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Difficult path ahead in the WTO

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EARLY CONCESSIONS BY DEVELOPING COUNTRIES

BACKGROUND

Intense negotiations under the World Trade Organization (WTO)'s Doha Work Programme continued after the adoption of a WTO General Council decision on 1 August 2004 (commonly referred to as the "July 2004 decision"), but no subsequent agreement emerged on the main issues. Consequently the Hong Kong Ministerial Conference of the WTO in December 2005 came up with only a meagre outcome. No significant progress could be made even thereafter. The negotiations collapsed and were then suspended during the last week of July 2006.

In the process of these negotiations, the developing countries made several significant concessions without getting any commensurate benefits. They gave up some of their important options, particularly in the areas of agriculture, non-agricultural market access (NAMA) and services. There was no compulsion on them to do so, nor was there any incentive for them to take this initiative. Perhaps they wanted to demonstrate their spirit of cooperation in the multilateral negotiations by coming forward with some important concessions. It is to be watched whether the developed countries will respond positively to their constructive gesture. Past experiences have shown, however, that the developed countries mostly consider such early concessions from the developing countries as a sign of weakness and are encouraged to raise their expectations and demands. Some of the important early concessions made by the developing countries are described below.

INDUSTRIAL TARIFFS (NAMA)

(i) *Argentina-Brazil-India proposal:* Argentina, Brazil and India jointly put forward a proposal in April 2005 that industrial-tariff reduction should be on the basis of the "Swiss formula" with a coefficient that would be dependent on the average tariff of a country. This was a major concession as it implied that they had accepted reduction of *each* bound tariff. Never in the past had the developing countries undertaken an obligation of reducing industrial tariffs on a line-by-line (of each product individually) basis. Earlier their obligation had been limited to reducing the average tariff; they retained the option to 'spread' the reduced average over the entire range of

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products. This had allowed them the flexibility to modulate individual tariffs in accordance with their development interests. Now by giving this proposal, Argentina, Brazil and India have surrendered this vital flexibility. Perhaps they expected a positive result of having to undertake lower tariff reduction through a higher coefficient in the formula, based on their rather high average tariffs.

(ii) *Hong Kong decision on tariff reduction:* The adverse aspect of this proposal was given a seal of approval in the December 2005 Hong Kong Ministerial Declaration, while the expected positive aspect did not materialize. It was decided to adopt the Swiss formula for tariff reduction and the choice of coefficients was left open. Thus the developing countries lost their flexibility of selecting the products for high/low rates of reduction without obtaining the expected benefit of lower reduction.

(iii) *Hong Kong decision on tariff binding:* On the binding coverage of tariffs (the percentage of tariff lines covered by a tariff-binding commitment), the decision in Hong Kong was that in the case of currently unbound tariffs, there would be a mark-up from the currently applied rates and then reduction would be effected according to the Swiss formula. The implication is that all products will be covered by the binding commitment. This also is a big concession made by the developing countries. Currently the developed countries have nearly total binding coverage, while the developing countries have a much lower binding coverage. And all this is a part of the current rights and obligations of the countries in the GATT/WTO system. With the Hong Kong decision implying full binding coverage, the developing countries have given up their right of keeping some of their products out of the commitment of binding. In this way another significant flexibility has been surrendered.

AGRICULTURE

The Hong Kong Ministerial Declaration has decided that the export subsidies in agriculture will be eliminated by the end of 2013. On the face of it, this may appear to be a gain for the developing countries, as they have been demanding the elimination of these subsidies. But a closer look indicates that even this decision entails a major concession by the developing countries.

The decision implies that the export subsidies will continue in the major developed countries until 2013. This is a big tragedy. Export subsidies are provided mainly by the major developed countries, particularly the European Union (EU) and the United States, the former by means of direct payments and the latter in the form of export credits and food aid. It puts the farmers of the importing countries at a great disadvantage and, in the case of the developing countries, even threatens their income and livelihood. There is absolutely no justification for these subsidies to continue even for a day longer. Now the Hong Kong decision ensures their continuance until 2013.

