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*(Text of papers circulated by India in the WTO -I)*

## DIFFERENTIAL AND MORE FAVOURABLE TREATMENT FOR DEVELOPING AND LEAST DEVELOPED COUNTRIES IN VARIOUS WTO AGREEMENTS - CONCERNS REGARDING IMPLEMENTATION

### The Underlying principle

The underlying principle of the Uruguay Round Agreements is to create a fair and equitable multilateral trading system that leads to development and increasing incomes. The Marrakesh Agreement establishing the World Trade Organisation recognises, in its Preamble, that relations between Member countries should be conducted with a view to "raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services...." The preamble recognises further that "there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their

economic development".

2. These principles are amplified further through specific provisions in various individual Agreements, Decisions and Declarations, which provide for special and differential treatment for developing and least developed countries. In WTO document No. WT/COMTD/W/35 dated 9th February, 1998, these provisions have been listed out and the status of action indicated. The Discussion Paper, entitled "Special and Differential Treatment : Search for a New Strategy", prepared by UNCTAD for the Group of 77, further highlights some of the problems relating to differential and more favourable treatment for developing and least developed countries. In their communication, submitted to the Committee on Trade and Development, Morocco has stressed the need for an analytical review to "provide the

India has submitted a paper in the ongoing preparatory process in the General Council for the Third Ministerial Conference highlighting the concerns regarding implementation of various provisions relating to Differential and more Favourable Treatment of developing and least developed countries in various WTO agreements. The underlying principle of the Uruguay Round Agreements is to create a fair and equitable multilateral trading system that leads to development and increasing incomes. These principles are amplified through specific provisions in various individual Agreements, Decisions and Declarations, which provide for Special and Differential treatment to developing and least developed countries. The Special and Differential provisions which are more in the nature of "best endeavour" clauses are virtually ignored in the process of implementation of Agreements. As such, the Indian paper on Special and Differential treatment brings out the need and mode for operationalising of these clauses in order that benefits of various WTO Agreements actually accrue to the developing and the least developed countries.

necessary framework for an evaluation of the implementation of the measures" [WT/COMTD/W/46 dated 17.7.1998].

**3. The question of special and more favourable treatment for developing and least developed countries has been engaging the attention of negotiators from the days of the 1947-48 Havana Conference onwards. The developing countries have stressed at all times the peculiar structural features characterising their economies and the distortions arising from historical trade relationships, which have constrained their trade prospects. The low level of industrialisation, inability to access advanced technologies, non-availability of adequate investible resources, high dependence on primary products in their export basket and vulnerable BOP situations are factors that need to be taken into account while assessing their capacity to compete on equal terms with developed countries.**

4. The UNCTAD-II Conference at New Delhi in 1968 and the Tokyo Round negotiations resulted in some favourable changes for developing countries. The UNCTAD-II Conference led to the introduction of GSP schemes and in the Tokyo Round, the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries [the "Enabling Clause"] was taken. However, the situation changed since the 1980s and there has been increasing discrimination against trade emanating from developing countries, manifesting itself in such measures voluntary export restraints, higher MFN tariffs, proliferation of restraints on textiles and clothing, and increased harassment through anti-dumping and countervailing duties.

5. The special and more favourable treatment provisions in the Uruguay Round Agreements fall under **two main categories** :

**a] Time limited derogations in the form of longer transition periods, more favourable thresholds in the application of countervailing measures and for undertaking certain commitments, and greater flexibility with regard to certain obligations.**

**b] Clauses, providing for specific, although undefined, action by developed countries under certain agreements, while dealing with developing countries.**

6. So far as the first category is concerned, it is necessary to evaluate the provisions presently available in various agreements with a view to determine whether changes are necessary and whether the intentions of the negotiators have been fully translated into practice. The experience of the past three years of developing countries will provide clear guidelines for such evaluation. **In certain cases, such as with regard to the Agreement on Textiles and Clothing, while provisions have been implemented in letter, the expected market access benefits for developing countries and least developed countries have not materialised. To that extent, the Agreement has failed to achieve its underlying objectives. Exhaustive study of all such provisions is, therefore, necessary in order to make positive recommendations to the third Ministerial Conference.**

7. The first category of provisions is relatively straightforward and can be dealt with in terms of increase in transition periods, improvement in de minimise margins, and higher flexibility for developing and least developed countries. It is the second category of provisions for special and differential treatment that poses more problems. In such cases, there has been difference of opinion between developed and developing countries regarding the meaning and interpretation of provisions. Likewise, some of the provisions which are more in the nature of "best endeavour" clauses are virtually ignored in the process of implementation of agreements.

#### **Balance of Payments Provisions**

Article XVIII of GATT, particularly Article XVIII:B, is one provision which helped developing countries in pre-WTO times to enjoy a certain degree of flexibility in their trade regimes. Article XVIII permits developing countries to impose quantitative restrictions on imports for balance of payments reasons, taking into account not only the foreign exchange reserves position, but also the development needs of the economy. This is clear from paragraph 2 of Article XVIII:B, which is extracted below :

"The contracting parties recognise further that it may be necessary for those contracting parties, in order to implement programmes and policies of economic development designed to raise the general standard of living of their people, to take protective or other measures affecting imports, and that such measures are justified in so far as they facilitate the attainment of the objectives of this Agreement. They agreed, therefore, that those contracting parties should enjoy additional facilities to enable them [a] to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment of a particular industry and [b] to apply quantitative restrictions for balance of payments purposes in a manner which takes full account of the continued high level of demand for imports likely to be generated by their programmes of economic development".

