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**‘Development and the Current Multilateral Trading
System: An Oxymoron’**

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‘Development and the Current Multilateral Trading System: An Oxymoron’

by

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Introduction

Development under the current multilateral trading system constitutes an oxymoron. This means that it is next to impossible for developing countries to establish a sustainable development path and poverty eradication under the current trading system. The rules and regulations personified by the key agreements such as the agreement on agriculture, GATS, TRIPS, TRIMS, key understandings such as the S&DT, and the governance system are not development-friendly but development-choking in their overarching capacity. These system, as it stands, are detrimental to the process of development in developing and poor countries, despite their inclusion of some development inducing elements in their *conceptual* formulation

The main mechanism in which the system tends to choke, rather than induce development is that it limits the policy space that developing countries must have and now-developed countries did have in their process of development. This is not something new. According to the WTO itself, the main role of a multilateral trading system is to *limit* the policy space that developing countries could have, through a *one size fits all* approach to development strengthened with rules such as single undertaking embedded in the governance of the system.

The overall preanalytical vision of the system is one-way market access through forcing trade liberalization and related regulations *in developing countries*, while letting developed countries adopt protectionist policies as they desire. Despite many examples of failure and despite the very well documented fact that now-developed countries did not use trade liberalization and regulations such as IPR, the system dominated by the power vested in developed countries promotes such a development policy across the board.

Not everything about the WTO system is ‘bad.’ For one, *a* multilateral trading system (that is fair) is potentially good for development. For another, some of the agreements such as the GATS do have quite appropriate mechanisms, both in terms of obligations and also their implementation, that could allow developing countries to devise their own development policies. The issue arises, in part, from the dual personality of the WTO system itself; while on paper these are good and development friendly but the actual system of negotiations as well as the difficulty of implementing the development-friendly aspects of the agreements, which are determined in most part by the imbalances in power and levels of development, overrules any possibility of them being realized in the development discourse unique to all developing countries.

The WTO system is not alone in this. Where the multilateral trading system misses something that is dictated by the complete vision, other like-minded international organizations, such as the World Bank or the IMF step in. For instance, export subsidies that could be used within a solid industrial policy are allowed under the WTO regime, but the overwhelming pressure from the IMF leaves no possibility for developing countries to use this valuable tool, which, incidentally, was used by developed countries in their early stages of development.

The system also chokes its own good. The Doha Declaration is an example. The good aspects of the declaration such as the S&DT are conveniently sidelined by the developed country members in Cancun. Cancun is the result of a two-year long scandalous failure of implementing development friendly aspects of the Doha Declaration.

This paper looks at the some key agreements and current events from a development perspective rather than a market access perspective assessing the mechanism and intensity in which the current multilateral system prevents developing countries from establishing a sustainable development path. It draws on the overview and the vision of the current book on *Making Global Trade Work for People*, of which I am a co-author.

The first section provides a quick snapshot of the relationship between trade and human development. The second section examines the three issues that occupied the Cancun agenda heavily: agriculture, Singapore Issues, and IPRs. The third section looks at key agreements and governance issues as well as proposals that have not been covered in Cancun. Before conclusion the paper provides some predictions and requirements. These include (1) the mechanism in which the collaboration among developing countries that showed its positive effect in Cancun could be kept; and (2) the preliminary steps for the inclusion of human development concerns in the multilateral trade agenda, while cooperation among developing countries continues, namely a discussion on Human Development Impact Assessments of Trade Policies and Agreements.

Trade and Human Development

Determining the dynamics of the relationship between international trade and human development is not an easy task. As the UNDP sponsored book on *Making Global Trade Work for People* suggests, theories of international trade have not been able to explain the relationship to a satisfactory extent.

While a full understanding of the dynamics require further research, it is a stylized fact that there are at least two aspects to the relationship between trade and human development:

- (1) Trade policies do affect human development outcomes and components;
- (2) Enhanced human development is instrumental in achieving sustainable and high trade performance.

These two aspects are in fact difficult to separate, but for analytical purposes this piece focuses on the first one. There are diverse views as to how and under which economic policy circumstances trade policy works to enhance human development. The conventional wisdom suggests that the impact of liberalized trade on economic growth and (then) human development is *automatic* and *guaranteed*. Static welfare gains (by improving allocative efficiency, increasing capacity utilization, expanding product variety and so on) and dynamic welfare gains (through greater economies of scale,

improving growth potential and so on) from *more* trade (both exports and imports) will almost certainly be achieved through a greater degree of trade liberalization. Greater degree of interaction with foreign producers will automatically take care of the technological advancement question.

This view has been challenged by recent research from the members of both neoclassical and non-neoclassical groups of economists. Rodrik and Rodriguez (2000) from the former group argue, for instance, that the argument that greater degree of liberalized trade automatically yields higher rates of economic growth is empirically invalid. They demonstrate that the only systematic relationship between countries' average tariff and non-tariff restrictions and their growth performance is that countries dismantle trade restrictions as they get richer. Other factors such as the macroeconomic policies, institutional set-up, regulatory framework, and good governance are critical in determining the growth performance in developing countries.