SERVICES

A close look at the decision on services in the Hong Kong Ministerial Declaration will reveal some subtle but significant concessions by the developing countries. It has been decided to intensify negotiations in accordance with the objectives and approaches contained in Annex C to the Declaration. This annex says that commitments will be taken at existing levels of market access in Mode 1 (supply of service by the service provider of a country to a consumer located in another country) and Mode 2 (supply of service in a country to a consumer coming from another country). In respect of Mode 3 (supply of service through the commercial presence of a foreign firm), the annex asks for commitments on enhanced levels of foreign equity participation and elimination or substantial reduction of necessity criteria applied by a country.

These are major commitments in view of the current flexibility available to the developing countries in the WTO's General Agreement on Trade in Services (GATS). The GATS permits the countries to choose the services sectors to be liberalized and also to impose conditions and limitations on market access and national treatment in these sectors. In particular, the agreement stipulates that the developing countries shall have the flexibility to liberalize fewer sectors and fewer transactions. But the decision in Hong Kong mentioned above lays down the base level for liberalization across the board in all sectors. The developing countries have given up their options and flexibility to a significant extent by agreeing to this decision.

DECISIONS FAVOURABLE TO DEVELOPING COUNTRIES

The Hong Kong Ministerial Declaration has two decisions in the area of agriculture that are favourable to the developing countries: (i) these countries can self-designate some products as Special Products; and (ii) those developing countries that do not have the obligation to reduce their Amber Box subsidies can retain their permissible *de minimis* level of domestic subsidies. Such clarity about the selection of Special Products is a step forward, but its practical utility is uncertain, as the number of products to be so designated and the special treatment to be given to them are still undetermined. Similarly retention of the *de minimis* subsidies of the developing countries is also a positive step, but it was never under serious challenge. Perhaps the major developed countries had proposed the reduction of these subsidies more for strategic reasons in order to put the developing countries on the defensive. In any case, this enabling provision is of little use to the developing countries as they do not have adequate financial resources to pay subsidies to their farmers up to this level.

It would thus appear that the Hong Kong Ministerial Declaration is highly unbalanced from the point of view of the developing countries. Their gains have been meagre while they have made major concessions.

POST-HONG KONG DEVELOPMENTS

The post-Hong Kong phase of negotiations was characterized by artificial dynamism. An atmosphere of crisis and tension was created by having frequent meetings among small groups of trade ministers of WTO member states at short intervals and fixing unreal targets. Perhaps the strategy was to push the ministers into softening their positions hurriedly. But the stakes and interests were too complex and diverse for such tactics to be effective.

Negotiations were conducted in restrictive and non-transparent formats. Perhaps the aim was to have agreement within a small group of rather active and vocal countries and then expand the circle of acceptance. The earlier negotiating format of "mini-ministerial meetings", which was already very restrictive, was replaced by a still more restrictive and non-transparent format. The trade ministers of Australia, Brazil, Japan, India and the US and the trade commissioner of the European Commission, representing the EU (jointly called "the G6" in WTO parlance), assumed the role of prime movers. They started intense talks among themselves to find common ground. The vast majority of the membership of the WTO that were left out in this process got disturbed and expressed their concern from time to time.

The G6 could not come to an agreement. Their talks collapsed in the last week of July 2006 and they decided to suspend their joint deliberations. The Director-General of the WTO then decided to suspend the negotiating process altogether and informed the WTO Trade Negotiations Committee and the General Council about the suspension. Neither a formal approval of the suspension was sought from the General Council nor was any such approval given by it. The General Council simply took note of the statement of the Director-General. Thus while the WTO members accepted the suspension, they did not give their seal of approval.

RESUMPTION OF TALKS LIKELY

There are several shades of opinion on the possibility of the negotiations being restarted. Many experts feel that it is difficult now to restart the process and complete it by the end of June 2007 to catch the deadline of the "fast-track authority" given by the US Congress to the US executive. (The "fast-track authority", technically known as the Trade Promotion Authority, enables the US President to submit a trade agreement to the US Congress for acceptance or rejection in its entirety without any scope for changes and amendments which could hold up the process. This authority will expire at the end of June 2007.) Thus many of them consider the Doha Work Programme negotiations almost dead.

