, only around half the member countries of WTO have competition laws. But then, having a law is not sufficient. Laws require enforceability, which is lacking in most of

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[28] "It was widely recognized that the Working Group's work programme should be open, non-prejudicial and capable of evolution as the work proceeds. It was also emphasized that all elements should be permeated by the development dimension." *Checklist of Issues Suggested for Study,* WTO, Annex I, 1998, p. 51.

[29] For a detailed assessment of the issues concerning competition policy, see *Competition Policy, Development and Developing Countries*, South Centre, November 1999; Bernard Hoekman and Peter Holmes, *Competition Policy, Developing Countries, and the World Trade Organisation*, World Bank Policy Research Working Paper No. 2211, October 1999; *Analyses of the Interaction between Trade and Competition Policy*, CUTS Research Report, 1999; Rakesh Basant and Sebastian Morris, *Competition Policy in India: Issues for a Globalizing Economy,* Economic and Political Weekly, July 29, 2000; *Competition Policy in Small Economies*, SAWTEE Briefing Paper, March 2000. CUTS has a series of monographs on the subject of competition policy which examine the issue in substantive detail, such as (i) *FDI, Mega-mergers and Strategic Alliances: Is Global Competition accelerating Development or Heading towards World Monopolies; (ii) Role of Competition Policy in Economic Development and The Indian Experience; (iii) Competition Regimes Around the World; (iv) Globalization, Competition Policy and International Trade Negotiations.*

these countries for a variety of reasons, including inherent institutional weaknesses. This needs to be urgently addressed through technical and financial assistance.

Third, the TRIPS Agreement explicitly authorizes the use of competition policy measures against abuses of IPRs. Many experts argue that as long as a producer faces competition from other brands, exclusive arrangements do not matter. However, in many developing countries, the major brands may all be in the hands of one entity or a *de facto* cartel debunking, as it were, the *raison d'etre* of a competition policy.

Fourth, at the WTO Working Group, one of the areas discussed was the impact that state monopolies have on competition. Many delegations took the view that state monopolies enjoyed several privileges in the form of exclusive rights that was equivalent to a monopoly and thus, a RBP. However, there has been no conclusive debate even in developing and Least Developed Countries about state monopolies. Ownership *per se* is not a determinant of economic performance. Several developing countries would argue that state monopolies are needed especially where market forces are still in their infancy.

Fifth, mergers and acquisitions would necessarily place corporations that operate on economies of scale on the forefront. The implications of large-scale unemployment as a result of 'downsizing' need to be evaluated in the context of the development dimension, particularly because of its close relationship with poverty.

It would be pertinent to briefly consider the use of anti-dumping and its impact on competition policy. The WTO agreements allow members to introduce and maintain trade measures that restrict competition (f.i. safeguards, etc). Anti-dumping however, "remains a pernicious instrument of discrimination that invalidates any genuine commitment to multilateral rules of competition"[30]. Indeed, the WTO Working Group has also found this a difficult subject to tackle. Anti-dumping rules protect competitors from 'unfair trade' whereas competition rules seek to enforce competition: the two are clearly in conflict. It is a point worth noting that of the 880 anti-dumping measures in effect in 1997, 302 were by the US alone, 137 by the EU and 91 by Canada[31]. In other words, these three accounted for more than half (61%) of the anti-dumping actions.

After the Singapore Ministerial communiqué was released, the US and EU authorities issued a Joint Statement expressing opposition to including anti-dumping in

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[30] J.M.Finger *Dumping and Anti-dumping: The Rhetoric and the Reality of Protection in Industrial Countries* World Bank Research Observer, July 1992.

[31] Source: WTO Annual Report, 1998.

discussions on competition policy. As the figures above demonstrate, the US and EU take recourse to anti-dumping to protect their domestic enterprises against import competition.

The Development Dimension

Everyone agrees that a competition policy is a good thing and that it is necessary to work towards such a policy. However, defining parameters is as important an exercise in this regard as agreeing to a competition policy. In this regard, the primary concern for developing countries is whether the developing dimension that appeared to constitute the heart of the Working Groups' mandate was now irrelevant. For developing countries, it still remains the core concern. Poverty still determines policies of these countries and to ignore the existence of poverty and asymmetries in development incorrectly assumes the existence of a level playing field. Several contentious issues remain unresolved. To argue that developing and Least Developed Countries need to be given a longer time frame to adapt their policies fails to recognize that what the developing countries may need is not a longer time frame to adopt a US or a EU type of competition policy but rather a policy that incorporates their special requirements and concerns.

