

Present problems and future shape of the WTO and the multilateral trading system

By Martin Khor

The multilateral trading system at the crossroads

The multilateral trading system, and the WTO, are at the crossroads. Decisions made this year at the WTO as we approach Doha, and at Doha itself, will have an important effect on which direction the trade system will head.

The most important of the decisions is whether the next few years will see the WTO Members doing their best to rectify the problems and imbalances in the rules and system, or whether the proposal for a "new comprehensive Round" is accepted, in which case more new issues are added to the WTO which will distort the trading system and add on even more to the existing imbalances.

More than six years after the WTO's establishment, it is time for an assessment of the Uruguay Round's results and for reviewing the future shape of the trading system. The old GATT system dealt with trade in goods. There were imbalances even in the system, as sectors of export interest to developing countries remained highly protected, particularly agriculture and textiles. In fact developing countries had agreed to subsidise the developed countries which had asked for time to adjust.

The developing countries' main expectation of benefit from the Uruguay Round was that at last these two sectors would be opened to their products. However they both remain closed six years after the Round ended. In agriculture, tariffs of many agriculture items of interest to developing countries are prohibitively

high (some are over 200 and over 300 per cent). Domestic subsidies in OECD countries have risen from US\$275 billion (annual average for base period 1986-88) to US\$326 billion in 1999 (according to OECD data) instead of declining as expected as the increase in permitted subsidies more than offset the decrease in subsidy categories that are under discipline in the Agriculture Agreement. In textiles, only very few items which the developing countries export have been taken off the quota list, even though more than half the implementation period has passed. According to the International Textiles and Clothing Bureau in June 2000, only a few quota restrictions (13 out of 750 by the US; 14 out of 219 by the EU; 29 out of 295 by Canada) had been eliminated; this raises doubts whether all or most of the quotas will really be removed by 2005.

The developed countries have not lived up to their liberalisation commitments, yet they still proclaim that it is unquestionably beneficial for developing countries to liberalise their imports and investments as fast as possible. Developing countries are asked to bear for a little while the pain of rapid adjustment which is surely good for them after a few years, whereas the developed countries which advocate this policy themselves ask for more time to adjust in agriculture and textiles which have been protected for so many decades.

Implementing their obligations under the WTO Agreements has brought many problems for developing countries. These problems include the prohibition of investment measures and subsidies, making it harder to encourage domestic industry; import liberalisation in agriculture, threatening the viability and livelihoods of small farmers whose products face competition from cheaper imported

TWN THIRD WORLD NETWORK is a network of groups and individuals involved in bringing about a greater articulation of the needs, aspirations and rights of the people in the Third World and in promoting a fair distribution of world resources and forms of development which are humane and are in harmony with nature.

Address: 121-S Jalan Utama, 10450 Penang, MALAYSIA **Tel:** 60-4-2266728/2266159 **Fax:** 60-4-2264505
E-mail: twnet@po.jaring.my **Website:** www.twinside.org.sg

foods, many of which are artificially cheapened through massive subsidy; and the effects of a high IPR regime that has led to exorbitant prices of medicines and other essentials, to the patenting by Northern corporations of biological materials originating in the South; and to higher cost for and lower access by developing countries to industrial technology. These problems raise the serious issue whether developing countries can presently or in future pursue development strategies (including industrialisation, technology upgrading, development of local industries, food security and maintenance of local farms and agriculture, and fulfilment of health and medicinal needs).

These problems arise from the structural imbalances and weaknesses of the WTO Agreements. There is now an urgent need to redress the imbalances and problems. Surely the WTO was not created with the intention to hurt the majority of its Members or deprive them of development. The developing countries have put forward their problems of implementation and their proposals for redressal in the WTO and a summary is in paras 21 and 22 of the pre-Seattle draft Ministerial Text of 19 October 1999. These requests have been repeated many times in the WTO General Council special sessions on implementation and in various Committees and Councils. Unfortunately the developed countries have so far not responded positively. Their attitude seems to be that the developing countries entered into legally binding commitments and must abide by them however painful; any changes requires new concessions on their part. Such an attitude does not augur well for the WTO, for it implies that the state of imbalance will have to remain, and if developing countries “pay twice” or “pay three or four times”, the imbalances will become worse and the burden more intolerable.