More recently, looking at the trade and investment (FDI) policies of a group of Latin American countries in relation to their growth performance over the last three decades, John Weeks has argued that the relationship between trade and GDP growth depends on the dynamics of the transmission mechanisms and complementarity (or lack thereof) between export and non-export sectors in the domestic economy. GDP growth can only be enhanced if the export sector can generate positive growth dynamism in the non-export sector (Weeks 2003). In its empirical investigation the paper shows that this complementarity has been greater in countries where the transmission mechanism was facilitated by expansionary macroeconomic policies (monetary and fiscal policies as well as exchange rate regime) and where there are solid industrial policy measures in place. A contractionary macroeconomic policy framework -- using restrictive monetary and fiscal policies for instance-- will be likely to negatively influence "export dynamism", measured by the elasticity of real exports and non-export GDP, by compressing (especially domestic) demand. This reduces the stimulating effect of exports on non-export production and thus on GDP growth (Weeks 2003). The linkage operates through the crowding in and income effects of government expenditures. Moreover, according to Taylor (2001) using real exchange rate appreciation to spur export growth may cause declining terms of trade for agriculture, reducing rural rents and hurting both landowners and agricultural workers, ultimately weakening food security.

Effective social policy and a fair and equitable governance structure, prioritizing spending on education and health as well as investment in basic infrastructure, which heavily depend on expansionary macroeconomic policy, are also important for positive and sustainable human development outcomes as well as increased trade performance. Expansionary macroeconomic policies require substantial financing. In most developing countries and in almost all LDCs, however, upto 40% of government revenues originate from customs duties, and the relationship between tariff revenues and tariff rates is still positive (Rao 1999). Tariff liberalization and other types of trade liberalization policies are, therefore, more than likely to put an additional financial burden on the government budget, limiting their ability to conduct meaningful social and economic policies, which would otherwise benefit trade, further growth, and human development.

This is not to say that trade is bad for human development. More trade *can* produce positive results through the efficiency gains talked about above if the policy is skillfully managed (including the export and import compositions) and sequenced, and put in the context of overall development policy specific to each country case. The importance of conscientious policy making and treating international trade policy as part of a consistent development strategy, rather than as a ‘magic stick’ for human development cannot be overstated and seems to have been growing obvious to many lately.

Key Issues in the current trading regime from a developmental perspective

The multilateral trading system determines the extent to which member developing countries can formulate their trade policy as part of a consistent development policy. In fact, as it stands, the system goes beyond that and affects almost all aspects of development policy. This stems from the false vision that every aspect of development policy is related to trade and thus more trade can solve all of the developmental problems that lower income countries are facing today.

As the Cancun Ministerial has shown, even this is not a sincere argument. Cancun fallout has demonstrated more clearly that the vision in the multilateral system, dominated by a bunch of powerful countries, is not about free trade, but about higher degree of access to developing country markets, with whatever means, trade related or not.

To make this point a bit more clearer, we now turn to the issues and dynamics of the Cancun Ministerial and its breakdown.

From Doha to Cancun

The Cancun Ministerial was mainly for assessing the progress that has been made in negotiations mandated by the Doha Declaration. Deadlines set in the Doha Ministerial for agreements on agriculture, trade-related intellectual property rights (TRIPS) and special and differential (S&D) treatment for developing countries under WTO rules had come and gone without tangible results. Some of the issues listed in the Cancun draft declaration are not explicitly slated for negotiation at the Ministerial, but rather progress in their ongoing negotiations would be assessed. For some other issues, however, the Doha Declaration, which was much more development friendly, mandated that an ‘explicit consensus’ on modalities for negotiations be reached at the Cancun Ministerial.

The Cancun Ministerial broke down without any resolution. WTO ministerials have broken down twice in the last four years. The mechanisms and results of the first breakdown, namely the Seattle 1999, and the second one, Cancun 2003 are significant. In Seattle, developing countries were accused of being protectionists especially by the media. In contrast in Cancun, the protectionist accusation, this time rightly so, were placed on developed countries, more specifically on the US and EU on their agricultural policy. The focus in Cancun, however, was mostly on the rules that govern the global trading system.

The other significant change from Seattle to Cancun was the conscious solidarity shown by 21 developing countries, led by Brazil, South Africa and India, that has come to be known as G-21. The significance of the group's emergence was twofold: Firstly it showed that developing countries can indeed get together and speak as one voice in the multilateral negotiating arena, and secondly they can do this with superb technical competence. The days when developing countries were bullied by the superior negotiation and technical capacity of developed country teams seems to be over. This brings the good news that the landscape of the multilateral negotiations have changed for good and for the better for developing countries (Palley 2003).

The three main issues in Cancun

While the Cancun agenda included many others, as widely known, there were three major issues in Cancun. These were agriculture, Singapore issues, (especially investment rules and transparency in government procurement) and intellectual property rights.

Agriculture. As widely known, the dominant 'make or break' issue in Cancun was the agricultural policy of the US and the EU. Agricultural tariffs and protectionist policies by developing countries are an important problem especially given the empirical arguments that agriculture sector plays an important role in eradicating poverty in developing and poor nations. Agricultural tariffs, currently averaging around 62 per cent, are very high both absolutely and relative to the current average industrial tariffs, which average around 4 per cent.

Moreover, tariff peaks and escalation remain pronounced in many industrial countries. For some agricultural exports of interest to developing countries (sugar, rice, dairy products) the major economic powers maintain tariffs of 350–900 per cent. In contrast, many developing countries have been compelled to cut their tariffs and non-tariff barriers as conditions for World Bank and International Monetary Fund (IMF) loans (UNDP et al. 2003).

The extreme protectionist agricultural policy of the EU and the US has been a major concern for developing countries. The high tariffs and quotas coupled with production subsidies have been major tools for this protectionism. The EU's Common Agricultural Policy, which cost about \$2.5 billion per annum, maintains high prices through price supports. The overproduction due to these high prices are then dumped to the international markets, while the domestic market is protected by high import tariffs.

