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Is what is good for 'sealing' the Doha talks good for the trading system?

by Chakravarthi Raghavan

Trade diplomats and negotiators who have returned to their desks (after the year-end recess) and resumed efforts at the World Trade Organisation (WTO) to conclude the Doha Round of trade talks, are facing an existential situation.

Every year in January, ministers and policy-makers in charge of the economy or trade make a 'pilgrimage' to Davos (the alpine luxury ski-resort town in northwest Switzerland) to concert with 'movers and shakers' of global business, finance and industry at the annual World Economic Forum meeting. And on the sidelines, trade ministers of a few countries, invited by the Swiss government, meet, with a statement issued at the end.

A 'pilgrimage' to any religious shrine involves (or demands) some set rituals from the pilgrims. And the Davos meet of the World Economic Forum where the high priests of the Market God gather every year has its own rituals. This year too, these rituals were gone through.

It was reported that the small group of ministers from key developed and developing countries (including the United States, the European Union (EU), Brazil and India) who met with the WTO Director-General Pascal Lamy over lunch on the sidelines of this year's World Economic Forum, agreed to a process proposed by Lamy for resuming the stalled Doha talks, in an effort to clinch a deal over the next few months – during the Bush presidency.

There have been differing, and even confusing, reports on the exact process that was agreed upon at Davos. Initially, it was reported that a process, including a ministerial meeting around Easter (23 March this year) for final bargaining to clinch a deal, as proposed by Lamy had been agreed. However, after some of the participants returned to Geneva and reported to their constituencies, some differences emerged.

After Davos, on coming back to Geneva, Lamy held an informal meeting of heads of delegation, preceded on the previous day by a 'green room' meeting (a WTO code word for a meeting of a small group of invited member-state delegations with the head of the WTO).

Lamy had been promoting meetings in early February of the negotiating groups on agriculture and non-agricultural market access (NAMA, which is concerned with trade in manufactured

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Address: 131, Jalan Macalister, 10400 Penang, MALAYSIA **Tel**: 60-4-2266728/2266159 **Fax**: 60-4-2264505
E-mail: twnet@po.jaring.my **Website**: www.twnside.org.sg

goods), where the chairs of the two groups would put forward new revised draft modality texts. Lamy had planned for both the texts, after being subjected to members' initial views, to be considered in what is being called a 'horizontal process' – under which key differences in both areas would be negotiated and concessions in one area would be 'traded off' for concessions in the other, and the modalities for agriculture and NAMA would be sealed.

However, this Lamy scenario appears to have received some setback.

The Doha talks (as they are popularly known) are in fact multilateral trade negotiations on the Doha Work Programme, launched in November 2001 by trade ministers of WTO member states (at a meeting in the Qatari capital of Doha in the immediate aftermath of the 9/11 terrorist attacks on the twin towers in New York and the Pentagon in Washington). The negotiations, which cover a range of subjects and areas (even more complex than the ones in the 1986-94 Uruguay Round of trade negotiations), were supposed to be completed within four years but have missed several deadlines and remain stymied and stuck – in the sands of Doha, so to say.

As the EU Trade Commissioner, Lamy had joined hands with the then US Trade Representative Robert Zoellick to launch the negotiations, exploiting the international political climate post-9/11. At the Cancun Ministerial Conference of the WTO in 2003, Lamy and Zoellick once again joined hands and thought they could force their will on other countries, but failed disastrously. After Lamy became head of the WTO in August 2005, the talks have been even less open and transparent than before. He orchestrated a process of talks within a small group of senior officials and/or ministers – with the larger membership 'informed' from time to time, but not involved in the negotiations in any meaningful and participatory way.

Since the Davos meeting, trade negotiators at Geneva have received 'new revised chairmen's drafts' in agriculture and NAMA, tabled respectively by New Zealand's Ambassador Crawford Falconer (who chairs the agriculture negotiations) and Canada's Amb. Don Stephenson (who chairs the NAMA negotiations). Negotiators are to discuss the two papers in the respective negotiating groups. Lamy is pushing for the two revised drafts, after some comments from delegations in the agriculture and NAMA groups, to then be taken up in the 'horizontal process' of negotiations to set the modalities – the nitty-gritty of subsidy and tariff cuts – in agriculture and NAMA.