9. Paragraph 8 of the Article XVIII further elucidates this point :

**"The contracting parties recognise that contracting parties coming within the scope of paragraph 4[a] of this Article tend, when they are in rapid process of development, to experience balance of payments difficulties arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade".**

10. Paragraph 9 of Article XVIII indicates that the developing countries may maintain quantitative restrictions for balance of payments "in order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its programme of economic development". **Paragraph 11 stipulates that "in carrying out its domestic policies, the contracting party concerned shall pay due regard to the need for restoring equilibrium in its balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources".**

**11. It is thus clear that the intention of the negotiators was to take into account the development needs of developing countries while estimating the adequacy or otherwise of foreign exchange reserves** in the process of determining legitimacy of maintenance of quantitative restrictions. However, in actual fact, we find that assessments of adequacy of foreign exchange reserves are made exclusively on the basis of a comparison of volume of reserves with value of imports during the past few years. **The development dimension is ignored.** Thus, in practice, there is no distinction between Article XII [which deals with quantitative restrictions maintained for BOP reasons by developed countries] and Article XVIII:B which provides a special dispensation for developing countries. **It is necessary to clearly define the scope of Article XVIII:B and to lay down guidelines for ensuring that the development dimension is fully taken into account while assessing foreign exchange reserves.** A differential has to be clearly built into the provision so that Article XVIII:B serves its purpose in ensuring long term stability of the BOP position of developing countries, without making them vulnerable to violent fluctuations in reserves and exchange rates which can lead to severe and sustained setbacks in the growth process.

#### **Anti-dumping Measures**

12. Another instance is provided by Article 15 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, which relates to anti-dumping. Article 15 is extracted below :

**"It is recognised that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members".**

13. However, **we find that anti-dumping measures are being virtually used as weapons by certain developed countries to deny access to the products of developing countries. On the same commodity, anti-dumping action has been repeatedly initiated by certain developed countries.** This has created instability and unpredictability in the market, which militates against basic GATT principles. It is vitally important to lay down clear guidelines for making sure that the provision in Article 15 is translated into practice. **Some areas where special and differential treatment can be considered for exports from developing country members are enumerated below :**

a) A de-minimis dumping margin limit of 2% of export price has been prescribed and no anti-dumping duty can be imposed if the dumping margin is below this threshold limit. This de minimis limit is the same for exports from developing as well as from developed countries. Many of the export products of developing countries are produced by labour intensive small and medium enterprises. Imposition of anti-dumping duties, or even the threat of imposition of such duties has a serious adverse effect on the functioning of such units. As a consequence, there is fall in production, heavy unemployment, decline in incomes and increase in poverty levels. In view of the high sensitivity of these sectors to any export disruption, the de minimis dumping margin of 2% should be enhanced. The level of enhancement in respect of each developing and least developed country should

reflect the disadvantage that the industry in such country suffers vis-a-vis comparable production in developed countries. For instance, the Federation of Indian Chambers of Commerce and Industry has estimated that the disadvantage suffered by Indian industry by way of differential costs of working capital, financing cost of refund of excise duty, intangible infrastructure costs, sales tax on local bought outs and octroi amounts to approximately 17%. The inherently high prices sometimes maintainable in the domestic market are not sustainable in exports, and the prices of the latter often represent reduced levels of profitability for the exporter. The price differential of 2% presently constituting the de minimis dumping margin is unrealistically low. However, the extent of disadvantage would vary from country to country and its assessment could be a cumbersome, contentious issue. **Hence it is better to have an across-the-board de minimis which could be prescribed vis a vis all developing countries to adequately reflect the higher price levels which prevail in such countries.**

- b) Article 5.8 of the Anti-Dumping Agreement presently provides that the volume of dumped imports shall normally be regarded as negligible, if the volume of dumped imports from a particular country is found to account for less than 3% of imports of the like product, unless countries which individually account for less than 3% of the imports of the like product collectively account for more than 7% of the imports into the importing Member. In view of the liberalisation of global trade and in view of the fact that more and more developing countries are entering into what were earlier untapped markets for them, **it is necessary to increase these percentages with a view to help developing countries. These percentages should be increased respectively to 7% and 15% in the case of imports from a developing country into a developed country.**
- c) Since anti-dumping investigations are against specific exporters, the impact of investigations and the resulting duties, if any, are felt by the exporters from developing countries who, more often than not, are very small in size and operations. The cost of defending the interests of the exporters of the developing country Members is also prohibitive and a matter of concern. It is, therefore, important that **investigations should be initiated against developing country members only if the petition has the support of atleast 50% of the domestic industry of the developed country Member. Further, no investigation should be initiated for a period of 365 days from the date of finalisation of a previous investigation for the same product resulting in non-imposition of duties.** However, if it is established by the complainants that the circumstances have changed drastically subsequently to the finalisation of a case, such investigation should be initiated only if it has the support of at least 75% of the domestic industry of the developed country Member. Further, **stricter criteria should be applied for such repeated investigations and the period of investigation should not be less than one year.** Guidelines should be established to define the parameters of "establishing", "drastic" change of circumstances and the "stricter criteria" to be applied in such cases.