The US spends about \$4 billion on cotton subsidies to 25,000 cotton farmers for about \$3 billion worth of Cotton (Economist September 6 2003). The result for some African countries such as Niger is disastrous.

OECD members provide about \$1 billion a day in domestic agricultural subsidies—more than six times what they spend on official development assistance for developing

countries. Direct production subsidies are currently about \$100 billion in the EU and \$50 billion in the US. Moreover, since 1997 such subsidies have increased by over a quarter. Many food policy experts, developing country governments and civil society organizations believe that these subsidies—and the related dumping of agricultural exports by industrial countries—have serious implications for developing countries. For example, rapid growth in international trade has made developing countries much more dependent on food imports, with potentially enormous effects on gender and distribution outcomes. In South and Southeast Asia women perform 60 per cent of food cultivation and production tasks. Rural African women produce, process and store up to 80 per cent of food. The erosion of domestic food production has numerous repercussions for food security, social cohesion in rural communities and women's income, employment and status (UNDP et al. 2003).

The resistance by the G-21 in Cancun was nothing more than to correct this situation. Developing countries require increased market access, especially in EU and North American markets—where reductions in domestic support and export subsidies and the elimination of export dumping are long overdue. In addition to the market access, for a level playing field, many developing countries believe that they must have greater flexibility in developing their agricultural policies, to ensure that they achieve food security and other human development objectives.

The proposals embodied in the 'development box'—developed by civil society organizations and presented in WTO negotiations by a group of developing countries — are important because of their significance for human development. If agreed, these proposals should apply only to developing countries and include a revised special safeguard mechanism. Some civil society organizations and developing countries have also argued for a 'positive list' approach to the development box, with illustrative criteria to ensure that this approach is not abused. Many believe that the development box, especially if made operational through a positive list approach, could put human development at the heart of negotiations on agriculture.

Singapore Issues: Investment rules and Government Procurement.

The attitude of developing countries in Cancun was to protect and implement what developed countries have been preaching for a long time now: Application of the fundamental principles of free trade to the case of Agriculture. But developed countries did not respond to this extremely fair agenda of developing countries. Instead, they insisted on their original agenda of increasing *their* market access through, *inter alia* expanding the multilateral trade rules into other areas and policies of development, which has been at work since the inception of the WTO.

The major difference between the GATT and the WTO is that the former stipulated the rules that govern the pricing and movement of goods between countries and left a considerable domestic policy space for member countries. The WTO, in contrast,

concerns itself with almost all aspects of development policy, regardless of whether they are related to international trade or not.

The background for the new issues proposed by the developed countries and adamantly advocated by the EU is this all-encompassing agenda which finds its origins in the dogma that free trade is an end in and of itself in the development discourse. The new issues that developed country members of the WTO want to include in the system, or widely known as the Singapore issues, are investment, competition, transparency in government procurement and trade facilitation. Since the 1996 Singapore Ministerial these issues have been on the table and since then developing countries have been resisting. The issues have been discussed, but no commitment for negotiation for new agreements have been agreed upon. The Doha Declaration stated that the Cancun Ministerial would take on these four issues on the basis of the explicit consensus on modalities of negotiations (Khor 2003).

These issues, especially investment rules, government procurement and competition policy, are extremely important for the development policy space that developing countries must have for further human development. Performance requirements such as domestic content requirements and related investment policy measures, favoring where necessary domestic firms in government procurement, and imposing conditions on foreign investors in joint venture deals, are extremely important industrial and social policy tools, which have been used by now-developed countries in the beginning of their development (Chang 2002, Kumar 2003).

In Cancun, inclusion of these issues in the WTO was made conditional to agricultural trade policy reform in the US and EU.

Intellectual Property Rights.

IP regulations has in fact set the standards for the inclusion of issues and areas that don't belong to the multilateral trading system. Regulation of intellectual property rights doesn't belong to the WTO. There are many reasons for that. Most significantly, now-developed countries were not restricted by intellectual property right regulations at the beginning of their ascent. In fact in many instances they openly violated existing patent laws. Empirical research shows that weak IPR protection could be beneficial in countries with low levels of technological capacity until they reached a level of development at which their industries could benefit from intellectual property protection. As Chang (2002) points out, most developed countries allowed the patenting of imported inventions by their nationals. The Netherlands abolished its 1817 patent law in 1869, treating patents as other monopolistic practices, and reintroduced it in 1910 under pressure from its neighbors. Other examples are Britain before 1852 and Austria and France. Even though the nature of technology has changed, this historical evidence is telling about the relevance of a standardized intellectual property regime for countries at hugely varying levels of income and technological capability.

Secondly, the existing regime is hurting developing countries for (1) developing countries, which are net importers of IP are burdened by the copyright and license

payments for technological improvements that are absolutely essential for their industrial development and movement to higher value added products in the international markets; (2) the IP regime prevents the copying of existing advanced technologies in the production of high value added products, thus preventing developing country producers from learning and further refinement of these production techniques and products. As indicated above this is how now- and new (Asian Tigers) have established their sustainable development path.