The Lamy aim is to get 'trade-offs' between the two areas (that is, the US, Europe and Japan agreeing to cut their agriculture subsidies and provide market access to exports from the developing world, in return for concessions by major developing countries to open up their markets to imports of industrial products). Lamy has indicated that this 'horizontal' bargaining process will be within a small group of key delegations in a 'green room', and the outcome forced down on the rest of the membership, to be sealed by a ministerial meeting.

This Lamy scenario would enable him to 'lock up' major developing countries (China, India, Indonesia, Brazil, South Africa, etc.) in terms of their agricultural and market-access concessions (to the US and Europe), and, on this basis, enable the Bush administration to get Congressional 'fast-track' negotiating authority. Under this scenario, the negotiations would be concluded this year, while Bush is still in the White House.

The Bush administration's fast-track authority expired on 1 July 2007, and the administration has not so far got any fresh authority from the US Congress. (More on this below.) It strains credulity for anyone to think that in the absence of Congressional fast-track authority (i.e., a commitment by Congress to consider a trade agreement within a stipulated time-frame, and agree or disagree, without making any changes to the agreement), a Doha deal could be sealed before Bush leaves office. This scenario is even less credible when considering that the United States is gearing up for the 4 November poll to elect a new president (and one-third of the Senators, and the entire House of Representatives). Both the major political parties in the US, the Democrats and the Republicans, are in the thick of primary fights (parties choosing delegates to their party conventions who will choose their presidential nominees); it is clear that the two parties, more so the Democrats, would be able to pick their nominees only at the party conventions – the Democratic Party's convention is set for the end of August, and the Republican one for the beginning of September.

The financial crisis

In taking the Lamy path, the negotiators will be ignoring several elephants in the room, and at least two of them have a direct bearing on the Doha talks.

One of the 'elephants' is the current financial crisis, which even the 'experts' heading the financial institutions (official and private) and all too many central bankers and regulators seem not to fully understand. In fact, no one seems to know the full ramifications of what a few months ago was being described as a 'subprime' house mortgage crisis, and then as a debt and credit crunch crisis, and now as a full-blown financial crisis – with a general loss of trust and confidence – that may plunge the US and the world economy into a deep recession, if not a 1930-type depression.

The house mortgage debts (as also others now coming to the fore like credit-card debts, etc.) were 'securitised' and repackaged into 'collateralised debt obligations' (CDOs) – through 'financial innovation' and complex 'derivatives' (that even central bankers and regulators seem not fully to understand). These CDOs were then given AAA ratings by the rating agencies (on the basis of evaluations which often reflected an over-optimistic view of the securities' structuring rather than the quality of the underlying assets, and the credit ratings of the guaranteeing insurance firms, the so-called monoline insurers which formerly guaranteed municipal bonds but branched out into guaranteeing these CDOs), and sold off as bonds to other institutions and investors.

Martin Wolf, a liberal economist, and associate editor and chief economics commentator of the *Financial Times*, recently described the financial crisis and various views and assessments by the experts as 'the elephant in the dark room'. A correct diagnosis and solutions to the crisis appear to be outside the remit of trade negotiators, though they are being told that they could contribute to a solution by concluding the Doha trade negotiations!

In fact, if developing countries agree to the demands on them in one of the sectors in these negotiations, namely, in the services sector negotiations, for liberalising cross-border financial transactions and thus international capital flows as well as market access in trade in financial services (access for foreign enterprises to their stock markets, insurance, banking and pension funds, etc. and/or scheduling their existing market access via cross-border supply and 'commercial presence', a euphemism for varying degrees of private capital investments), along with the proposed rules on domestic regulations, it would result in what the *New York Times* columnist Paul Krugman has called the buried 'financial toxic waste' in the North being exported to them. The few developing countries like China, India, Brazil, etc. that seem for the moment to have escaped the financial crisis in the US, Europe and Japan would probably find themselves engulfed.

An example of those at the top of the financial system not knowing fully where the corpses are buried is the explanation in the financial media about the sudden US Federal Reserve interest-rate cut of 75 basis points – reducing its lending rate to banks to 3.5%, 'barely above the (well-massaged) rate of consumer price inflation' (as US columnist Philip Bowring put it in an opinion piece on *Asia Sentinel*). The rate cut is seen as (at least temporarily) staving off a US recession (in an election year).