But there are reasonable grounds to anticipate that the negotiations may restart soon and get wound up by end-June 2007. It is reasonable to believe that the manufacturers, exporters and service providers of the major developed countries will expect their governments to consolidate the gains already obtained in these negotiations and several others that seem to be within their reach. All these will be lost if the negotiations do not conclude by the deadline of end-June 2007.

Developing countries' commitments of total binding coverage of industrial tariffs and reduction of tariffs on each industrial product have already been obtained, as explained above. An industrial-tariff ceiling of 20 percent (resulting from a coefficient of 20 in the Swiss formula) and 35-45 percent reduction in the agricultural tariffs in the developing countries appear to be within reach. Besides, significant liberalization in several services sectors through sectoral plurilateral negotiations also appears attainable. The industry, trade and services lobbies in the major developed countries may not like to lose these opportunities for enhanced market access in the developing countries.

The time limit of the "fast-track authority" given by the US Congress may be another motivating factor for expediting the conclusion of the WTO negotiations. If the opportunity is missed now, it may not come again for several years. The shift in the political spectrum in the US Congress is such that many experts think it unlikely that the US executive will get another term of the "fast-track authority". The trade and industry sectors in the US may perhaps expect the new dynamics in the US Congress to look after their sustained defensive interests in the future, but completion of the current negotiations is important for their aggressive export interests. And, it may be possible, under extreme pressure of time, to catch the deadline of end-June 2007 if the negotiations are not delayed too long.

EMERGING TRENDS IN NEGOTIATIONS

SITUATION WITHIN THE G6

Differences in positions among the G6 countries were really not so wide as to have caused the much-publicized collapse of the negotiations at the end of July 2006. Perhaps the collapse was more due to the timing and the tension in the atmosphere. It is important to understand the positions within the G6 at that terminal phase, as these will have a significant bearing on the negotiations when they resume.

The G6 are reported to have taken up three core issues for resolution: agriculture tariffs in the EU, domestic subsidies in agriculture in the US, and industrial tariffs in the developing countries. The first issue did not prove to be a stumbling block as the EU is reported to have indicated some flexibility. The other two were, however, more difficult.

The G20 developing-country grouping had asked for 70-80 percent reduction in the total trade-distorting domestic support (TDS) in the developed countries. With the levels in the US and EU of US$48 billion and •110 billion (year 2000, the last year of notification) respectively, the G20's expectations of the reduced values were respectively US$12 billion and •27 billion (i.e., after reduction by 70-80 percent). On their part, the US and EU are reported to have offered to reduce the levels to US$23 billion and •33 billion. Perhaps there was some indication that the EU might be finally willing to go down to the level suggested by the G20. Thus the main problem was the refusal of the US to reduce any further.

In respect of industrial tariffs, Brazil and India (members of a coalition of 11 developing countries commonly called NAMA-11) perhaps appeared to be moving towards a coefficient of 25 in the Swiss formula, but the demand from the developed countries was for 15.

These differences were really not totally unbridgeable. For example, there was scope for the US to come down slightly lower in its TDS, say to US$19 billion, which was its applied level in 2005. The freedom to raise the Green Box subsidies and thereby neutralize the effect of any reduction in the TDS could have tempered its hesitation. Similarly, in view of the trends in the negotiating positions of Brazil and India, going slightly lower in the coefficient in the Swiss formula in NAMA was perhaps not totally unlikely.

What the developing countries have to seriously consider is whether these positions, if they had finally emerged, as was likely if the negotiations had continued in a more conducive atmosphere, would be in their interest. As is indicated below, such a result would have been highly dangerous and grossly unfair for the developing countries.

DANGERS FOR DEVELOPING COUNTRIES

Agriculture

Even if the EU and the US would have finally agreed to reduce their respective TDS to the levels of •27 billion and US$19 billion, it would not have defended the farmers of the developing countries against heavily subsidized imports from the EU and the US, nor would it have significantly facilitated their exports to third-country markets. The sad fact is that even if the proposal of the G20 on TDS reduction is fully accepted, it will not effectively protect domestic agricultural production in the developing countries and promote their agricultural exports. This is because of two loopholes and escape routes which may allow the major developed countries to maintain or even increase their total domestic subsidies. These loopholes and escape routes are: (i) Green Box subsidies; and (ii) product concentration of TDS, as will be explained below.