- d) Article 9.1 of the Agreement allows the investigating authorities to impose anti-dumping duties where all requirements for imposition have been fulfilled. This Article further states that it is desirable that the duty be less than the margin of dumping if such lesser duty would be adequate to remove the injury to the domestic industry. It is a matter of concern that a large number of developed countries, who also happen to be active users of the mechanism, apply duties to the full extent of the margin of dumping. While the Agreement does not make it obligatory for the investigating authorities to follow the "lesser duty rule", the application of duties to the full extent of dumping margin invariably leads to higher level of protection to the domestic industry which is in excess of the duty required to negate the injury caused to their domestic industry. It would be appropriate, therefore, to have a special provision that the application of the lesser duty rule be made mandatory when a developed country Member is investigating the alleged dumped imports from a developing country Member. In addition, norms and criteria should be established to operationalise the "lesser duty" route in terms of "adequacy" to remove "injury"
- e) The Agreement on Anti-dumping has severely limited the role of panels in disputes relating to anti-dumping. Article 17.6 lays down that if the panel finds that the authorities have established and evaluated facts properly, objectively and without bias, it shall not overturn the conclusion reached by the authorities even though, on the basis of the same facts, the panel itself would have decided differently. **Since developed countries are increasingly resorting to the use of anti-dumping duties against developing countries, it is necessary that the same standard of review that is applicable to disputes relating to other covered agreements is made applicable to disputes relating to anti-dumping.**
- 14. There is an in-built imbalance in the Agreement on Subsidies and Countervailing Measures. While subsidies normally used in developed countries (research and development, regional development and adaptation to environmental standards) are considered non-actionable, subsidies usually used by developing countries for development, diversification and upgradation of their industry are actionable.** This imbalance has to be removed by making the latter range of measures also non-actionable. Article 27.2 of the Agreement provides a special dispensation for developing country Members to the effect that the prohibition of paragraphs 1 (a) of Article 3 does not apply to developing country Members referred to in Annex VII and to other developing countries for a period of 8 years. However, the subsidies which are maintainable under the provisions of Article 27 are subject to countervailing measures in accordance with the provisions of Article VI of GATT 1994. The special dispensation and the resulting benefits from the provisions of Article 27 thus stand negated by virtue of the provisions relating to countervailing measures. **It is, therefore, necessary that countervailing measures are not allowed to be used by developed country Members against subsidies maintained by developing country Members within the special dispensation provided under Article 27.**
- 15. There are several other provisions in the Agreement on Subsidies and Countervailing Measures that need to be altered to take into account the interests of developing countries. These include the following:**
- a) The de-minimis level below which countervailing duties may not be imposed has now been fixed as 3% for developing countries. The disadvantages faced by industry in developing countries in comparison with their counterparts in developed countries are many. The high cost of capital, low levels of infrastructure development, inadequate integration and organisation of the economy, poorly developed information networks-these characterise industry in developing and least developed countries. The details of the inherent cost disadvantages in these countries have been elaborated in para 13(a). The recent thinking among economists recognises the need for more active role for the state. In order to offset the many disadvantages that developing and least developed countries encounter, it is necessary that the de-minimis level below which countervailing duties may not be imposed would need to be scaled up to a realistic level. The volume of the subsidised imports represents less than 4% of the Para 27.10 of the SCM Agreement provides that any countervailing duty investigation of a product originating in a developing country shall be terminated as soon as it is determined that total imports of the like product, unless imports from all the developing country Members, of the like product collectively account for more than 9 % of the total imports. Again, in view of the liberalisation of world trade and the fact that more and more developing countries are expanding their export markets, it may be necessary to review the justification of carrying on countervailing duty investigation even when the total volume of imports is less than 4% though the total volume of imports of the products from all developing countries is greater than 9%. Our suggestion would be that countervailing duty investigation should not be initiated, or if initiated should be terminated when imports from a developing country are less than 7% irrespective of the cumulative volume of imports of the like products from all developing countries. Alternatively if a safeguard is needed to be provided to developed countries for a surge of subsidised imports from a number of developing countries at the same time, then the de-minimis volume of the cumulative imports should be increased to at least 15%.
- b) Even if the investigating authorities of a developed country Member come to the conclusion that the export prices contain an element of subsidy, the duties should necessarily be restricted to the amount by which such subsidy exceeds the de-minimis level.
- c) The definition of "inputs" under footnote 61 in Annex II of the Agreement needs to be widened to include all inputs which are financially, not necessarily physically incorporated in the cost /price of export products. This would allow remission of import charges on capital goods when used for the production of export goods. Similarly, consumables other than those prescribed under the current definition also need to be included. These changes are necessary so that these duties and import charges can be rebated by developing countries without being considered subsidies.
- d) Aggregated and generalised rates of duty remission should be allowed in the case of developing countries even though the individual units may not be able to establish the source of their inputs. This is necessary as export production units in developing countries are very small in size in comparison with their counterparts in developed countries, as a consequence of which they do not have the necessary expertise to maintain elaborate systems of accounting of inputs.

- e) Paragraph K of Annex I states that export credit at rates below those which the granting authority actually has to pay for the funds so employed would be considered as export subsidy. As a matter of special dispensation to developing country Members, such export credits should not be considered as subsidies so long as the rates at which they are extended are above LIBOR.
- f) In many developing countries, including India, taxes can be collected by government authorities at different levels. Customs duties, income tax, excise duties on production of goods, are charged and collected by the Central Government. Similarly, the state government charges sales tax on sales made within the respective states. There are several other taxes collected by the municipal and other local authorities in the form of octroi, cess etc. The impact of such taxes vary from state to state and also from district to district. Goods produced in the country suffer from a number of these taxes at various stages of production. Some of these taxes like excise duties are to a considerable extent taken care of by a system of abatements at every stage of production. Still there is some portion of excise duty which remains unabated in addition to a large number of other taxes which have to be absorbed as a part of the cost of manufacture. The main contention is that even though the GATT Agreement permits neutralisation of all taxes, several taxes remain un-neutralised in many developing countries because of the plethora of taxes and multiplicity of collecting agencies. The developed countries get over this problem by using the VAT system. Since the introduction of VAT in developing countries will take time in view of its complexities and cost involved, such countries should be allowed to neutralise the cost escalating effect of such taxes by partial or full remission of direct taxes.