Incorporating the development dimension also entails recognizing the need to take into account the differential levels of development that distinguishes the higher income countries from the others. This raises the question of whether there can be an *optimal* level of competition as opposed to competition *per se* since the latter is only about market access and not about development. As has been pointed out above, competition policy, which should actually deter the formation of cartels, can in fact, under certain situations in developing countries, lead to the formation of such cartels and introduce market distortions.

There is consensus that a policy is desirable, both on investments as also on competition. The Working Groups are studying the complex issues involved and it is imperative that the ramifications are fully understood before formal negotiations on the subject begin in the WTO. As has been seen, a number of areas of concern still remain. It would be premature therefore, to overload WTOs agenda at this stage by introducing these two areas.

2.4 Trade Facilitation

Background

It was decided at the Singapore Ministerial Conference that the Council for Trade in Goods would undertake exploratory and analytical work in the area. Essentially, trade facilitation is the process of addressing 'invisible' barriers to trade. Issues such as quantitative

restrictions or high tariffs are 'visible' trade barriers. While these need to be dismantled, there may be a series of other barriers, which could be administrative or procedural and which are trade restrictive. To give an example, in a study of documentation requirements for importing or exporting one consignment in India, Nepal and Pakistan, ESCAP pointed out that the types of documents required can vary from 15 in Pakistan, 29 in India to 83 in Nepal[32]. Cumbersome documentation requirements do not facilitate business from being transacted either at a rapid pace or at lower costs. Indeed,

> "The overhead costs for international trade are estimated at about US$ 350 billion in 1996 or 7 % of the value of world trade. In some instances, 100 documents and 20 different organizations are involved in conducting international transactions. Savings from more efficient data processing could be as high as US$ 100 billion."[33]

According to the APEC Business Advisory Council[34], to effect an average international trade transaction today requires 27-30 different parties, around 40 documents, 200 data elements (of which 30% are repeated at least 30 times) and re-keying of 60-70% of all data at least once. Trade facilitation is thus, the procedure by which 'invisible' trade barriers are dismantled and the business of doing business made more user-friendly.

The Issues

In principle, all countries recognize the importance of trade facilitation. What is not clear, however, is how this is to be achieved. First, it is argued that since the World Customs Organisation (WCO) is addressing the subject of harmonization of trading rules and procedures and is the appropriate body to do so, it would result in duplication if the matter were brought within the purview of WTO. In fact, it is the Kyoto Convention of 1973, which is administered by WCO that deals with the subject of trade facilitation. Only around 55 countries participated in the Convention but each signatory to the final text had reservations on the 30 annexes that set out the substantive obligations. At the same time, it is relevant to point out that it is only the WTO that can invoke the dispute settlement procedures to enforce decisions. WCO lacks such capability as it only *recommends* 'best endeavours' and does not impose binding obligations.

Second, while accepting that trade facilitation through the simplification of procedures, alignment of documents, harmonization of requirements is beneficial to trade, the issue of high start-up costs is a matter of concern. Developing and Least Developed Countries have argued that it is not possible for them to undertake the substantial

[32] Development through Globalization and Partnership in the 21st Century? ESCAP, 2000; pp 130.
[33] WTO Special Studies 2 on *Electronic Commerce and the Role of the WTO*, WTO Secretariat, 1998; Geneva.
[34] Report to the APEC Economic Leaders, 1996

expenditure involved without a reliable technical assistance programme. While there are no studies available on the cost of 'switchover', it is estimated to be high and far in excess of what the poorer countries are in a position to afford. Indeed, this entails not only a new way of thinking but also a new way of working. How the funds for such a technical assistance programme would be generated needs to be thought through carefully.

Third, there were several WTO Agreements that already deal with trade facilitation issues such as the Agreement on Customs Valuation, the Agreement on Rules of Origin, the Agreement on Pre-shipment Inspection, the Agreement on Import Licensing Procedures, the Agreements on Technical Barriers to Trade and on the Application of Sanitary and Phytosanitary Standards. The implementation of these agreements needed to be strengthened in the first instance before embarking on an entirely new exercise for an agreement on trade facilitation in the WTO.