And in a complete U-turn, the head of the International Monetary Fund (IMF) (which preaches to developing countries the merits of fiscal balance and consolidation) has joined others like Nobel laureate Paul Samuelson and advocated at Davos a global fiscal stimulus. And former IMF chief economist Kenneth Rogoff, now an academic, spoke at the Davos forum of inequalities and the rich-poor gap among and within nations and the need for economic policies to address them!

But, as Mr Shrirang P Shukla, India's former representative to the General Agreement on Tariffs and Trade (GATT) forum (March 1984 to February 1989) and later a member of the Indian Planning Commission, commenting on such proposals for stimulus, says: 'These and other pleas are for a "dose of Keynesianism in the US context", a new New Deal as it were, with a bit of "new" elements in their analysis, such as the references to non-transparency and financial shenanigans. However, they all seem to fall short of recognising the overwhelming reality of finance capitalism.'

'When capital-as-finance, as distinct from capital-in-production, takes over the state power,' says Shukla in a communication, 'the main preoccupation of the policy-makers is to preserve and enhance the value of the financial assets: that is how all the policies are reoriented. Epithets like "kinder SEC", "financial engineering shenanigans" and central bankers in important financial centres working as "mediocre CEOs" are but symptoms of the underlying shift in the power base. And unless that is exposed analytically, no real corrective action can be expected to emerge even on paper.'

It is not possible, Shukla insists, to practise Keynesianism at the global level unless there is a global government controlled by 'enlightened' capital-in-production. And halfway policy houses built on thin foundations of transparency, reversing excessive financial deregulation or 'excellence' in central bank CEOs and a bit of new New Dealism cannot provide durable and effective solutions, certainly not on a global scale. While such policies may help shore up the US economy for a while with beneficial consequences for some other dependent economies, particularly in the OECD, there is a distinct possibility of such a policy approach implying a continuation or worsening of two major adverse implications for the rest of the world: the continued war of aggression for the oil/gas resources in West Asia and continued pressures on the growing economies of China and India to align their economic policies to facilitate the expanding domain of finance capital. Without the continuance of wars for oil and gas resources, the dollar hegemony, so essential for capital-as-finance to preserve its strength and wealth, cannot be maintained. The pressures on China and India will continue because 'big emerging economies' could constitute a potential threat to the domain of finance capital, unless they are integrated rapidly into the global system as outer spaces for sucking out the surpluses as they emerge with the progress of capital-in-production in those economies or as new risk-distributing platforms for finance capital's activities or both, said Shukla.

After the announcement of the huge losses at the Societe Generale bank in France, explanations were trotted out that by now even French regulators are challenging. Initially, the bank blamed its losses on the activities of a lone 'rogue trader', who it said had created liabilities of sorts for nearly 70 billion euros (by speculative hedging and bets on German and US stock indexes) without anyone in the bank being aware. The bank claimed that it had quickly closed and sold off the future options and positions, and in the process appears to have brought down stock markets in Germany and the US, and, as a consequence, around the world.

These explanations and versions of the Societe Generale debacle have been challenged by the lawyers for the trader, who has said he would not allow himself to be 'scapegoated', and more recently by French regulators and the government, on the basis of their preliminary inquiries.

Since the revelations concerning Societe Generale, the crisis has engulfed still other major institutions in the financial sector, which have reported huge losses due to their involvement in structured finance. Most recently (16-17 March), with US Federal Reserve backing, JP Morgan purchased the investment bank Bear Stearns, a major player in asset-backed securities, thus saving it from imminent collapse. Bear Stearns shares quoted at $80 at end-February were bought at $2 (with the shares trading up at about $8 a few days later).

Nevertheless, in the week of 21 January, seeing the stock markets collapsing (and not knowing the cause), the US Federal Reserve is supposed to have hurriedly announced a drastic interest-rate cut. It is so unbelievable a story that it may just be true, proving Martin Wolf's point about this being an elephant in a dark room!