#### **SPS and TBT**

16. Article 10.1 of the Agreement on Sanitary and Phytosanitary (SPS) Measures stipulates that "in the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least developed country Members". Likewise Article 12 of the Agreement on Technical Barriers to Trade (TBT) provides for differential and more favourable treatment to developing country Members and stipulates further that "Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members." Here again, **we continue to observe imposition of standards by developed countries that are either beyond the technical competence of developing countries or do not take into account the special development, financial and trade needs of developing countries or fundamental climatic or geographical factors or fundamental technological problems of developing countries. We also do not see a corresponding willingness on the part of developed countries to transfer to developing countries better and more advanced technologies at fair and reasonable cost. Guidelines need to be prepared, which lay down a process of prompt and regular notification and discussion of standards laid down by developed countries, creation of a positive link between transfer of technology at fair and reasonable cost and the application of standards and a**

**procedure for early removal of restrictions that are unreasonable.**

**17. To give effect to the broad principles enunciated above, certain specific submissions have been made by India to the relevant Committees in WTO administering the Agreements on Technical Barriers to Trade and that on Sanitary and Phytosanitary measures respectively during the review process of these Agreements. Under the TBT Agreement, India has emphasised three broad issues.** Firstly, means have to be found to ensure effective participation of developing countries in setting of standards by international standard-setting organisations. Secondly, technical cooperation is required to upgrade conformity assessment procedures in developing countries to gain their acceptance in developed markets. Acceptance by developed country importers of self declaration regarding adherence to standards by developing country exporters and acceptance of certification procedures adopted by developing country certification bodies based on international standards have been urged. Thirdly, the importance of broad basing and multilateralising Mutual Recognition Agreements between national standard setting bodies has been stressed. Also, the need for developing equivalence of standards has been highlighted, where the legitimate purpose behind setting up of standards is achieved in a standard set in a developing country keeping in view the limitations of technical and technological knowhow or fundamental climatic or geographical factors.

**18. In view of the various constraints and barriers that developing countries have been facing on account of SPS measures, it is important for the Secretariat to undertake a study to identify such market access barriers, which exports from developing countries have been facing.** In particular it would be important to focus on instances where buyers from developed countries have been insisting on the enforcement of standards, which may not be appropriate to the technical standards prevalent in developing countries. **Further in view of what has been stated above in para 17 about the lack of participation of developing countries in the activities of standard setting bodies, it is suggested that representatives of the relevant international standardising bodies are invited to make presentations to the Committee so as to assess the extent to which the special problems of developing countries have been taken into account in this body, and what these organisations propose to do to improve this participation.** Developing countries are also invariably not in a position to convey their concerns on proposed SPS/TBT measures since the said notifications do not provide sufficient information regarding the proposed standards, especially with regard to the risk assessment methodology and other factors which may have been taken into account for determining the appropriate level of SPS protection. This necessitates that details of notifications have to be obtained from the enquiry points and by the time this information is actually obtained the last dates for comments is often over. It is, therefore, important that adequate information and time should be given for members to respond to proposed measures. In addition it is also important that the adequate interval of time mentioned in Article 2 of Annex B of the SPS Agreement should be specified, since at present varying time periods are provided by developed country Members between the publication of an SPS regulation and its entry into force. In order to further transparency it should be ensured that the proposing Members should specifically respond to those Members who have submitted comments or raised objections on

the proposed measure. We would also like to suggest that a comprehensive database be created incorporating Members' SPS rules and regulations having a major trade impact with a view to minimise the difficulties being faced by developing country exporters.

**19. Since standards are emerging as one of the major non-tariff barriers to the market access of developing countries, it is imperative that they be speedily rationalised from the developing countries' perspective.**

#### **TRIMS**

20. The Agreement on Trade Related Investment Measures (TRIMS) poses an entirely different set of problems. These problems relate to both the transition periods allowed for removing TRIMS as well as the notification for availing transition provisions. The transition period allowed for existing TRIMS is five years for developing countries and seven years for least developed countries. This period lapses automatically and extension has to be agreed to in the Council for Trade in Goods.

**21. Developing countries should have the freedom to use regulatory measures to channel investment in such manner that it leads to increase in exports.** Local content regulation, as an instrument of policy, can perform two critically important functions in developing countries. Firstly, they can further the process of industrialisation in these countries by creating linkages within their economies. Secondly, it helps in the conservation of foreign exchange by progressive substitution of imported sources of inputs by domestic supplies. **The need to impose local content regulations in developing countries has been felt especially in respect of foreign investments.** If foreign investment takes place in one industry, it should be able to encourage domestic investment by creating demand in other countries. The importance of such a mechanism can be seen from the fact that once foreign investment has been attracted, it should be expected to lead to an income effect that brings about a higher level of domestic sales.

**22. The balance of payments implications of industrialisation without local content regulations can be serious for a developing country. The existence of import dependent industries can lead to increasing burden of external liabilities, which may eventually undermine the very process of industrialisation.** The increasing imbalances on the payments front can, at least, in theory, be met by depreciation of the foreign currency. However, this would inevitably lead to increase in input costs resulting in domestic firms becoming globally uncompetitive. With their fragile export production bases, developing countries would run the risk of encountering repeated and severe balance of payment crises, which would set back for many years their process of growth.