The only relatively positive development in the TRIPS area is on the TRIPS and public health, and it is only because big pharmaceuticals trying to control the damage on their image done in connection with the HIV/AIDS pandemic. With the recognition in the Doha Declaration, that IPRs could be subservient to the public health concerns, developing countries can now import low price generics under the conditions of public emergency and take necessary measures to prevent these generics entering into industrialized country markets to protect high prices in the developed countries. While this is all good, the major damage that is done by the TRIPS regulations, namely the technological advancements and efficient usage of industrial and technology policy by developing countries have not been addressed. Neither are the issues of food security, biological resources and traditional knowledge that are damaged by the TRIPS studied are addressed.

The ultimate solution for an equal playing field in the areas of public health, technology and knowledge creation, and the food security, biological resources and traditional knowledge is overhauling the multilateral intellectual property rights regime and the migration of the regulations out of the WTO. However, if one is stuck with the system possible sub-optimal solutions, as academics and policy experts have argued that WTO members should explore alternative mechanisms for protecting intellectual property rights. New mechanisms could encourage innovation in both developing and industrial countries and support technology transfers to developing countries. Ultimately, the international community should settle on a way to protect intellectual property that does not involve trade sanctions. Possible reforms suggested include intellectual property 'ladders', a 'TRIPS minus' model, an intellectual property regime with specific opt-out clauses and separate intellectual property regimes for collective and individual rights. In the meantime there is an urgent need to interpret and implement the TRIPS agreement in a more development-friendly manner—especially when efforts to do so are challenged under the dispute settlement mechanism. Concrete action at the international level will need to be supplemented by national legislation that gives full weight to human development concerns (UNDP et al. 2003).

Non-Cancun Issues in the WTO

Development implications of the WTO regime are not limited to these three issues. Some of the essential issues like the GATS and NAMA two of those. As indicated above, Cancun included a good deal of discussion on the global governance of trade. This subsection deals with these issues.

Services Agreement:

From a development perspective, GATS is one of the most important agreements in the WTO system. The Agreement regulates the cross-border flow of trade in services and has important implications, especially in terms of its impact on a state's development policy-making. The main potential human development impact of GATS appears to lie in its influence on the ability of developing country governments to formulate social and development policy. Because of its broad coverage and formulation, GATS impacts not only the flow of services trade but almost all other aspects of trade-related development policy. Therefore, the correct interpretation of the rules of the Agreement from a human development perspective assumes particular importance for developing countries in their future negotiations.

Not surprisingly, most of the services trade comes from industrialized countries. Industrial country services exports amounted to 71% of all traded services in 1997 and imports 67%.¹ This imbalance is reflected in GATS as well – and has important policy implications, as well as implications for human development.

The GATS provides a legal framework for trade in services, defined to cover a range of areas including investment, financial services, communications, transportation, education, energy, water and movement of persons. It also calls for negotiating the progressive liberalization of regulations that impede trade and investment in services.

The GATS provides two types of benefits for developing countries: the potential flexibility provided through its 'positive list' approach and through the provisions for human development incorporated in several of its articles.

Still, there remain important problems with the GATS. These arise from the agreement's actual application and from developing countries' inability to fully benefit from its flexibility and beneficial articles. Moreover, a lack of credible data on the impact of services liberalization has made it difficult for developing countries to determine which areas to liberalize and what limitations to include in country schedules. In addition, with the ambitious 'free trade' agenda of the developed countries, the GATS could facilitate the commercialisation of public services to the detriment of poor women and children.

Movement of Natural Persons: It is argued that the lack of commercially meaningful commitments by developed countries in the movement of natural persons (MNP) is the basic source of imbalance in services trade (Mashayekhi 2000). In the Uruguay Round, commitments scheduled under Mode 4 were limited largely to two categories: first, intra-company transferees regarded as "essential personnel", such as managers and technical staff linked with a commercial presence in the host country; and second, business visitors, who are short-term visitors not in general gainfully employed in the host country (WTO 2001). Since these are mostly higher-level personnel linked to Mode 3, they benefit developed countries more than their developing counterparts (Butkeviciene 2000,

¹ More than one third of US economic growth in the last 5 years has been due to services exports, entertainment (films and TV programmes) being the largest single export industry.

Mashayekhi 2000).

While industrialized countries are pushing to deepen the commitments under Mode 3 -- such as financial services, health and other basic services -- a major shortcoming of GATS from a human development perspective is its provisions on the movement of labour, which could cover a wide range of service exports that are of developing country interest. Despite the fact that Mode 4 includes the supply of services through the presence of natural -- as opposed to legal -- persons, the Annex on MNP states that “the Agreement shall not apply to measures affecting natural persons seeking access to the employment market...”

There is no similar restriction on the movement of capital in GATS.² It is argued that this created a heavy bias in favor of the movement of capital, technology-intensive services, and eventually industrial countries (Shukla 2000). Currently, services provided through TNCs based in other countries constitute about 33% of the global services, while only 1% is provided through the transfer of labour (McCullogh, Winters and Cirera 2001, Oxfam 2002).

While there is an apparent imbalance, generating other sorts of imbalances, in the Agreement, the issue is not clear-cut. Major developing countries are keen to have access to industrial country labor markets for their independent professionals, and industrialized countries are very eager to have them (Winters 2002). In fact, some developing country governments like India, which was the highest-ranking country in receiving workers' remittances in 1998, promote this kind of skilled labour-biased migration on the basis of the fact that the qualified personnel constitutes an element of their competitive advantage in the world market (Butkeviciene 2000, The Corner House 2001).

While the migration of skilled people from developing to developed countries could be beneficial in the medium and long term, it is argued that a key to reducing poverty and international and domestic inequalities is extending Mode 4 effectively to less-skilled, and ultimately unskilled workers (Winters 2002).