Fundamentals shaken

Already over the last few weeks, Nobel laureate Paul Samuelson has done a 'mea culpa' for his 'securitisation' theory (which enabled the creating and selling of securities, backed by these 'assets'). In an *International Herald Tribune* op-ed in November, he said: 'As one of the economists who helped create today's newfangled securities, I must plead guilty: These new mechanisms both mask transparency and tempt to rash over-leveraging.'

Martin Wolf himself, who during the Asian financial crisis of 1997 advocated that the financial markets should be allowed to sort themselves out, has also now done a 'mea culpa' of sorts (though not in so many words) and come out for strong regulation of financial institutions and markets.

Both Samuelson and Wolf deserve credit for publicly acknowledging their earlier errors and indirect contributions to the crisis.

Paul Krugman says in the *NYT* that what has really undermined trust is the fact that nobody knows where the financial toxic waste is buried: Citigroup wasn't supposed to have tens of billions of dollars in subprime exposure; it did. Florida's Local Government Investment Pool, which acts as a bank for the state's school districts, was supposed to be risk-free; it wasn't (and now schools don't have the money to pay teachers).

How did things get so opaque? The answer, he says, is 'financial innovation' – two words that should, from now on, strike fear into investors' hearts. While some kinds of financial innovation may be good, Krugman notes that the innovations of recent years – the alphabet soup of CDOs and SIVs, RMBS and ABCP – were sold on false pretenses. They were promoted as ways to spread risk, making investment safer. What they did instead – aside from making their creators a lot of money, which they didn't have to repay when it all went bust – was to spread confusion, luring investors into taking on more risk than they realised.

Why was this allowed to happen? In Krugman's view, the problem was ideological. But, according to Andrew Cornford of the Financial Markets Centre, the problem is even deeper and involves the conceptual foundations of the economics underlying modern finance, which relies for many of its results on the assumption of smoothly functioning markets and underplays liquidity risks. As a result, designers of financial products and financial risk managers underestimated threats posed by the disappearance of liquidity. Moreover, unquestioning faith in the market led policy-makers to ignore the warning signs.

Krugman in his column points out in this regard that then US Federal Reserve Chairman Alan Greenspan had brushed aside warnings from Edward Gramlich, who was a member of the Federal Reserve Board, about a potential subprime crisis. And free-market orthodoxy, Krugman adds, dies hard. Just a few weeks ago, Henry Paulson, the US Treasury Secretary, admitted to *Fortune* magazine that financial innovation got ahead of regulation – but added, 'I don't think we'd want it the other way around.'

'The bottom line is that policy-makers left the financial industry free to innovate – and what it did was to innovate itself, and the rest of us, into a big, nasty mess,' Krugman concludes.

The sum of all these assessments from Samuelson, Wolf, Krugman and other mainstream economists – all market liberals and exponents of free trade – is that the financial crisis has shaken some fundamentals, and several of the two-decades-old underlying theologies are being openly questioned. The WTO's Lamy himself, just before the Davos forum, is reported to have told the media that the pendulum is swinging back from the market to the state, from extensive deregulation to re-regulation.

Some of those whose 'theories' set the stage for the financial crisis are now running around calling for Keynesian stimulus and actions by the Federal Reserve to save the global economy. All their financial innovation and instruments have come down like a house of cards, jeopardising not merely the investment banks and their capital, but the very basis and theories of this market economy. Martin Wolf now has come out for stronger regulation of financial institutions, and even regulation on the pay packages, bonuses and perks of those from these financial institutions, arguing in favour of viewing them differently from other enterprises and institutions!

As for the underlying trade theories about 'free trade' and its benefits, in a forthcoming paper (available in draft form as a mimeo from the author, under the title 'Deconstructing the arguments for free trade'), Prof. Robert Driskill of Vanderbilt University has brought out that mainstream economists generally advocate 'free trade' as beneficial to all, as an axiomatic truth (rather than an empirical one to be based on factual evidence). He calls on economists to be more modest and provide a more nuanced view of trade-offs.

In the nature of things, economic theories cannot be proved in terms of cause and effect. At best, economists take associative evidence of sorts – of countries and economies having 'free' and 'open' markets growing and prospering, in contrast to those that are closed and restricted. But even the yardsticks for 'openness' are subjective, and the evidence could be interpreted either way. As Prof. Dani Rodrik and others have pointed out, the evidence is ambiguous and could be interpreted to mean that growth produces open markets and freer trade, rather than the other way round.