23. Since implementation of the TRIMS Agreement is coming in the way of industrialisation and balance of payments stability of the developing countries, **it is necessary to review the relevant provisions of the TRIMS Agreement with the objective of not impeding industrialisation of developing countries.**

#### **Services**

24. Article IV of the General Agreement on Trade in Services, (GATS) provides that increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different members through strengthening of their domestic services capacity and its efficiency and competitiveness, inter-alia through access to technology on a commercial basis; the improvement of their

access to distribution channels and information networks; and the liberalisation of market access in sectors and modes of supply of export interest to them.

25. Similarly, Article XIX:2 of GATS provides that the process of liberalisation in trade in services shall take place with due respect for national policy objectives and the level of development of individual Member, both overall and in each sector. There shall be appropriate flexibility for individual developing country Member for opening sectors, liberalising fewer types of transactions, progressively extending market access in line with their development situation.

**26. Negotiations under GATS in the Uruguay Round and subsequent negotiations on financial services, movement of natural persons and Basic Telecommunications reveal that interests of developing countries are not being adequately addressed despite provisions of Article IV and Article XIX:2** Developing countries are being asked to undertake more and more market access and national treatment commitments, while developed countries are not providing adequate market access in sectors and modes of supply of export interest to developing countries. **Even though, there were spill over negotiations on movement of natural persons, hardly any commitments were undertaken by the developed countries for movement of natural persons without commercial presence.** Similarly, access to technology in several critical areas still remains closed to the developing countries. **As developing countries have limited comparative advantage in trade in services, there is a need to have a comprehensive assessment of the benefits that have accrued to the developing countries through trade in services since the formation of WTO.** In the absence of a specific mechanism for implementing Article IV and Article XIX:2, these Articles have been remaining more as pious statements of intention and GATS has not been able to adequately address the issue of increasing participation of developing countries in trade in services.

#### **Dispute Settlement**

**27. The 'Understanding on Rules and Procedures Governing the Settlement of Disputes' is another instrument where provisions for special and more favourable treatment of developing countries remain largely unimplemented.**

28. Although the Dispute Settlement Understanding (DSU) provides for special and differential treatment in various clauses, there is lack of clarity regarding the manner in which such provision are implemented. This is so even through in a number of relevant clauses, the words "shall" and "should" have been used in order to provide such a treatment to developing countries. There is however no way to ensure that such treatment is accorded to these countries in practice. Therefore, there seems to be a need for developing a screening process to check whether such requirements are adhered to. It is necessary that the interests of developing country Members are fully taken into account in the dispute settlement process. There should also be recognition of the fact that dispute settlement proceedings are extremely expensive, that developing countries and least developed countries do not have necessary legal expertise to handle such cases and that dispute settlement proceedings are being competitively used by certain developed countries to prove their aggression to domestic constituencies. Procedures must be developed to make sure that the interests of developing countries are protected and that developed countries do not use dispute settlement proceedings as instruments for coercion of the less privileged Member countries.

**29. Certain specific suggestions are made to ensure that the interests of developing country members are fully taken into account in the dispute settlement process :**

- a) In certain Articles of the DSU the special and differential treatment clause is not articulated in specific terms and mere generalisations are used. This needs to be corrected. Instances of such provisions in the DSU are as follows:
  - (i) Article 49(10) of the DSU relating to consultations requires the members should give special attention to the particular problems and interests of developing country Members. However, how this is to be achieved is not indicated.
  - (ii) Under Article 12.11, "where one or more of the parties is a developing country Member, the Panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures."
  - (iii) **Article 21(2) of the DSU regarding surveillance of implementation of recommendations and rulings requires that particular attention should be paid to the matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement. Concrete details are again not provided. Similarly, Article 21(7) and Article 21(8) also need further elaboration.**
- b) **In cases initiated by developed countries, the period of implementation suggested as a guideline to the arbitrator in Article 21.3(c) of the Dispute Settlement Understanding may be increased from 15 months to 3 years for developing countries where disputes between developed and developing countries result in findings in favour of the developing country.**
- c) Where developing countries, as respondent, have won cases initiated by developed countries, the legal fees and other costs should be paid by the developed country that had initiated the case.
- d) In cases in which the developed country is the complainant and a developing country is the respondent, the period available to the concerned developing country for making submissions, rebuttals etc. as indicated in Appendix 3 to the Dispute Settlement Understanding, should be doubled. This will also entail a corresponding change in Article 12.8 of the Dispute Settlement Understanding.
- e) In cases, where a developed country is the complainant and a developing country is the respondent, the developed country should acquire the right to initiate dispute settlement action against the developing country, only if it is able to demonstrate that the alleged violation of a provision of a covered agreement by a developing country causes, to the developed country, trade impairment or trade loss above a threshold or de-minimus level. Various methods of arriving at this de-minimus or threshold level of trade loss could be examined. For instance, the de-minimus level could be a certain percentage of the value of imports of that particular item by the developing country concerned or a certain fixed percentage of the total market size of the developing country for that particular item.

By adopting this approach it would be possible to ensure that developed countries do not raise disputes against developing countries unless the measure taken by the developing country is demonstrated to have a significant impact on the trade of the developed country.