Fourth, the Council for Trade in Goods was already examining the issue of trade facilitation and ascertaining how best this may be dealt with given the broad consensus that it was an important area and the fact that issues related to the costs of 'switch-over' as also linkage with other WTO Agreements needed to be addressed. It would be inappropriate at this stage therefore, to commence negotiations on the matter especially when the divergences of opinions among Member Countries on how best to embark on trade facilitation measures is so acute.

2.5 Transparency in Government Procurement

Background

The Agreement on Government Procurement negotiated in the UR is a plurilateral Agreement[35]. While most developed countries are members, only three developing countries have acceded to it[36]. Most developing countries are therefore, not bound by the substantive and procedural obligations the Agreement imposes.

At the Singapore Ministerial Conference, the US and the EU took the initiative in strongly suggesting the need to bring the practices of all countries under international rule. The Conference accordingly decided to set up a Working Group on Transparency in Government Procurement "to conduct a study…(and) to develop elements for inclusion in an

[35] Unlike other associated Agreements, which are binding on all WTO Members, a plurilateral Agreement is only binding on those countries that have acceded to it.

[36] These are Hongkong (China), the Republic of Korea and Singapore. All these countries, while classified as developing countries, are in a higher stage of development.

appropriate agreement." Membership to such an agreement would be obligatory for all WTO Members.

Issues of Concern

Developing countries have been reluctant to accede to the plurilateral Agreement on Government Procurement for several reasons. First, they believe that membership to the Agreement would bring about only marginal export gains to them and that major gains would accrue to the developed countries through improved access to developing country markets. Second, regional trade among development countries especially in the procurement sector may be brought about through regional arrangements and agreements and there is no need to be members of the plurilateral agreement. Third, developing countries believe that there is logic to giving a price preference to domestic suppliers, which they would no longer be in a position to give after joining the plurilateral agreement. Fourth, the agreement applies not only to trade in goods but also in services. Its compatibility with GATS has not yet been considered.

Given the lack of interest that developing countries showed with regard to the plurilateral agreement, there appears to be no immediate interest on their part in entering into a multilateral agreement, which would be binding, on all members. Furthermore, it may be recalled that the US and the EU have given the push for a multilateral agreement and that the agreement is of interest to developed countries as they would gain the most.

2.6 Electronic Commerce

Background

E-commerce is expected to grow at a rapid pace. The US accounts for the bulk of the trade conducted through the Internet. Its Internet-based sales are expected to reach US$ 200 billion to US$ 300 billion in 2001, attributable mainly to sales in the domestic market.

Because of the increasing use of the Internet and other electronic means in international trade in goods and services, the Geneva Ministerial Conference (1998) adopted a Declaration on Global Electronic Commerce and directed the General Council "to establish a comprehensive programme to examine all trade-related issues relating to global electronic commerce".

The Issues

All countries have recognized the importance of e-commerce. However, there are a number of areas in which clarifications are required and those in which serious difficulties are felt. For instance, developing countries lag far behind in terms of the technical requirements of conducting e-commerce. This relates not only to telecommunications infrastructure and the availability of hardware at an affordable price, but also the price of Internet charges.

Second, it is not yet agreed as to whether e-commerce is to be classified under trade in *goods* or in *services*. If you characterize all transmissions on Internet as goods, the GATT discipline applies to them and is automatically accompanied by a ban on customs duties on the transmissions (as is currently in place)[37]. On the other hand, if it is classified under services, GATS discipline would apply and the importing country may choose to levy higher duties or taxes. It is important therefore, to decide whether e-commerce is to be classified as goods or services. This is likely to be a bone of contention.

Third, a series of legal issues are involved; such as: What is the origin of electronically traded products? When is an electronically delivered product 'domestic' and when is it 'imported'? Where 'written' agreements or 'original' signatures are required, how would a trader who uses electronic means deal with it? How is message authenticity ensured? Since e-commerce is essentially anonymous, what legal safeguards or remedies are available to ensure that 'orders' are not placed by those who are not qualified to do so (minors)?