The proposals for a new comprehensive round to be launched in Doha, if accepted, would be equivalent to making developing countries pay twice, thrice or four times. The heart of the proposed “comprehensive” New Round is the introduction for negotiations for new agreements in investment, competition and transparency in government procurement. There is also a proposal for a new round of industrial tariff cuts for all countries. There would also be future discussions or even negotiations on environmental standards and labour standards.

It is claimed by the proponents that such a New Round would be especially beneficial to developing countries. Nothing could be further from the truth. Developing countries are told their requests on implementation problems and on getting greater access in the North for agriculture and textiles will be considered in the New Round, meaning that they have to accept the entrance of the new issues into the WTO. But new agreements and obligations in these new areas would be very detrimental to developing countries, which will find even more of their development options closed off; and at the same time (given the poor record of the North in keeping their commitments) there is no guarantee at all that the implementation problems will

be resolved or that there will be really more meaningful access to Northern markets in agriculture, textiles and other sectors.

Why Bringing In the Proposed New Issues into the WTO is Inappropriate

The proposals for bringing in the new issues (investment, competition, procurement) through a New Round are inappropriate for the following reasons:

1. The WTO is a multilateral trade organisation that makes and enforces rules. It should stick to its mandate for dealing with trade issues.
2. Principles (such as transparency, national treatment) and operations, that were created for a regime dealing with TRADE issues may not be suitable when applied to NON-TRADE issues.
3. Developed countries would like to bring many non-trade issues into WTO, not because it would strengthen the trade system, but because they would like to make use of the enforcement system of WTO (i.e. the ability to bring countries to the dispute settlement system to WTO and impose a trade sanction).
4. Therefore many new non-traditional non-trade issues are proposed to be brought in, through the process of Ministerial Conferences, such as at Doha in November 2001. The issues include investment, competition, government procurement, labour and environment.
5. If these non-trade issues are brought into WTO, and WTO principles as interpreted by developed countries are applied to them, developing countries will be at great disadvantage, and would lose a great deal of their economic sovereignty, and their ability to make national policies of their own regarding economic, financial, social and political issues.
6. During the Uruguay Round, the developed countries already brought in new issues: intellectual property, services and investment measures. These agreements (TRIPS, services, TRIMS) are already causing many serious problems, giving rise to the “Implementation Issues.” Prof. Jagdish Bhagwati, the doyen of free-trade economists, and advisor to the GATT director general Arthur Dunkel during the Uruguay Round, has recently published in the Financial Times that it was a great mistake to have introduced intellectual property into the WTO as it is not a trade issue, and has distorted the trade system, against the interests of developing countries.
7. The developed countries’ real aims are to enable their big corporations free entry into the markets of developing countries. Governments in the South lose the ability to regulate the entry and operations of foreign firms, and to give preferences to locals in policies or contracts. This is the aim of the investment, competition and procurement issues. On the other hand, the labour and environmental standards issues

could lay the ground for new forms of protectionism against developing countries' products and firms through high standards. The introduction of these new issues is the essence of what the developed countries mean by launching a "comprehensive New Round." The new issues are what make a New Round new for them. They give the wrong impression that without these new issues, the WTO will lose dynamism or have nothing to discuss. But this is not true as the WTO agenda is already full even without the new issues.

Even Without New Issues, the Present Agenda of WTO is Very Full

In reality the agenda of the WTO for the next several years is already very full. The items already include:

(a) Problems of implementing the existing agreements. This item is insisted on by developing countries, so that current inequities can be rectified, otherwise the WTO will not benefit them. There are many discussions going on and which will go on for the next many years.