- f) If, due to circumstances beyond the control of a developing country and in spite of such country's best endeavour, the developing country is unable to complete action within the implementation period laid down in Article 21.3 of the Dispute Settlement Understanding, the matter should be considered by the Dispute Settlement Body and additional time given to implement the commitment. This should apply only in cases where the developing country is able to establish that despite best endeavour, it has not been possible to fulfil the commitment due to force majeure conditions.
- g) Article 22 of the Dispute Settlement Understanding provides for compensation and suspension of concessions in case a defaulting Member country fails to comply with the recommendations of the Dispute Settlement Panel or the Appellate Body, as the case may be, within the reasonable period of time determined under paragraph 3 of Article 21. However, there are no clear guidelines regarding the manner in which such compensation or suspension of concessions is to be calculated. This is not an issue that can be left entirely to negotiations between unequal partners. There should be guidelines laid down in the same manner as in the Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994. Besides, it is essential that differential and more favourable treatment for developing and least developed countries is built into these guidelines also, so that a developing country or least developed country has to pay substantially less compensation than a developed country in comparable circumstances.
- h) Considering the disparity between developed and developing countries in commercial strength, it is obvious that developing and least developed countries have little capacity to take effective retaliatory action against developed countries. In cases where developing countries are to get ultimate relief through retaliation against developed countries, there should be joint action by the entire membership of the WTO.

**Special Working Group**

**30. There is thus a strong need for immediate review of the special and differential treatment provisions for developing and least developed countries with a view to ensuring that the full benefits of the multilateral trade system accrue to developing countries. A process of evaluation has to be immediately initiated, either through a specially constituted Working Group or through special and dedicated sessions of the Committee on Trade and Development in order that necessary amendments to various agreements are formulated and placed for discussion before the General Council. This process of evaluation and formulation of amendments has to be a time bound process to be completed by December 1998 so that serious discussion in the General Council can commence in January 1999.**



# Monthly News Letter from PMI\*/Geneva

(15th March 15th April, 1999)

## High Level Symposium on Trade and Environment & High Level Symposium on Trade and Development

Two symposiums, namely, on Trade & Environment, and on Trade and Development were organised by the WTO Secretariat during the period 15-18 March 1999 in Geneva. These symposiums were organised by the Secretariat on its own responsibility. Apart from Governmental representatives, representatives from NGOs, business etc. participated in these symposiums. NGOs from India participated as well. In the symposium on Trade and Environment, the issues discussed and debated were multilateral environmental agreements, eco-labelling, production and process methods (PPMs), Article XX of GATT etc. The discussions represented both the points of view of developed and developing countries. In the symposium on Trade and Development, issues such as trade liberalisation, open and non-discriminatory multilateral trading system, debt, capacity building and special and differential treatment for development countries were discussed. The two symposiums were both interesting and educative. It may be underlined that the symposiums were non-binding on WTO Members and were meant for primarily hearing out non-WTO-Members such as NGOs and business interests.

## Committee on Agriculture

The Committee on Agriculture met over the period 24 March to 26 March 1999. The thrust of the discussion during the on going process of analysis and information exchange was on the multifunctional character of agriculture. A number of delegations including the EU, Norway, Japan and Korea emphasised the dual objectives that agriculture fulfilled,

namely, the production of food and fibre and the fulfilment of certain non-trade concerns. The Cairns Group Members expressed some reservations on the proposal stating that multifunctionality of agriculture could not be used as an excuse for providing trade distorting support. India's paper on food security was also taken up for discussion. The paper highlighted the need to allow predominantly rural agrarian developing countries, sufficient flexibility in their domestic policies for agricultural development thereby ensuring food security. A straight jacket trade liberalisation policy which would not be able to overcome the characteristic problems of such economies, where agriculture is usually characterised by small holdings, sustenance farming etc. in the agricultural sector should not be applied to countries like India. The complexity of providing food security in terms of availability and economic access as well as the inter-linkages of agricultural policy with rural development and employment adds to the sensitivity of this sector. India's paper was well received with a number of Members acknowledging that food security was an important trade concern and that the issues highlighted by India needed further consideration.

## Selection of new - DG

Consultations on deciding the next DG of the WTO are continuing. There are now effectively two candidates in the fray namely Dr. Supachai of Thailand and Mr. Mike Moore of New Zealand. While it appears that Dr. Supachai has the support of a large number of WTO Members, the US is continuing to strongly support and push the candidature of Mr. Moore. The Chairman of the GC and the Swiss Ambassador are continuing to consult Members in this regard. It is hoped that a final decision in this regard may be possible before the end of the month.

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\* Permanent Mission of India, Geneva

# WTO's Negotiating Agenda should be a Balanced One - Ruggiero

**Following are some excerpts from the address by Renato Ruggiero, outgoing Director-General, WTO, at the Group of 77 Preparatory Committee for UNCTAD-X in Geneva on 13th April, 1999, highlighting concerns of the developing countries and the need to make development a central part of the future trade agenda :**

Just over three weeks ago, in Geneva, we held the WTO's first High Level Symposium on Trade and Development - an event which brought together senior government officials, academics, and non-governmental organisations to discuss the formidable challenge of development in a globalising world.

It could not have come at a more critical time. The past year has been overshadowed by the financial crisis - a crisis that now hopefully appears to be passing, but which has left its most damaging effects in the developing world. This past year has also seen a dangerous widening of the gap between the transatlantic economies, which have so far been less affected by the crisis, and the rest of the world economy, which has seen its progress towards development dramatically set back by financial instability, retreating investment, and falling commodity and industrial prices.

As a result of this symposium, I believe we have already emerged with a much clearer idea of the tasks we face - the need to make development a central part of the future trade agenda; the need to see development as a challenge for advanced countries as well developing, with a shared burden of responsibility for its solution; and the need for developing countries to coordinate their objectives, to leverage their growing influence, and to prepare themselves for future negotiations with a positive agenda.