Fourth, the issue of intellectual property rights would need to be looked into carefully. Similar trade marks could exist in different countries/territories and in the borderless world of e-commerce, this could lead to conflict. Additionally, how would same or similar domain names be dealt with? The entire ambit of the Dispute Settlement Mechanism would need to be gone into in detail so that problems arising through the use of e-commerce may be resolved.

While e-commerce is growing rapidly, there are a number of interrelated issues that need to be looked into in greater detail before formal negotiations under WTO can commence. It would be appropriate therefore, that these continue to be studied and discussed in the General Council and in the Committee on Trade and Development in the first instance.

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[37] This is because of National Treatment and MFN. Under national treatment, member countries would give up their right to discriminate against Internet imports as far as domestic taxes are concerned. In addition, the ban on customs duties would bind their tariffs on Internet imports to zero.

III. The Other Issue

In addition, there is another area, i.e. labour standards, on which it was clearly agreed at Singapore that it did not fall within the jurisdiction of WTO but which nevertheless is being insisted upon by the US in particular, with the support of some EU Member States. This is the issue of labour standards, also known as 'the social clause'.

It is extensively argued that it was US's insistence at Seattle for the inclusion of labour standards in the trade agenda, coupled with the threat of sanctions, which finally scuttled the Seattle Conference. Developing countries have consistently maintained that attempts to link labour standards with trade, especially through sanctions, would only result in harming both trade and labour. In Jagdish Bhagwati's[38] inimical style, if you try to kill two birds (of labour standards and of trade) with one stone, you end up missing both birds. DFID had also brought this out in a recent publication[39] where they demonstrated how in the case of the garments industry in Bangladesh, where the Bangladesh Manufactures and Exporters Association undertook to eliminate child labour in the industry, over 50,000 children were thrown out of work. The objective was to send these children into school. Unfortunately however, these children did not end up in schools, rather their dismissal from the workforce pushed them into crime and prostitution.

Despite lack of success over the years in introducing labour standards in the trade agenda, both the US and the EU have continued to exert pressure on developing and Least Developed Countries who are vociferously opposed to such a linkage. Of late, the US has resorted to the use of domestic legislation[40] and the European Commission has offered

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38 Jagdish Bhagwati, *Labour Standards and the WTO: The Case for Separate Agendas* World Trade Brief, op cit.

39 DFID *Helping, not Hurting Children - An Alternative Approach to Child Labour*.

40 The US Postal Services and General Governmental Appropriation Act of 1998, which is now, a law is relevant. Section 633 reads as follows: "*None of the funds made available in this Act for the United States Customs Service may be used to allow the importation into the United States of any goods, wares, articles or merchandise mined, produced or manufactured by forced or indentured child labour, as determined pursuant to Section 307 of the Tariff Act of 1930.*" A complaint was accordingly lodged in the US courts calling for an investigation into India, Pakistan and Nepal's carpet industry for violating the law and urging a ban on their products for using forced or indentured child labour. In addition there are several other bills on the anvil such as, Child Labour Free Consumer Information Act of 1997 which would make it mandatory to certify that the product is free from child labour; and the International Child Labour Elimination Act of 1997 which not only prohibits US developmental assistance to countries that use child labour but also prescribes penalties (both civil and criminal) for such imports. The domestic legislation is a de facto sanction. See Amit Dasgupta *Labour Standards and WTO: A New Form of Protectionism*, South Asia Economic Journal, September 2000; Vol 1 No. 2.

"special incentives" in their GSP scheme to those countries that acknowledge and subscribe to the linkage.

Developing countries have argued that putting labour issues on the trade agenda is a form of protecting markets in developed countries from cheap imports from low wage economies. Furthermore, they argue that since the majority of children are not in the export performing sectors, such sanctions would not affect those who are in the informal sector where the majority of children are employed.

Furthermore, in the case of the US for instance, of the seven key International Labour Organisation Conventions that have set out core international labour standards, only two Conventions have been ratified by the US so far. Additionally, issues such as enforcement against domestic sweatshops, which is notoriously lax in the US, where they abound in the textiles industry are not in the social clause; nor indeed are the rights of migrant labour which is subject to quasi-slavery conditions in parts of US agriculture; nor indeed the low level of unionization of the labour force in the US[41].