(b) The "built-in agenda" of agriculture and services negotiations. These are big areas which will occupy the attention of negotiators for several years.

(c) The mandated reviews of agreements such as in TRIPS and TRIMS.

(d) Discussions in working groups (including on investment, competition, government procurement) and committees (such as trade and environment).

(e) The normal work of the WTO and its many committees, its trade reviews, and the dispute cases.

Reasons Against a "Comprehensive New Round" or "New Issues"

The new issues should not be on the agenda of the WTO's next stage of discussions and negotiations in the next few years. Therefore the Doha Ministerial should not launch a New Round with New Issues because:

(a) Introducing new issues into the WTO will distract from the other work of WTO dealing with trade and other existing issues as listed above. Developing countries do not have the manpower and financial resources to cope with negotiations on new issues as well as the other items on the agenda.

(b) The "new issues" are not trade issues and do not belong to the WTO. If these issues are to be discussed internationally, other more appropriate venues should be found for them. If they are nevertheless brought into the WTO, they will lead to a distortion of the multilateral trade system, to the detriment of world trade. Therefore developed countries should not seek to bring in these issues, for their own narrow self-

centered interests (i.e. to get advantages over developing countries and getting these enforced through the WTO's dispute settlement mechanism). By seeking to do so, they are destabilising the multilateral trading system.

(c) Developing countries will be severely disadvantaged and their options for economic, social and development policies would be severely constricted, should these New Issues enter the WTO. They would largely be unable to take measures to boost the conditions and prospects of local firms, or to manage many aspects of their macroeconomic, financial and development policies, or government procurement policies.

(d) The WTO must stick to trade issues, which have a legitimate place within a system of multilateral trade rules, and these rules and the system must primarily be designed or re-designed to benefit developing countries, which form the majority of the WTO membership. For Doha and future Ministerials, it must be very clear that for issues to be brought into the WTO, they must meet strict criteria, such as these:

- The issue is a trade issue appropriate for a system of multilateral trade rules.
- The WTO is the appropriate venue, and there are no venues that are more appropriate.
- The issue is sufficiently "mature" in that Members have an understanding of it and how it relates to WTO and to their interests.
- If brought into the WTO, the issue (and how it will be interpreted) will clearly be to the interests of developing countries, which are the majority of the membership.
- There must be a consensus of all Members that the issue should be brought in, and how it should be brought in. And this should be a genuine consensus based on a full understanding by all Members which are allowed to participate fully in the decision-making process in Geneva and at the Ministerial Conference itself.

The following is a brief analysis and proposed positions that developing countries can take on investment, competition and procurement.

Investment

The main proponents of an investment agreement would like international binding rules that allow freedom of foreign investors the rights to enter countries without conditions and regulations, and to operate in the host countries without most conditions now existing, and be granted "national treatment" and MFN status. Performance requirements and restrictions on movements of funds would be prohibited. There would also be strict standards of protection for investors' rights, in relation to "expropriation" of property. (A wide definition could be given to expropriation; the NAFTA experience is worth noting).

Due to the unpopularity of this extreme model, the major proponents are now offering watered-down

versions, such as a GATS type approach; a plurilateral approach; a multilateral agreement confined to transparency in the first stage; and a bridging approach (continue discussion for two years then upgrade to negotiations for an agreement automatically after that). These step-by-step approaches are aimed at getting Members to agree to the concept that investment rules belong to the mandate of WTO; and then to draw them into an agreement which appears not to be so harmful and where there is some space to make choices; and then later on to pressure them to liberalise more and more in terms of sectors and depth of policy measures.

It should be recognised that the watered down versions are only shifts in tactics and not in the ultimate goals. Once an initial agreement with limited scope and commitments is obtained, pressure will be applied to widen the scope and deepen the commitments in subsequent rounds of negotiations.