Using CGE modeling, Walmsley and Winters (2002) estimate the effects of increasing temporary workers' permits in industrialized countries by 3% of their current skilled and unskilled workforces -- permitting about 8 million skilled and 8.4 million unskilled workers to enter. The economic benefits are huge: compared with those of the \$66 billion for complete trade liberalization in goods shared between developed and developing economies, such liberalization in the movement of natural persons yields more than \$150 billion per year. Moreover, global gains from unskilled labour mobility exceed those from skilled labour mobility, since the input lost to developing country production as a result of transfer could be lower in value added in the former case.

Winters (2002) argues that many of the extremely poor still would not benefit from the new opportunities to work abroad. They may, however, benefit, at least at the beginning, from simple trickle-down and increased tax revenues from those who do benefit. In the

² By contrast, the free movement of capital is encouraged through financial services liberalization.

long run, increased returns to acquiring sufficient skills to permit mobility may encourage greater education and governments' willingness to provide it (Winters 2002).

At any rate, developing countries have a great potential advantage for promoting their trade in services through the MNP in all categories, and as such, developing countries are interested in market access for persons in all categories which is not linked to investment (Butkeviciene 2002). The economic needs test (ENT) seems to be the most controversial and detrimental in terms of services exports through MNP from developing countries. There are several proposals to remedy the situation. These include ENT exemption lists, as proposed by Pakistan, by professions and/or by sectors (Pakistan Proposal to the preparations for the Third Ministerial, cited in Mashayekhi 2000).³

In a similar position, India has recommended that governments⁴:

- a. provide free and accessible information regarding the movement of personnel;
- b. provide equal treatment of all foreign nationals;
- c. standardize/harmonize qualifications and experience with the help of agreements;
- d. remove all restrictions on temporary movement of professionals, salary and wage comparison with residents, and local competency or certification (e.g. medical boards) (CUTS 1999)

Though many countries support the GATS' positive list approach, they believe that it should be improved through the adoption of such modalities as the 'conditional offer approach'. They also believe that the agreement's developmentfriendly articles should be operationalized. To enable that, developing countries should negotiate service modes of greatest interest to themselves in the exchange of offers and requests in a manner that ensures that these articles are effectively implemented at the sectoral level.

The extent to which public services are open to GATS rules will ultimately depend on how the agreement's text is interpreted by the WTO's dispute settlement body. In the interests of human development, many governments and civil society organizations are calling for exemptions from progressive liberalization for basic public services such as water, health, education and social protection.

Non Agricultural Market Access (NAMA)

The GATT aimed at creating a multilateral trading system in which tariffs on industrial goods would be minimized as much as possible. The concerns related to the implementation of this overall goal were raised at the Doha Ministerial, and members

³ ENT could be used for public policy purposes only with certain clear guidelines, which do not currently exist under GATS (Butkeviciene 2000).

⁴ The accountancy sector in India can benefit from the GATS. Due to availability of trained manpower and professional firms, India is very competitive in this sector. However, indirect restrictions like the wage parity that requires that, regardless of nationality, everyone be paid the same disrupts the competitiveness to deliver the assignment at a much cheaper cost. Wage parity, along with deduction of withholding tax and double taxation of social security, are key non-tariff barriers used by EU and the USA (CUTS 1999).

agreed that a consensus should be reached on how to expedite this. Non-Agricultural Market access has been a particularly difficult issue, because there have been an abundance of different proposals as to how to increase market access for industrial products. The existing proposals include mathematical formulas to reduce all tariffs on non-agricultural goods (for example, reducing tariffs by a certain percentage) and tariff harmonization, which would make tariffs for the same good equal everywhere. Developing countries would like first and foremost, tariff peaks (defined as tariffs higher than 12 percent) and tariff escalation, (relatively higher tariffs imposed on finished products than intermediate ones) to be eliminated. Because of the difficulty in formulating an acceptable, uniform market access formula to all countries, it is hard to envisage an agreement on the negotiation modalities on non-agricultural market access in Cancun.

The existing developed country proposals imply ambitious tariff cuts and demand strong liberalization effort from developing countries, while not providing for any S&DT for developing countries.⁵ Some of them would require more dramatic tariff reduction and put more liberalization pressure on developing countries and India. There is an Indian proposal that is more moderate, leaving space for industrial and development policy purpose. Most developing countries consider that they need to keep reasonably high level of tariffs on sensitive products, leaving them unbound.

The importance of the principle of “less than full reciprocity” in the possible commitments, meaning that developing countries are allowed not to reciprocate fully in return to developed country concessions, was stressed. The outcome of the negotiations should provide sufficient policy flexibility for industrial development purpose. Sectoral elimination should be undertaken on a voluntary basis, and some of the sectors, in particular auto components and electronic goods, for tariff elimination could have adverse effects on industrial strategies, especially in middle income countries. Genuine market access liberalization needs to be accompanied by the identification and removal of non-tariff barriers.

Global Governance of Trade From a Human Development Perspective

Most of the development-unfriendly problems of the current multilateral trading regime stem from the dogmatic and hypocritical vision adopted by the system, which is based on market access. This vision is conveniently supported by the existing governance structure and its application in the WTO. In order to make the system development friendly and using the valuable potential of having a multilateral trading system for human development in developing countries through establishing an equal playing field, a major reform in the system is imperative.