Developing countries also argue that one of the principal causes of child labour is poverty and unless, the question of poverty is first addressed, it would be well nigh impossible to eliminate or reduce the incidence of child labour. They have accordingly argued that attempts to link trade with the social clause would only negatively impact on both, the trade agenda as also the need to discourage the deployment of children in the workforce.

IV. In Lieu of a Conclusion

Seattle's failure was a serious setback for WTO because developing and Least Developed Country delegations saw WTO as what they had all along feared - a rich man's club. They understood that freeing trade of barriers was not a linear process. Rather, new forms of protectionism would be erected by the developed countries while at the same time, putting pressure on the developing countries to open up their markets. Commitments made in earlier rounds still remain unimplemented particularly where it concerned interests of developing and Least Developed Countries. Despite this, an attempt is made to overload the WTO agenda with new issues.

The build-up to the Qatar Ministerial Conference does not offer any new promise to the developing world. The EU continues to insist on a new round to address pending issues and new concerns. The US is yet to make its position clear after the recently concluded

[41] Jagdish Bhagwati *op cit*

Presidential elections. Qatar is not likely to be just a meeting of Ministers to share concerns about globalization and the manner in which WTO has been reduced to an unequal club. Rather, it is more likely than not, to be the venue where Seattle's unfinished agenda is pushed by the developed countries. Regrettably, this augurs ill for the MTS and the WTO because it once again splits the world into the North-South divide. It is imperative, therefore, that developing and Least Developed Countries are fully prepared for what Qatar might hold.

References

Basant, Rakesh and Sebastian Morris. *Competition Policy in India: Issues for a Globalizing Economy.*

CUTS Research Report. *Analyses of the Interaction between Trade and Competition Policy*, 1999.

Bhagwati, Jagdish. *Labour Standards and the WTO: The Case for Separate Agendas*, World Trade Brief, 1999.

CUTS monographs. *FDI, mega-mergers and strategic alliances: is global competition accelerating development or heading towards world monopolies?* **No. 9909,** 1999; *Role of Competition Policy in Economic Development and The Indian Experience*, **No. 9908**, 1999; *Competition Regimes around the world*, **No. 2202**, 2000; *Globalization, Competition Policy and International Trade Negotiations*, **No. 2203**, 2000.

Dasgupta, Amit. "Labour Standards and WTO: A New Form of Protectionism." *South Asia Economic Journal,* (September 2000).

DFID. *Helping, Not Hurting Children: An Alternative Approach to Child Labour*, 1999.

The Earth Summit. Rio de Janeiro; 1992.

Economic and Political Weekly. July 29, 2000.

The Indian Express "*UNEP Clears India on Greenhouse Gases*"; February 25th, 2001.

ESCAP, Development through Globalization and Partnership in the 21st Century, 2000.

Financial Times, October 25, 1999.

Finger, J. M. "Dumping and Anti-Dumping: The Rhetorics and the Reality of Protection in Industrial Countries." *World Bank Research Observer,* (July 1992).

Hoekman, Bernard and Peter Holmes "Competition Policy, Developing Countries and the World Trade Organisation." *World Bank Policy Research Working Paper,* **No. 2211** (October 1999).

Sands, Philippe. Principles of International Environment Law, **Volume 1**; Manchester University Press (1995).

Report of SCCI's Fifth Economic Cooperation Conference *Government-Private Sector Partnership: A Strategic Alliance for 2010* (forthcoming; 2001).

SAWTEE Briefing Paper. Competition Policy in Small Economies. (March 2000).

Shahin, Magda. "Trade and Environment: Seattle and Beyond." *CUTS Briefing Paper*, **No. 2/2000**.

South Centre. Competition Policy, Development and Developing Countries. Geneva: (November 1999).

UNCTAD, Trends in International Investment Agreements: An Overview. (1999).

UNCTAD, Lessons from MAI. (1999).

World Trade Organisation, The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts. (1994).

World Trade Organisation, Annual Report. (1998).

World Trade Organisation, "Electronic Commerce and the Role of the WTO." *Special Studies 2*, (1998).

World Trade Organisation, Introduction to the WTO: Trading into the Future. Geneva: (2000); English version.

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