**What does the developing world want from the multilateral trading system?**

What does the developing world want - and need - from the multilateral trading system in the present circumstances? **First, an examination of the implementation of existing commitments. This is of course a concern for all WTO Members, but for a number of developing countries in particular it is an issue which influences their attitude to further trade negotiations.** These countries have stated repeatedly that they are encountering unexpected problems with implementing existing Uruguay Round commitments, and furthermore that some of those agreements have deficiencies that have only become apparent during the implementation process.

On the other hand, they claim that anticipated benefits have failed to materialise because, for example, industrialised countries have not lived up to the spirit of liberalising agreements [such as textiles], made excessive use of anti-dumping measures, or failed to respect the principle of special and differential treatment. In short, **these countries see an imbalance in the way existing agreements affect them, and they see this as a problem which needs a**

**political solution, not just more technical assistance.** They also argue that since this is a question of righting an existing imbalance, it should not become something they are expected to "pay" for in new negotiations.

Recent meetings of developing country leaders, most notably the G-15, have shown that their full support for new negotiations cannot be assumed as long as they feel that their legitimate concerns are not being adequately addressed. This same message was heard again and again at the High Level Symposium. I too want to underline the critical importance of approaching this complex issue with all the necessary attention and good will as we prepare for our next Ministerial Conference in Seattle in November.

**Second, developing countries need improved market access for their exports.** A 1998 joint study by WTO and UNCTAD shows that, even after the successful implementation of the Uruguay Round, a substantial number of high tariffs will remain both for developed and developing countries. About 10 per cent of all Quad country tariffs are still above 12 per cent ad valorem. Moreover, there is a very high variation in these rates, with some tariff peaks reaching 350 per cent or more, and the majority of peaks being somewhere between 12 and 30 per cent. These sectors include textiles and clothing, footwear, leather and travel goods, fish, processed food stuffs, agricultural products - many of which are of primary interest to developing countries. The point is that it would be misleading to assume that tariffs are no longer an issue in trade policy today. And these areas must receive due attention in future negotiations.

Improved market access is an especially important objective for the least developed and the less dynamic developing countries. I have urged WTO members to provide the elimination of trade restrictions and bound duty free access for the export products of least developed countries since the 1996 G-7 summit in Lyon - and this call has been echoed by a growing list of leaders and governments, also at the High-Level Symposium. A number of WTO Members have already taken steps in this direction, and I congratulate them. The elimination of all obstacles to trade with least-developed countries by all industrial countries and - with a different timetable - by the most dynamic developing countries, must be a key objective of the next Round, possibly to be achieved as early as the Seattle Ministerial Conference.

**Third, capacity building. Eliminating trade barriers will not be enough unless we also reduce the very serious supply-side barriers these countries face** - from infrastructure and institution building, to health care, education, and social policy. This is why we have launched with UNCTAD, the ITC, the World Bank, UNDP, and the IMF a new approach to technical assistance - an integrated framework where these international institutions ask the countries themselves to design a results-oriented programme tailored to their needs.

**Fourth, debt relief.** I want to underline the great importance that least developed countries attach to debt relief - and to personally endorse their efforts to resolve this central issue even if it is not in the mandate of the WTO. **Advanced economies should accompany free market access, with an initiative to cancel foreign debt for as many of these countries as possible.** Several proposals have been made recently. They should be given careful consideration, and we should send a message of solidarity to those who want to move forward. A creative approach to debt relief - together with full market access in the advanced economies and capacity building - can provide the three pillars of a new strategy for bringing least developed countries into the mainstream of the system.

**Fifth, the importance of new technologies.** Many of the issues we will face in future negotiations will involve new, technology-based issues like telecommunications, financial services, information technologies, and electronic commerce. Again some have portrayed these as developed country issues. Nothing could be further from the truth. New technologies like computers, cell phones, or the internet help to shrink distances and time, providing an escape route from physical marginalisation. They equalise access to the most important resource of the 21st century - knowledge and ideas. They determine whether a country is equipped to participate in the new global economy, or is left behind. Far from seeing technology as a barrier between North and South, we should see it as a bridge - and work to make this bridge a reality.

**Sixth, we need to underline the importance of investment and competition policy to development** - and the need for flexibility and creativity in considering these issues in order to take full account of developing country needs. The case for considering investment rules in the WTO is a simple and compelling one: The need to create a level global playing field - for developing and developed economies alike - by building a framework of secure, predictable and non-discriminatory rules. The threat to developing countries today is not from a flood of foreign investment, but from the lack of it. Net private capital flows to emerging markets plunged in 1998 to \$152 billion, down from \$260 billion in 1997 and \$327 billion in 1996 - although it should be said the most of the decline has been in the flow of short term capital, not long term investment. And we are not just talking about access to productive capital. We are talking about access to developed country markets, access to managerial and marketing techniques, access above all to technology and advanced processes - all of which now flow through cross-border investments and business alliances. The way to tackle - and take into account - legitimate investment concerns is through negotiations, not by refusing to negotiate.

The case for considering competition rules in the trading system is equally compelling - and the idea that developing and least developed countries have no interest in this subject must be dispelled. In reality, if we want to encourage the development of the private sector in these countries we have to help them to create the regulatory environment that will allow markets to operate - the commercial, competition, and financial laws that must underpin business confidence and investor security. Of course, there are sensitive issues as is the case with every key issue. But the role of negotiators is to take account of these sensitivities and to find the appropriate answer.