The single undertaking

⁵ The latest joint Canada/EU/USA proposal proposes a simple ambition Swiss formula on a line-by-line basis. Furthermore, it introduces a system of credits providing less ambitious tariff cuts for developing countries that bind more than 95% of their tariffs.

The WTO's single undertaking mandate, which compels governments to accept agreements as a complete package rather than on an individual basis, is unique among multilateral organizations. The single undertaking appears to have provided some benefits to developing countries by more effectively subjecting agriculture and textiles and clothing to multilateral trade disciplines. But many developing countries argue that the single undertaking has also sharply reduced their flexibility in choosing which agreements to sign, limiting their options for domestic development policies to those compatible with the new rules and agreements of the global trade regime (TWN, 2001).

Many developing countries argue that the single undertaking's human development impact would be maximized if it ensured that all countries' interests were reflected in the trade regime's rules and agreements. Thus a major challenge for the international trade regime is to incorporate human development objectives as positive obligations in its rules and agreements. Many developing country governments and trade policy specialists argue that special and differential treatment can help achieve this goal.

Special and differential treatment

To ensure progress in crafting trade agreements that support human development, the Cancun Ministerial should have reached clear consensus on the importance of special and differential treatment, as part of positive developments in Doha . A conference declaration on special and differential treatment and human development would have shown a concrete ministerial commitment to changing the mindset of the system towards a more human development friendly approach.

In terms of human development, possible areas that such a declaration could cover include education, energy, health care, technology transfer, gender equality, environmental protection, cultural integrity and diversity, and the right to use traditional knowledge to promote human development⁶.

Governance structure and decision-making

Formally, the WTO is the most democratic of all intergovernmental organizations with a global mandate (this is actually a part of the double personality feature of the WTO). Its one-country, one-vote system of governance makes it far more democratic than many other multilateral institutions. The WTO is also a member-driven organization, with its members involved in day-to-day activities through its general council. In keeping with this status, the WTO's secretariat is relatively small and has limited power and autonomy. These features suggest that the WTO's formal governance structure provides developing countries with unique opportunities in a global forum for economic governance—especially when they have a clear majority. But such opportunities may be difficult to realize, because informal consensus building has had a far greater influence on WTO decision-making than its formal processes. Some suggested changes to the consensus-building process include increasing the size of the quorum required to make decisions and allowing countries without representatives in Geneva to participate through videoconferencing or other arrangements. Some developing countries have also encouraged voting for certain decisions, such as those related to the trade regime's

⁶ This sub-section will be expanded in the next draft.

governance, budget, management and administration. Such voting could occur by mail or electronically to ensure the participation of members without Geneva representation. This approach would lead to better-informed decisions that are more genuinely owned by the majority of members and be more sustainable in the long run. There is widespread agreement that the least developed countries and small island developing countries require support to bolster their representation and capacity in Geneva.

Academics, policy experts and veterans of trade negotiations have also suggested that the WTO's governance structure allow for more effective organization and participation of coalitions of developing countries as well as developing and industrial countries. A clear example is the G-21, through which the development urgencies of developing countries were voiced and efficiently delivered to developed country counterparts. Some other earlier informal groups of developing countries have already emerged, among them the Like-Minded Group. Another example is the Cairns Group, which brings together industrial and developing countries to discuss market access for agriculture. Such coalitions should be encouraged and supported.

Dispute settlement

The WTO's dispute settlement mechanism, central to the governance of the trade system, is in many ways a marked improvement over its predecessor under the GATT. The new mechanism is more time-bound, predictable, consistent and binding on all members. As a result developing countries are participating more in the dispute settlement process.

Still, many international experts and developing country governments have argued for important changes in the mechanism's rules and functions. Changes are partly needed because of the perception that trade sanctions are an acceptable way—indeed, to some the only effective way—of enforcing international commitments.

This perception has fuelled initiatives to extend the WTO's agenda to cover areas of international economic interaction far beyond cross-border trade in goods. Given the importance of trade sanctions and retaliation in the dispute settlement process, developing countries are in a weak position relative to industrial countries because their threat of retaliation is less credible. Proposals have been made to rectify this imbalance, and there is a need for mechanisms to ensure that all countries honour WTO rulings. Such mechanisms could include requiring financial compensation and levying penalty payments on countries that delay implementation of dispute settlement rulings. Some experts have also suggested that in certain cases a collective action clause be used against powerful members that refuse to implement dispute rulings.

What is next? What is to be done?

Apart from the specific proposals above, now the lingering question in everybody's mind is what is going to happen next. Some people argue that Cancun breakdown marks the end of the multilateral trading system, and there is a definite return to to bilateralism. While there is some merit to this argument, looking at the new developments (such as the recent softer proposal from the American side on negotiations) and the importance of

having a multilateral trading system for the benefit of developing countries, a sharp fallback to bilateralism is highly unlikely.

As indicated above, Cancun breakdown demonstrated the importance for developing countries to act together in one voice to place the trade-related development agenda and free trade in its true sense. A likely scenario at the multilateral level would be to extend this approach of collaboration among developing countries to other areas such as the TRIPS (already happening in the case of TRIPS and public health) in technology transfer etc., NAMA and GATS. The other mechanism to avoid bilateralism is regional trade deals. As long as it is among equals, such agreements can in fact be more development friendly.

Though there is considerable overlap in coverage between regional and multilateral trade agreements, some regional agreements are considered more development-friendly by their members. However, a growing number of regional trade agreements incorporate ‘WTO plus’ elements. Many analysts have argued that WTO rules should provide the overall boundaries for regional agreements—but that WTO rules should first be made more flexible and friendly to human development.