An international agreement on investment rules of this type is ultimately designed to maximise foreign investors' rights whilst minimising the authority, rights and policy space of governments and developing countries. This has serious consequences in terms of policy making in economic, social and political spheres, affecting ability to plan in relation to local participation and ownership, balancing of equity shares between foreign and locals and between local communities, the ability to build capacity of local firms and entrepreneurs, etc. It would also weaken the bargaining position of government vis-à-vis foreign investors (including portfolio investors) and creditors

PROPOSED POSITION: The position for developing countries to take prior to and at Doha could be that:

(a) Investment is not a trade issue, and thus bringing it within the ambit of WTO would be an aberration and could cause distortion to the trade system. It is certainly not clear that the principles of WTO (including national treatment, MFN) that apply to trade in goods should apply to investment, nor that if they apply that it would benefit developing countries. Traditionally developing countries have had the freedom and right to regulate the entry and conditions of establishment and operation of foreign investments; restricting their rights could cause adverse repercussions.

(b) The discussions in the working group on trade and investment have not been complete or conclusive. The implications for development of an investment agreement, of whatever type, have not been fully discussed nor understood.

(c) Therefore there cannot be any decision in the WTO now or at the Doha Ministerial to begin a negotiation on an investment agreement or on investment rules. It is also not acceptable to begin negotiations on a plurilateral agreement, nor on an agreement regarding only transparency.

Government Procurement

The Singapore WTO Conference (1996) agreed "to

establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and based on this study, to develop elements for inclusion in an appropriate agreement." The decision does not specify that there must result an agreement; it only commits Members to a working group to study the subject of transparency and based on this study to develop the elements to include in an appropriate agreement. There is thus scope to limit the progress towards an agreement, and to put forward the case for what an appropriate agreement, if any, should be like.

Whilst the study in the working group, and the agreement, is only mandated to cover transparency (and not the practices themselves), the major countries pushing this issue had made clear their ultimate goal to fully integrate the huge worldwide government procurement market into the WTO rules and system. At present, WTO Members are allowed to exempt government procurement from WTO market access rules. The exception are those Members who have joined the WTO's plurilateral agreement on government procurement. Due to the unpopularity of fully integrating procurement into the WTO with almost all developing countries, the majors devised a tactic of a two-stage process: firstly, to draw in all Members into an agreement on transparency; and secondly, to then extend the scope from transparency to other areas (for example, due process) and then to the ultimate areas of market access, MFN and national treatment for foreign firms. This is clear from the various papers of the majors.

If the integration of procurement into WTO eventually takes place (as is clearly the aim of the major developed countries), governments in future will not be allowed to give preference to local companies to supply goods and services or to obtain concessions for projects. The effects on developing countries would be severe.

Government procurement has very important economic, social and even political roles in developing countries:

- The level of expenditure, and the attempt to direct the expenditure to locally produced materials, is a major macroeconomic instrument, especially during recessionary periods, to counter economic downturn.
- There can be national policies to give preference to local firms, suppliers and contractors, in order to boost the domestic economy and participation of locals in economic development and benefits.
- There can be specification that certain groups or communities, especially those that are under-represented in economic standing, be given preference.
- For procurement or concessions where foreign firms are invited to bid, there could be a preference to give the award to firms from particular countries (eg. other developing countries, or particular developed countries, with which there is a special commercial or political relationship).

Should government procurement be opened up through the national treatment and MFN principles, the scope and space for a government to use procurement as an instrument for development would be severely curtailed. For example:

- If the foreign share increases, there would be a “leakage” in government attempts to boost the economy through increased spending, during a downturn.
- The ability to assist local companies, and particular socio-economic groups or ethnic communities would be seriously curtailed.
- The ability to give preferences to certain foreign countries would similarly be curtailed.