Of course, the G20 has given proposals regarding the Green Box and product concentration too, but these are much less specific than those for the TDS and tariffs. Also, these have not been pursued with the same vigour as that applied to TDS and tariffs. In agriculture, the negotiations in the G6 were allowed to be narrowed down to the issues of tariffs and TDS without simultaneously keeping the criteria for the Green Box and the product ceiling of TDS in the forefront. Relegating these two issues to the background is risky.

The Green Box subsidies are not subject to reduction on the presumption that they are not trade-distorting. But enough evidence is now available to indicate that even such subsidies can distort production and trade. They have a wealth effect and also increase the risk-taking tendency of the farmers. They enhance the staying capacity of the farmers in agriculture and support their otherwise unviable agricultural production.

Some forms of subsidy in the Green Box cause particularly serious concern, for example, decoupled income support, insurance against income loss and investment aid, given respectively under paragraphs 6, 7 and 11 of Annex 2 to the WTO Agreement on Agriculture (AoA). Any amount can be given through these routes without limit, resulting in limitless distortion of production and thereby of trade. These open and unhindered routes through the Green Box have been variously used by the US and the EU from year to year. For example, the amount of decoupled income support in the US was US$4 billion in 2001 and that of investment aid in the EU was US$5.7 billion in 2001-2.

After reducing their total TDS to an agreed level, the US and EU can easily enhance the amount given under these provisions of the Green Box, thus nullifying the effect of the TDS reduction. All they have to do is to make the relevant changes in their legislation, which would be entirely an internal process. Thus, obtaining a commitment for reduction of the total TDS of the major developed countries without simultaneously and effectively closing the escape route offered by the Green Box may be a fruitless exercise.

The developing countries have the bitter experience of the previous Uruguay Round negotiations, where the major developed countries utilized the escape routes in agriculture and textiles. The developed countries fulfilled their commitment of reducing their Amber Box subsidies, but enhanced their total subsidies in agriculture. In textiles, they fulfilled their obligation of liberalization in four phases without however actually bringing about any effective liberalization for 10 years, from 1995 to 2004. They were able to do these by using the escape routes that had found their way into the respective agreements.

There is no assurance that they will not do the same once again. An effective safeguard can be achieved only by disciplining the criteria of the Green Box, which is already mandated by the July 04 decision.

Another risk arises due to the possibility of concentration of the TDS on a limited number of products. The total TDS in the US and EU, even at reduced levels, can be highly injurious to the developing countries if they are concentrated on a small number of products. In the absence of an effective discipline on the product concentration of the TDS, the major developed countries can select some products to be accorded a very large proportion of the permissible TDS, thus infusing high levels of artificial competitive strength into the selected products.

NAMA

The Hong Kong Ministerial Declaration has decided to use the Swiss formula for tariff reduction in industrial products. This formula links the initial tariff and the final tariff through a coefficient (a number) which is to be determined through negotiation. The choice of the coefficient in this formula is crucial in determining the extent of tariff reduction. The higher the coefficient, the lesser is the extent of reduction. The negotiations have thus been focussed on what the coefficient should be.

The figures under consideration within the G6 reportedly were a coefficient of 20-30 for the developing countries and around 10 for the developed countries. Perhaps this was considered as reflecting the "less than full reciprocity in reduction commitments" feature for the developing countries. But a simple calculation would indicate that such an assumption is highly erroneous. Taking 30 as the coefficient for the developing countries, for example, their tariff of 28 percent, which is their average tariff, will be reduced to 14 percent, which represents a 50 percent reduction (from 28 to 14). Taking a coefficient of 10 for the developed countries, their tariff of 4 percent, which is their average tariff, will be reduced to 3 percent, or a reduction of only 25 percent (from 4 to 3). This is clearly a reversal of the agreed principle of "less than full reciprocity" for the developing countries and will be extremely unfair.

Services

As explained earlier, the developing countries have made significant concessions regarding commitments in Modes 1, 2 and 3 in the Hong Kong Ministerial Declaration, detracting from the special and differential treatment allowed to them in Article XIX of the GATS. Moreover, these concessions have not been reciprocated by the developed countries. This is grossly unfair. Reportedly, the G6 did not take up the subject of services in their discussions and thus did not correct this unbalanced and unfair position.