In addition, many developing countries believe that WTO rules on regional agreements must be clarified to ensure that the agreements reflect human development criteria and countries enjoy the same special and differential treatment at the regional level as at the multilateral level. The Doha declaration and current negotiations on a number of regional trade agreements (such as the Cotonou Agreement between African, Caribbean and Pacific countries and the EU) provide opportunities to achieve these goals.⁷

Whatever the likely outcome in terms the landscape of the new trading system, it is important to keep momentum in the collaboration. In order for the collaboration in other issues (than agriculture) to be credible, however, it is extremely important to showcase the urgency of having a developmental mindset in the trading system. While the technical capacity of the developing country trade negotiators has made a quantum leap in the last decade or so, the human development mindset needs more food. This, in turn, requires a thorough assessment of the existing trade agreements, starting from the accession process. So far this has been neglected, partly because the WTO and some other institutions have not seen this as a priority, but mostly because a participatory impact assessment of key changes in trade policy, such as accession to the WTO or the expiration of the MFA, would produce ‘unpleasant results’ for the seemingly free traders.

We now turn to a short discussion on the basic parameters of such impact assessments.

Human Development Impact Assessment of Trade Policies

As suggested by the recent UNDP-sponsored book on *Making Global Trade Work for People*, because of the human development implications of trade policies, it is salient that

⁷ There will be more discussion on this in the following draft.

the impact of these policies from a human development perspective be thoroughly and systematically assessed both before (ex-ante) and after (ex-post) the policy commitments are made and, within this context, supporting measures to mitigate possible adverse impacts, including rejecting trade commitments that would hurt the poor, and those to improve opportunities should be put in place.

Impact Assessments.....

In the context of trade agreements, impact assessments can be conducted in different ways. It can be comprehensive, that is, for all of the major agreements, signifying a fundamental change in the trade policy. Impact assessment of accession to the WTO would be an example of that, as the WTO accession requires a substantial policy and institutional shift in the three key areas, namely tariffs (industrial), agriculture and services, and thus, is likely to affect a wide range (almost all) of HD components in the candidate country.

Alternatively, impact assessments can be specific to a certain agreement or a specific change in the rules of international trade. For example in the multilateral trading system, the HD impact of the TRIPS agreement on public health can be assessed in isolation. The HD impact of expiration of the multi-fibre agreement (MFA), a major change in the multilateral system, can also be evaluated through impact assessments.

Modality of impact assessments can be different depending on the context (for a thorough review of macroeconomic policy impact assessments for instance please see Schmidt 2002). They can be quantitative, qualitative, or some sort of a combination of the two. Quantitative assessments use several simulation and descriptive statistics techniques, while qualitative assessments concentrate on collection of qualitative information on the impact of a particular policy change through field work and extensive interviews with several stakeholders.

Unfortunately, because of political and other reasons, meaningful human development impact assessment of trade policies in developing countries have not been conducted. There is no example of human development impact assessments of WTO accession in a rigorous and thorough manner, or that of any major WTO agreement.

In the context of trade, limited number of contemporary impact assessments have been inspired by environmental impact assessments in a developed country setting. These include National Environmental Reviews and those developed by UNEP and WWF that are based on a case study approach. Most recently, EU has been involved in Sustainability Impact Assessment (SIA) of Trade Agreements. The SIA is conducted over three pillars; economic, social and environmental (Box 1).

Box 1: The EU SIA Methodology

The SIA methodology uses a core group of sustainability indicators to measure the impact that further liberalisation and changes in rule-making might have on

sustainability. These indicators are balanced between economic, environmental and social: average real income; employment; net fixed capital formation; equity and poverty; health and education; gender inequality; environmental quality of air, water and land; biological diversity and other natural resource stock.

The first stage of the assessment methodology is a screening exercise to determine which measures require SIA because they are likely to have significant impacts. The next stage is coping to establish the appropriate coverage of each SIA, taking each of the measures identified in the screening exercise and identifying which components of those measures are likely to give rise to an impact. From this, there follows a preliminary SIA to identify potential significant effects, positive and negative, on sustainable development. Finally, the methodology includes mitigation and enhancement analysis to suggest possible improvements, which may enhance the overall impact on sustainable development of the proposed liberalisation. Flanking measures are interesting outcomes of SIA as:

They aim at mitigating negative impacts and enhancing positive ones; They raise awareness of the role of non-trade policy in the impacts of trade policies on sustainability. Identification of flanking measures could help third countries to adjust their own regulation to improve overall gains of the trade agreement.

Source Background Paper: Sustainability Impact Assessment of trade agreements – Making Trade Sustainable, pp 20-21.

While current impact assessments of trade policy and agreements, like the SIA provide useful insights, from an HD perspective, they commonly suffer from crucial problems. Firstly, most of them take trade as an end in itself and, as such, do not question the feasibility of trade liberalization policies. Therefore, the idea is not to assess whether or not and how trade liberalization affects key HD variables, but to identify ‘flanking’ measures to facilitate the (assumed) positive impact of a ‘given’ policy (trade liberalization) on ‘economic growth’. Secondly, most of them are limited to certain areas and concepts such as the environment. Thirdly, in both qualitative and quantitative techniques, they are participatory only on the surface. Their coverage of stakeholders is limited to government and private sector (mostly big players). Last but not least, the existing modalities rely heavily on and come up with policy options and designs almost exclusively at the national level. Reasons for negative impacts are often be found in national distortions, lack of environmental regulation, and externalities (rather than those caused by the developmental shortcomings of the international system). As such the modality and following recommendations are likely suffer from incompleteness and lack of sustainability. In a developing, especially least developed, country context, the global focus, reflecting the responsibilities and participation of the global development community in both the assessment and policies should be maintained in any rigorous policy analysis.