PROPOSED POSITION: In light of the background information above, on the strategy of the majors, a position should be taken that reflects the overall strategic situation, rather than a position that is focused more narrowly on the technicalities or legalities alone.

The discussions on “transparency” and on a “transparency agreement” should be seen in the light of the strategic objective of the majors to draw in the developing countries into the real goal of market access and full integration of procurement practices. Therefore if there is an agreement on transparency, it would be the start of a slippery slope that would most likely lead, in years ahead, to a full-fledged market-access agreement.

The following position could thus be taken:

- (a) We have yet to fully comprehend and appreciate the desirability, degree of appropriateness and implications of even a transparency agreement in WTO, especially as to how it would affect social, economic and political development.
- (b) We are extremely concerned that by introducing the subject, even in the limited transparency aspect, that this would lead step by step to market access issues, and our concerns for this have to be absolutely allayed first for there to be a reasonable degree of comfort to discuss transparency; what are the ways in which these concerns can be allayed to our full satisfaction?
- (c) We are not convinced that an agreement even if confined to transparency can be properly implemented or that its implementation will be on balance beneficial to us as a developing country.
- (d) Since the issues are so complex, the study process in the working group has to continue, and in fact it is by no means a foregone conclusion that there can be an appropriate agreement that every country can agree on or is satisfied with.
- (e) Therefore, it is crucial that the Doha Ministerial text or set of decisions does not include either a transparency agreement or a decision to start a negotiation on a transparency agreement.

In the continuing discussion in the working group, and

in the process for Doha, positions should also be worked out in detail on issues such as: problems of implementing even a transparency agreement; the scope of transparency agreement; the definition of “transparency”; the issue, even if on transparency, should not be linked to the dispute settlement system in WTO; the agreement, if any, should be in the form of non-binding guidelines and not a legally binding agreement.

Competition

At the Singapore Ministerial (1996), Ministers decided to set up a working group on the interaction between trade and competition policy. There was a specific mention that this does not commit Members to negotiate an agreement in the WTO on competition.

At present, the EU is still pushing for inclusion of negotiations for a competition agreement in a New Round to be launched at Doha; whilst the US appears cool. The main aim of the EU (the main proponent) and the US (as announced by its Trade Representative after the Singapore Ministerial) is to establish competition laws in developing countries that would enable the large foreign firms to be able to compete in a “free competition” environment in developing countries, whereby advantages to local firms (in terms of government policy or private-sector practices) would be considered to be unfair competition.

The EU proposal is to have multilateral rules that discipline Members to establish national competition law and policy. These laws/policies must incorporate the “core principles of WTO”, defined as transparency, non-discrimination, MFN and national treatment.

Competition law and policy, in appropriate forms, are beneficial to the country. However each country must have full flexibility to choose a model which is suitable, and which can also change through time to suit changing conditions. Having an appropriate model is especially important in the context of globalisation and liberalisation where local firms are already facing intense foreign competition

The EU proposal for competition policy to provide “effective opportunity for competition” in the local market for foreign firms, and thus to apply the WTO “core principles” to competition law/policy would affect the needed flexibility for the country to have its own appropriate model or models of competition law/policy.

Competition law/policy should complement other national objectives, eg. industrial policy, or the need for local sectors to compete in the context of liberalisation. Therefore the traditional or the UK and US models of competition may not be appropriate for a developing country. On the other hand the Japan model of the 1950s-70s may be more appropriate but may not be allowed under the EU proposed framework of applying WTO principles to competition policy.

If a multilateral approach is needed, there are other

venues that are more suitable, eg. UNCTAD with its Set on RBPs.

Competition can be viewed from many perspectives. From the developing countries' perspective, it is important to curb the mega-mergers and acquisitions taking place which threaten the competitive position of local firms in developing countries. Also, the abuse of anti-dumping actions in the West is anti-competitive against developing countries' products. The restrictive business practices of large firms also hinder competition. However these issues are unlikely to find favour with the major countries, especially the US, which wants to continue its use of anti-dumping actions as a protectionist device. If negotiations begin, the EU interpretation of competition, i.e. the need for foreign firms to have national treatment and free competition, could well prevail, especially given the unequal negotiating strength which works against the developing countries.