But more to the point are the views of the Bank for International Settlements – the central bank of the world's central banks, an institution advocating liberal economics, though more recently, its Monetary and Economics Department appears to be pioneering neo-Keynesian prudential macroeconomics, rather than the mainstream neo-classical neo-liberal economics. The BIS has this to say on attempts to generalise policy conclusions: 'Economics is not a science, at least not in the sense that repeated experiments always produce the same results. Thus, economic forecasts are often widely off the mark, particularly at cyclical turning points, with inadequate data, deficient models and random shocks often conspiring to produce unsatisfactory outcomes ... it is scarcely an exaggeration to say that we face a fundamentally uncertain world – one in which probabilities cannot be calculated – rather than simply a risky one.' (Bank for International Settlements, *77th Annual Report*, 2007, page 139)

Lack of fast-track authority

As noted earlier, another 'elephant' in the WTO trade talks, and one that the negotiators appear to have tacitly agreed to ignore in continuing with their negotiations, is the lack of fast-track authority (officially known as Trade Promotion Authority (TPA)) for the Bush administration. Though the Indian Commerce Minister Kamal Nath has reportedly flagged this issue and asked the US for a 'road map' on this, it has not figured in the WTO talks – neither at the Trade Negotiations Committee (TNC) nor at the meetings of the WTO General Council, which 'takes note' of reports on the TNC from Lamy.

The US Senate Finance Committee Report on the 2002 trade legislation (http://finance.senate.gov/TradePromotionAuthority.pdf) has given both a legislative history of fast-track authority (1974 Trade Act, 1988 Omnibus Trade and Competitiveness law, fast-track extensions of 1991 and 1993, and 2002 Trade Act) and details of the 2002 Trade Act. On page 22, 'Senate Committee Report on Trade Reform Act of 1974', the report has clearly spelt out 'traditional procedures' for Congress to deal with trade agreements in the absence of fast-track authority: '1. Completion of an international agreement on an ad referendum basis and submission to the Congress for approval through implementing legislation (or seeking in advance approval by act of Congress for entering into and implementing an agreement); and 2. Completion of an international agreement and its submission to the Senate as a treaty.' On page 36, the report notes that implementation of trade agreements often requires the US to enact legislation modifying tariffs and making other changes to US law. Congressional consideration of such implementing legislation under ordinary rules of procedure carries several disadvantages.

Under ordinary rules, a bill may be amended in a manner inconsistent with the underlying agreement, which may require the president to reopen negotiation of the agreement. Ordinary rules do not require that a bill be voted on by a certain date, or that it be voted on at all. A trade agreement could be concluded and languish indefinitely.

The implications for other nations negotiating with the US in the absence of fast-track authority have thus been clearly spelt out by Congress, and no trade negotiator from any country negotiating with the US can pretend ignorance.

Commenting on the reports out of Davos – decision of a small group of ministers to conclude the Doha talks during the Bush presidency, and Lamy keeping open his option to table a text of his own – Mr BK Zutshi, former Indian ambassador to GATT (1989-94) during the Uruguay Round negotiations which ended in the Marrakesh treaty, says: 'Frankly, I'm surprised how a select group of trade ministers at Davos have agreed to engage in serious negotiations for concluding the Doha Round by the end of this year in the absence of the US administration having the requisite trade negotiating authority, generally known as the fast-track authority or the trade promotion authority. During the Uruguay Round (UR) negotiations, when a similar situation arose (in 1987, and in 1991), negotiations were practically suspended, although some technical work continued in agriculture and services. It was only after the US got the authority that serious negotiations were resumed. This was for good reason, as participants did not want to enter into the deal-making phase without the assurance that the final deal cannot be tampered with by the US Congress, and that it will be subject only to an up or down vote. There is a danger in accepting any assurance from the US administration about an authority becoming available to them by the time negotiations in Geneva are concluded, as this will amount to accepting a potential salami-tactics-like situation.'