While the exact modality of these HDIAs depends on specific contexts, the basic parameters of the HDIA, which aims at improving the quality and coherence of trade policies from an HD perspective, include the following:

- The HDIA aims explicitly at assessing the feasibility of a particular form of trade policy (in the current context, liberalization) from a HD perspective;
- Using both quantitative and qualitative techniques, the HDIA provides a flexible enough methodology to be applied in different contexts;
- It is participatory in the sense that in analysing particular trade policies, it brings together *all* of the relevant stakeholders and representatives of vulnerable groups that are most likely to be affected by the policy change. Open and interactive national forums and committees, as well as field work are used to guarantee people's participation;
- One of the HDIA's main objectives is to mainstream participatory decision making into trade policy formulation. This exercise gives the ownership of the decisions to the people who are likely to be affected by the policy change;
- The HDIA identifies opportunities as well as negative implications of the policy change and recommends measures that help operationalize and realize the former and mitigate the latter with a specific focus on enhancing human capabilities.

The outcomes of HDIA are used to mainstream trade concerns into the trade negotiation process, by influencing trade negotiators' mindset from a human development perspective. In addition, by demonstrating likely (or existing) effects of a particular trade policy decision around the negotiation table, the outcomes and analyses of such an HDIA are hoped to provide significant leverage for developing country trade negotiators around the negotiation table.

The importance of conducting HDIA of trade policies in a thorough and participatory manner cannot be overstated. Unfortunately, in many cases, such as in Nepal and Bangladesh, the systematic work should have been done much earlier so that meaningful human development policy actions could have been developed. Nonetheless, HDIA of trade policies constitute an important vehicle and a starting point for UNDP's engagement in trade for HD.

Conclusion

The current multilateral trading system, personified by the WTO, does not provide a suitable platform for development in developing and poor countries. A human development oriented multilateral trading system that provides necessary development policy space at the domestic level and fair trade outcomes at the international is, however, essential for making sustainable progress towards the attainment of sustainable human development in developing and least developed countries. This, in turn, requires collective action and co-operation at the global level for the transformation of the global governance of trade towards a more open, equitable, predictable and non-discriminatory system for human development and poverty eradication. This cooperation started in Cancun with a very significant demonstration of solidarity among developing countries on the issue of protectionist agricultural policy of developed countries.

In order for this to for this to further materialise, the cooperation among developing countries on other key issues should take place. Equally importantly, however, there is a need for a strong international partnership and action by developed countries to remove restraints on developing country trade. Estimates indicate that removal of rich-country trade barriers would be worth twice the \$50 billion provided in ODA to all developing countries each year. Thus far, however, OECD countries have seen trade negotiations as an opportunity to bargain for markets rather than an opportunity to promote development. Cancun is the result. There is, therefore, a need for a fundamental shift in the mind set of developed countries in global trade negotiations towards the priorities of developing countries. Removal of current barriers to trade flows from developing countries including high tariffs and massive agricultural export and domestic subsidies and enabling developing countries to meet existing food safety regulations, while providing flexibility to developing countries to defend their small farmers against disruptive imports is extremely important. There is a need for a larger discussion on the TRIPS agreement than just limited to the public health, so as to enhance the ability of developing countries to effectively and cheaply transfer technology for industrial upgrading. Increased access for developing country industrial products in developed countries would help the former move up in value added chain in industrial production. Finally, more specific commitments from developed countries relating to movement of natural persons in sectors and categories of occupations of export interest to developing countries is essential.

Removal of trade barriers however is not enough. It should be supplemented by a development friendly system of preferences in the multilateral trading system. Preferential market access and other provisions granted to developing and least developed countries through the special and differential treatment under the WTO has played an important role in poverty eradication in some least developed regions. This, however, should be further improved in an attempt to level the playing field. Least developed countries such as Cambodia, Nepal and Bangladesh more than doubled their exports as a share of GDP in the last decade due in most part to the preferential market access granted to them in developed countries. Removal of trade preferences, without a sustainable alternative mechanism is likely to produce adverse human development outcomes especially in least developed countries in the region. The recent LDC ministerial meeting joined forces for obtaining a binding commitment for duty free quota free access into developed country markets that should be granted to all LDCs.

The full implementation of the Agreement on Textiles and Clothing at the end of 2004, will result in the removal of the quotas which have shielded less efficient and smaller textiles and clothing producers from competition from more efficient suppliers in the lucrative markets of the USA, EU, Canada and Norway. It is feared to result in a massive employment displacement in countries like Bangladesh, affecting livelihoods of millions of people, mainly women, in the absence of an alternative preference mechanism, such as duty free access for LDCs in the textiles sector or efficient trade related technical assistance.

Last but not least, a development friendly multilateral trading system should respect

development policy autonomy of developing countries and be supportive of it, as achievement of sustainable human development depends first and foremost on a solid domestic development policy agenda. This will further enhance the trade capacity of developing countries and produce a 'win- win' outcome for all participants of the global trading system.

All these, however, need to be showcased before the international community. This in turn requires that there be a thorough assessment of the existing situation, which is long overdue. (TBC).

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