The likely result is that developing countries would have to establish national competition laws and policies that are inappropriate for their conditions. This would curb the right of governments to provide advantages to local firms, and local firms themselves may be restricted from practices which are to their advantage (e.g. the use of exclusive distribution channels built up over generations of business and trust).

The complex issues are not adequately explored, especially the development aspects and the effects of the proposals on development.

PROPOSED POSITION: The issue of the interaction between trade and competition policy is extremely complex, as there are so many aspects and definitions and interpretations of "competition", as well as of the principles of trade policy. Moreover, it is far from clear what are the implications of the proposals of EU and other proponents for the development prospects of developing countries. Therefore, we cannot agree to any decision to begin negotiations on establishing a multilateral framework or agreement on trade and competition policy. At best, the work of the study group can continue, and it should focus on the implications for developing countries of previous and future proposals on the subject.

Industrial Tariffs

Besides the three issues of investment, competition and procurement, another economic issue that was being pushed for as part of a New Round is "industrial tariffs". This would entail another round of negotiations to further reduce duties on manufactured products. Since the tariffs in this sector are generally lower in the developed countries, a new round of tariff cuts would mainly entail new commitments by the developing countries.

Most developing countries have already significantly reduced their tariffs on industrial products in recent years. Many did this under the structural adjustment programmes directed by the IMF and the World Bank.

An influential study by the UN Economic Commission for Africa on the effects of structural adjustment policies in 1991 warned that: "External trade liberalisation for underdeveloped economies can have some serious side effects. For one, it can lead to dumping of cheap products from outside such as clothes, shoes, creams, etc. This undermines the local industries that produce or those that would have started to produce these products as they cannot compete with similar but much cheaper products from abroad. So African infant industries fail to take-off under extensive trade liberalisation."

In recent years, many African and Latin American countries have suffered from "de-industrialisation", a process in which local industries and enterprises have been closed or taken over as they are made uncompetitive by rival imported products.

A further round of cuts in industrial tariffs, as proposed by the developed countries, would render the industrial sector and industrial enterprises of most developing countries even more unviable. The future of industrialisation, especially that based on the survival and development of local enterprises, is at stake in the South.

Therefore, there should not be another formal round of negotiations to further cut developing countries' tariffs. If anything, the next stage of negotiations should only involve the reduction of "tariff peaks" (high tariffs) and "tariff escalation" (the practice of imposing no or low tariffs on raw materials but progressively higher tariffs on products that are processed or manufactured from the same raw materials) of the developed countries. The developed countries should commit themselves to reducing their tariff peaks and tariff escalation, and not use the promise of this as a carrot to draw in the developing countries to cut the latter's industrial tariffs in a new Round.

PROPOSED POSITION:

(a) It should be argued that industrial tariffs or "non-agricultural tariffs" is a new issue in that the Uruguay Round outcome did not include another round of industrial tariff cuts as part of the future "built-in agenda". Any decision to start a new round of industrial tariff cuts must be the result of an explicit consensus by all Members.

(b) Although industrial tariff liberalisation has been the main area of the GATT's previous focus and activity, it is by no means correct to conclude that industrial tariff reduction has benefited all countries, nor has it benefited countries equitably. Countries that are not yet prepared for tariff cuts find their local industries have suffered or even closed down; and they also are not in a position to benefit from industrial exports due to many factors. Thus the equation is not reciprocal or equitable.

(c) It is necessary to conduct an in-depth review of the differential effects of industrial tariff liberalisation on different categories of countries, and especially on the effects on less industrialised developing countries.