Besides, the plurilateral track of negotiations has assumed a major role where a specific sector or mode will be separately negotiated. There may be a risk that the developing countries will be pressurized to make concessions in specific sectors and modes of interest to the major developed countries, while they lose out in the sectors and modes of interest to themselves. The plurilateral track does not facilitate exchange of concessions across sectors and modes, and this may work against the interests of the developing countries, if enough precaution establishing linkages among different plurilateral tracks is not taken.

Subjects Sponsored by the Developing Countries

The G6 did not take on board the subjects which had been sponsored by the developing countries in the negotiations and which are of special importance to them. These subjects, which have special bearing on the development content of the current negotiations, are: special and differential treatment of the developing countries, implementation issues and non-tariff barriers. These important subjects have been pushed into the background by various means.

The discussion above therefore indicates that the developing countries are exposed to grave risks in the negotiations and it is necessary to reorient the negotiations when they resume in future.

SOME SUGGESTIONS

AGRICULTURE

Trade-Distorting Domestic Support (TDS)

There should be the following disciplines on the TDS:

(i) The total TDS, excluding a small *de minimis* amount, in the developed countries should be eliminated by the end of the implementation period.
(ii) Elimination of the TDS should be front-loaded; thus 50 percent of the TDS, excluding a small *de minimis* amount, should be eliminated in the first year of the implementation period.
(iii) The corporate sector should be totally excluded from the benefit of TDS, which should be admissible only to individual farmers.
(iv) There should be an annual ceiling on the payment of TDS to an individual farmer.

Product-Specific Ceiling of TDS

There should be a ceiling on the TDS given to a product. As some selected products have been getting high subsidies in the major developed countries in the past, it will not be correct to base the ceiling on the level in a previous year. The ceiling should instead be fixed as a percentage of annual production, for example, the subsidy on any product may not be allowed to exceed 10 percent of its annual production.

Green Box Subsidies

The Doha Ministerial Declaration of November 2001 and the July 04 decision have already mandated a review of the criteria for the Green Box subsidies to ensure they are not trade-distorting or cause only minimal trade distortion. As mentioned earlier, Green Box subsidies, by enhancing the staying capacity of the farmer in farming and thus supporting otherwise unviable production, are very much trade-distorting. An effective way to stop Green Box subsidies from being trade-distorting is, of course, to prohibit these payments altogether. If that is not possible, these payments should be kept at a minimal level in order to minimize the trade distortion.

The Green Box subsidies, particularly those handed out as decoupled income support, insurance against income loss and investment aid, given respectively under paragraphs 6, 7 and 11 of Annex 2 to the AoA, should be subjected to specific criteria of eligibility and a ceiling. Suggestions for some criteria are given below:

(i) Payment should be made only to individual farmers. Corporate entities should be totally excluded from such payment.

(ii) Even among the individual farmers, there should be some criterion of eligibility based on income, in recognition of the fact that comparatively richer farmers do not need this support. For example, only the farmers having an annual income from all sources of up to 10 percent of the average annual income in the country may be made eligible for the payment.

(iii) There should be a ceiling on the annual payment to an individual farmer, for example, US$5,000 to 10,000.

Quantitative Restrictions

Developing countries should be enabled to impose quantitative import restrictions on the products that have received TDS or Green Box subsidies of the types mentioned above.

Other Important Elements

Apart from the subsidy-specific suggestions given above, appropriate provisions should be made regarding Special Products and a Special Safeguard Mechanism (SSM) for the developing countries. It has already been decided in the Hong Kong Ministerial Declaration that the Special Products will be self-designated by the developing countries. As the objective is to take care of food security, livelihood security and rural development in the developing countries, the products selected should be adequate in number and the treatment to be accorded to them should allow adequate flexibility regarding protection, through both tariffs and direct quantitative restrictions, as well as support through subsidies.

The SSM should have simple criteria based on a rise in imports or fall in price in the previous year. The SSM measure should be in the form of an additional tariff or a quantitative restriction.