Last but not least **we need to strengthen the multilateral trading system by ensuring that developing countries have an equal voice in the system - and an equal stake in its success.** Trade is now even more critical to the economic future of the developing countries than the industrialised countries. In 1970, trade as expressed as a share of developing country GDP was slightly less than 20 per cent. Today it is 38 per cent - compared to less than 15 per cent for the EU, and 11 per cent for the United States. What these figures reflect is the developing world's remarkable integration into the global economy over the past three decades. But what they also underline is the fact that there will be no sustained economic recovery in the developing world, without a sustained recovery of their global trade.

It is in this context of uncertainties and increasing imbalances - together with the certainty of interdependence and of its unprecedented opportunities - that we are facing the challenge of new negotiations. We are now at the end of the first phase of the preparations for the Ministerial Meeting which has essentially been one of issue clarification. The second phase, from February to July, is centred on specific proposals from WTO Members. This process has the challenging task of preparing recommendations to Ministers about the work programme that will take the WTO into the new millennium. We are already committed to negotiations in important areas such as services, agriculture, and aspects of intellectual property. And there is now a growing number of voices in favour of a substantial and ambitious multilateral Round, though it should be said that not all countries - especially not all developing countries - are guided by the same vision.

Against this background, I want to make a general but very important observation. **It is absolutely vital that the WTO's negotiating agenda should be a balanced one, and should be seen to be so from a developing country perspective. Clearly the active participation of developing countries will be essential to the launching and success of negotiations.** Developing and least developed countries now make up almost four fifths of the WTO's membership. Politically this system will not be able to move ahead confidently through its next Ministerial Conference and into the next century without these countries sharing in the belief that new negotiations are warranted and in their economic interests.

Let me conclude by saying that development is a global challenge which requires global solutions. Trade provides us with a powerful tool, but it cannot provide all the answers. I believe that the high degree of interdependence we have reached lends a powerful weight to the view that we need a new strategy for development which involves all the international and national stockholders at the highest level - a new integrated strategy which embraces not only trade and investment, but also sustainable development, debt relief, capacity building, health care, education, social safety nets, poverty eradication, human rights, cultural diversity, gender equality - in short what we call "human security" - all as subjects which must be embraced in an improved concept of global economic management. Without a coherent plan for tackling the unacceptable marginalisation we see in the world today we risk building this new global economy on foundations of sand.



# NEWS BRIEFS

## **Phase-out of QRs in Exim Policy**

Gradual removal of quantitative restrictions (QRs) has been a part of the government's economic reforms and trade policies. India has entered into bilateral agreement with its trade partners, namely, Australia, New Zealand, Canada, Switzerland and Japan (as third party) for phased removal of QRs over a 6 year period from 1.4.1997 to 21.3.2003. As part of this agreement, India has progressively removed QRs in its annual Exim Policies - in 1997-98 i.e., in the first year of the phase-out plan, 406 items were freed and in the second year (1998-99) of this phase-out plan, a total of 892 items were freed in the Exim Policy announced on 31.3.1999. It may be mentioned that in all 2714 tariff lines/items were notified by India under the Balance of Payments (BoP) cover. Of these, a total of 1298 items have so far been freed.

## **Advisory Committee on International Trade Meets**

The Advisory Committee on International Trade set up by the government has met twice under the chairmanship of the Commerce Minister Shri Ramakrishna Hegde - on 29th January 1999 and on 30th March 1999. The purpose of setting up the Committee, comprising eminent people from trade and industry, experts on international trade and former diplomats and trade officials, is to discuss various issues being taken up in WTO and to benefit from their advice, views and suggestions on all multilateral trade matters.

## **India to gain from Millennium Round, says Leon Brittan**

Sir Leon Brittan, Vice President of the European Commission, has said that India's interests, including

those of its business community, would be greatly helped by its participation in the proposed new round of multilateral trade talks and by further liberalisation within the framework of the WTO. On the key mechanics of the new round and why he felt they were important for the interest of all WTO members including India, Sir Brittan underlined the open-ended nature of the agenda setting process and said that any issue or area of concern to any WTO member could be put forward for inclusion in the agenda of the new round, which is agreed upon by consensus. Sir Brittan was on an official visit to India on 6th and 7th April, 1999.

## **World trade growth slows down in 1998**

The rate of growth in the volume of world merchandise exports slowed to 3.5% in 1998, from over 10% in 1997 **due largely to continuing economic contraction in much of Asia.** World output growth slipped to 2% in 1998, compared to 3% in 1997. Although trade growth still exceeded output growth in 1998, it was by a smaller margin than the average for the 1990s. Export growth in 1999 is expected to match that of 1998, but for this projection to be realised, trade growth will have to accelerate during the course of 1999. This projection also assumes that slowing output growth in the United States and Western Europe will be offset somewhat by recovery in Asia. These are among the findings of the WTO's first report on trade developments last year and the outlook for this year. **Global exports of merchandise and commercial services amounted to US \$ 6.5 trillion in 1998.** In value terms, merchandise exports amounted to US \$ 5.2 trillion and commercial services to US \$ 1.3 trillion.

## **Schedule of Meetings at the WTO, Geneva : May 1999\***

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3.5.99	:	Committee on Regional Trade Agreements
3/4.5.99	:	Special General Council (3rd Ministerial Conference)
3/7.5.99	:	Committee on Subsidies and Countervailing Measures
4.5.99	:	Working Party on Professional Services
7.5.99	:	Committee on Balance of Payments Restrictions (Bangladesh)
17/18.5.99	:	Council for Trade in Services
19/21.5.99	:	Textile Monitoring Body
20/21.5.99	:	Special General Council (3rd Ministerial Conference)
26.5.99	:	Working Party on State Trading Enterprises

\*Source : WTO / Geneva as on April 30,1999

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