Until such a review is satisfactorily conducted and the appropriate conclusions drawn, it is premature and indeed it could be counter-productive to launch negotiations on a new round of industrial tariff cuts.

(d) Therefore, developing countries cannot agree to begin negotiations on another round of industrial tariff cuts. Instead, we encourage studies to be carried out nationally as well as globally to review:

(i) continued protection in industries in the developed countries in areas of export interest to developing countries (including textiles, processed agricultural products, resource-based products, and tariff escalation and tariff peaks);

(ii) the trends of industrial tariff reductions in developing countries (especially LDCs) and the impact on local firms, employment and the balance of payments. This review should take account of differential effects on different groups of developing countries;

(iii) the appropriate approaches that can or should be taken by different countries on industrial tariffs, depending on the different conditions, circumstances and stages of development of different developing countries.

CONCLUSIONS

1. Rethinking the nature and timing of liberalisation

Given the problems and imbalances in world trade, there is the need for a rethinking of the dominant model of trade policy that has advocated across-the-board rapid liberalisation for developing countries.

For a successful trade policy, a country has to “calibrate” and aim for balance between the two major aspects of trade, i.e. imports and exports. Many developing countries do not possess yet the factors required for sustained export growth. Yet they have been under pressure to rapidly liberalise their imports. If import liberalisation proceeds whilst the conditions for successful export growth are not yet in place, there can be adverse results, such as increases in the trade deficit and balance of payments difficulties, which then adds to the level of external debt and greater debt servicing burden, leading to retardation of economic growth and increased unemployment.

In the recent experience of many developing countries, trade liberalization can (and often does) cause imports to surge without a corresponding (or correspondingly large) increase in exports. UNCTAD’s Trade and Development Report 1999 found that for developing countries (excluding China) the average trade deficit in the 1990s was higher than in the 1970s by 3 percentage points of GDP while the average growth rate was lower by 2 percentage points. Inappropriate trade liberalisation contributed to this negative phenomenon. “It (trade liberalization) led to a sharp

increase in their import propensity, but exports failed to keep pace, particularly where liberalization was a response to the failure to establish competitive industries behind high barriers.”

Trade liberalization should not be pursued automatically or rapidly, as an end in itself. Rather, what is important is the quality, timing, sequencing and scope of liberalization (especially import liberalization), and how the process is accompanied by (or preceded by) other factors. If conditions for success are not present yet in a country, then to proceed with import liberalization (or liberalisation of services, including investments) can lead to negative results or even persistent recession.

Therefore, developing countries need adequate policy space and freedom, to be able to choose between different options in relation to their trade policies. Developing countries must have the scope and flexibility to make strategic choices in trade policies and related policies in the area of finance, investment and technology, in order to make decisions on the rate and scope of liberalization.

2. Reorienting the WTO towards development as the main priority

The preamble to the Marrakesh Agreement recognises the objective of sustainable development and also the need for positive efforts to ensure the developing countries secure a share in international trade growth commensurate with the needs of their economic development. However, in practice, development is not seen as a primary WTO objective; nor was it a primary purpose of the Uruguay Round or the Marrakesh Agreement.

The objective of development should become the overriding principle guiding the work of the WTO, and its rules and operations should be designed to produce development as the outcome. Since the developing countries form the majority of the WTO membership, the development of these countries should be the first and foremost concern of the WTO.

The test of a rule, proposal or policy being considered in the WTO should not be whether that is “trade distorting” but whether it is “development distorting.” Since development is the ultimate objective, whilst reduction of trade barriers is only a means, the need to avoid development distortions should have primacy over the avoidance of trade distortion. So-called “trade distortions” could in some circumstances constitute a necessary condition for meeting development objectives. From this perspective, the prevention of development distorting rules, measures, policies and approaches should be the overriding concern of the WTO.

The re-orientation of the WTO towards this perspective and approach is essential if there is to be progress towards a fair and balanced multilateral trading system with more benefits rather than costs for developing

countries. Such a reorientation would make the rules and judgment of future proposals more in line with empirical reality and practical necessities.