NAMA

The Doha Declaration and the July 04 decision have provided for "less than full reciprocity" for the developing countries in respect of reduction of industrial tariffs. The most appropriate manner in which this objective can be achieved is for the developing countries to open their markets for the developed countries to a lesser degree than the developed countries' opening of their markets for the developing countries.

One way of achieving this is through having an appropriate differential in the reduction in absolute tariff numbers between the developing countries and the developed countries. For example, if the developed countries reduce the tariff from 10 percent to 4 percent (a reduction of 6 in the absolute tariff number), the developing countries could reduce their tariff from 35 percent to 31 percent (a reduction of 4 in the absolute tariff number). The respective coefficients in the Swiss formula for the developed countries and the developing countries then work out accordingly as 6.7 and 271.

Another way may be to lay down differential rates of tariff reduction for the developing countries and the developed countries. For example, the developed countries and the developing countries may reduce their tariffs respectively by 60 percent and 40 percent. In order to have such reduction in their respective tariffs of 4 percent and 30 percent (which are near their respective average industrial-tariff levels), the coefficients for the developed countries and the developing countries respectively should be 2.7 and 45.

These examples show that the coefficients of 10 and 20-30 (for developed and developing countries respectively) which were under consideration in the G6 towards the end of July 2006 are totally out of place. It is therefore necessary to reorient the negotiations in a basic way. The primary focus should not be the coefficients in the Swiss formula; rather, it should be the reduction in absolute tariff numbers or the percentage reduction in tariffs. Then appropriate coefficients should be worked out in order to have the desired reduction.

SERVICES

The developing countries have much less supply capacity in the services sectors compared to the developed countries. Thus they have much less export interest than the developed countries in this area. And wherever the developing countries do have supply capacity and export interest, the developed countries are most reluctant to liberalize.

The foremost interest of the developing countries is in liberalization in Mode 4 (supply of service by movement of persons), which gets constrained in the developed countries on the grounds of immigration policy. Besides, the developed countries also often use qualification and quality standards which the service providers of the developing countries find difficult to meet.

In this background, the objective of the developing countries should be to fully balance their commitments with the benefits they get from the commitments of the developed countries.

Thus, for example, any commitment by the developing countries in any plurilateral sectoral negotiation should be undertaken only when they get a commensurate commitment from the developed countries regarding their liberalization in Mode 4 and their adoption of reasonable standards appropriate to the developing countries' supply capability.

The developing countries should work out a monitoring mechanism for balancing their commitments in various plurilateral/request-offer negotiations with the benefits they get from the commitments of the developed countries.

SUBJECTS OF SPECIAL INTEREST TO DEVELOPING COUNTRIES

In addition to the above areas, it is also important that the subjects that had been sponsored by the developing countries are brought back to the centrestage of the negotiations. There has been a constant tendency in the recent negotiations to push them into the background. These subjects are, in particular, special and differential treatment to developing countries, implementation issues and non-tariff barriers. It may be desirable for the developing countries to link the progress of negotiations on these three subjects with the progress in the areas of agriculture, NAMA and services. They may establish a mechanism to monitor this link regularly and periodically.

NEGOTIATING FORMAT

With the recognition that the restricted and non-transparent negotiating format in the WTO has failed, efforts should be made to follow an inclusive and transparent negotiating process. The strategy of first forging agreement among a limited group of "important" and vocal countries and then expanding the circle of agreement should be given up. No country should have grounds to feel aggrieved because of non-involvement in the negotiations. If getting agreements in open meetings with 150 participants is deemed impractical, the solution does not lie in the arbitrary selection of a few members to thrash out a deal while leaving out the rest. Some innovative negotiating formats will have to be worked out. Serious work on this in the WTO appears to be a priority task.

Bhagirath Lal Das was formerly Director of International Trade Programmes at the United Nations Conference on Trade and Development (UNCTAD) and India's Ambassador to the General Agreement on Tariffs and Trade (GATT) forum. The above will be included as the last chapter in the forthcoming updated edition of his book *The Current Negotiations in the WTO: Options, Opportunities and Risks for Developing Countries*, published by Third World Network (Penang, Malaysia) and Zed Books (London and New York).

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