Taking this approach, the goal for developing countries would be to attain “appropriate liberalisation” rather than to come under the pressure of attaining “maximum liberalisation.”

The rules of WTO should be reviewed to screen out those that are “development distorting”, and a decision could be made that, at the least, developing countries be exempted from being obliged to follow rules or measures that prevent them from meeting their development objectives. These exemptions can be on the basis of special and differential treatment.

3. Rethinking the scope of WTO’s mandate over issues and the role of other agencies

It is misleading to equate the WTO with the “multilateral trading system”, as is often done in many discussions. In fact the WTO is less than and more than the global trade system. There are key issues regarding world trade that the WTO is not seriously concerned with, including the trends and problems of the terms of trade of its Members, and the problems in primary commodity markets (including low commodity prices). On the other hand, the WTO has become deeply involved in domestic policy issues such as intellectual property laws, domestic investment and subsidy policies. There are also proposals to bring in other non-trade issues including labour and environment standards.

The WTO and its predecessor the GATT have evolved trade principles (such as non-discrimination, MFN and national treatment) that were derived in the context of trade in goods. It is by no means assured or agreed that the application of the same principles to areas outside of trade would lead to positive outcomes. Indeed, the incorporation of non-trade issues into the WTO system could distort the work of the WTO itself and the multilateral trading system.

Therefore, a fundamental rethinking of the mandate and scope of the WTO is required. Firstly, issues that are not trade issues should not be introduced in the WTO as subjects for rules. This rule should apply at least until the question of the appropriateness and criteria of proposed issues is dealt with satisfactorily in a systemic manner.

Secondly, a review should be made of the issues that are currently in the WTO to determine whether the WTO is the appropriate venue for them. Prominent trade economists such as Jagdish Bhagwati and Sreenivasen have concluded that it was a mistake to have incorporated intellectual property as an issue in the Uruguay Round and in the WTO. There should be a serious consideration, starting with the mandated review process, of transferring the TRIPS Agreement from the WTO to a more suitable forum.

Within its traditional ambit of trade in goods, the WTO should reorientate its primary operational objectives and principles towards development, as elaborated in the sections above. The imbalances in the agreements relating to goods should be ironed out, with the “re-balancing” designed to meet the development needs of developing countries and to be more in line with the realities of the liberalisation and development processes.

With these changes, the WTO could better play its role in the designing and maintenance of fair rules for trade, and thus contribute towards a balanced, predictable international trading system which is designed to produce and promote development.

The WTO, reformed along the lines above, should then be seen as a key component of the international trading system, co-existing, complementing and cooperating with other organisations, and together the WTO and these other organisations would operate within the framework of the trading system.

Other critical trade issues should be dealt with by other organisations, which should be given the mandate, support and resources to carry out their tasks effectively. These other issues should include: (i) assisting developing countries to build their capacity for production, marketing, distribution and trade; (ii) the need for monitoring and stabilising commodity markets, with a view to ensuring reasonable prices and earnings for commodity-producing developing countries; (iii) addressing the restrictive business and trade practices of transnational corporations that reduce the conditions for smaller firms to engage in production and trade; (iv) addressing the problems of low commodity prices and developing countries’ terms of trade. These issues can be dealt with by various UN bodies, especially a revitalised UNCTAD.

MARTIN KHOR is the Director of Third World Network, a network of several NGOs in different parts of the developing world. An economist trained in Cambridge University who has lectured in economics in the Science University of Malaysia, he is the author of several books and articles on trade, development and environment issues.

He is also the Honorary Secretary of the Consumers’ Association of Penang in Malaysia and a board member of the International Forum on Globalization. He was formerly a Vice Chairman of the UN Commission on Human Rights Expert Group on the Right to Development and a consultant in several research studies under the United Nations.