Since March 2007, and certainly since June when the US TPA expired, US Trade Representative Susan Schwab, as well as Lamy and his officials, have been suggesting that if there is an attractive enough market-access package that the US cannot refuse, Congress would quickly grant even limited TPA to conclude the Doha talks. And on this basis, Lamy has been pressing major developing countries to make market-access concessions to the US.

This reminds one of a tale in the Sanskrit classic *Hitopadesa*, of a student returning after years of study to set himself up as a priest and teacher in a seaside village. The teacher is approached by the villagers to advise them on how to catch a crane alive. He thinks about it and advises them to take a glob of butter, place it on the head of the crane and wait until the sun rises and melts the butter, blinding the crane, when they could then ensnare and catch it!

It is difficult to imagine that trade negotiators, trade officials, the media specialising in following and reporting on the WTO, and the civil society groups involved in the process believe in this 'spin'. In fact, anyone outside this group who has access to the Internet and is following the run-up to the US presidential elections knows there is no chance of any TPA being granted to the Bush administration, nor even to any new administration until perhaps well into the end of 2009 or 2010.

According to Lori Wallach, Director of Global Trade Watch at the Washington DC-based Public Citizen organisation, any new Congressional delegated authority to any future administration (Democratic or Republican) will come with more Congressional oversight and control to ensure real (rather than, as now, pro forma) executive consultations with Congress before any agreement is signed, and not a mere 'yes' or 'no' vote in Congress.

As for the other elephant in the room, the financial crisis could blow everything out of the water.

A compromise text?

Lamy himself, even before he assumed his job at the WTO, had talked to former GATT Director-General, the late Arthur Dunkel, about the prospect of Lamy putting forward a text, like Dunkel did in the Uruguay Round in December 1991. Dunkel, according to some of his friends, is reported to have cautioned him. Lamy has again voiced this option of tabling his compromise text, though in response to a question at the Davos forum.

Commenting on this, Zutshi says: 'I'm surprised by the impression being given that Mr Lamy, as the DG, or even as the Chairperson of the Trade Negotiations Committee, can propose compromises on his own with a view to concluding the Round early. Such an authority can be given to him or anyone else only by a Ministerial Conference or by the General Council, or by the TNC. During the UR, Mr Dunkel was specifically authorised by the TNC to propose a final draft text, where the remaining disagreements were confined to a limited number of issues, and the compromises he came up with were based on extensive consultations with the participants.'

And as reported contemporaneously *in extenso* by this writer during the Uruguay Round talks, in 1991 Dunkel was encouraged to put forward a text supplying compromises in a few areas that key negotiators could not agree on in the talks resumed after the Brussels Ministerial of 1990. The US and the EC, after encouraging him to present a text, to be taken by parties as a package, came back in 1992 calling for changes to the text in areas concerning them, while insisting that none of the areas of concern to developing countries (for example, in TRIPS) could be reopened (Chakravarthi Raghavan, *From GATT to the WTO*, CD-ROM, Third World Network, 1999).

At that time, the developing countries, willy nilly perhaps, acquiesced. But the US and the EC first negotiated among themselves to reach the Blair House accord on agriculture, but even then could not conclude the talks. And after the 1992

US presidential elections, when George Bush Sr. was defeated in his re-election bid and Bill Clinton won the White House, the US and the EC got rid of Dunkel and brought in Peter Sutherland. With his help, many other parts of the Dunkel text were reopened and changed, before it was accepted in December 1993. The major developing countries at that time presented it to their parliaments and countries as a fait accompli, with a 'there is no alternative' argument.

If they are hoping to do the same this time, they will be in for a rude awakening. Such a course may well result in rejection of the accord in many countries, with coalition partners in many governments (as in India) refusing to go along. This will result in the WTO itself, and its leadership promoting the interests of the US and the EU, facing its moment of truth, and finding itself unable to prevail. And it would bring down the multilateral trading system itself.

It would perhaps be wiser for everyone to pull back, put the Doha talks aside (until the US comes to the negotiating table armed with fast-track authority from Congress), and address the issues that the General Council had earlier (after the WTO's 1999 Seattle Ministerial Conference) decided upon, namely, 'confidence-building' measures. Some of these may in fact need changes in rules, but others are issues of practice that could be decided by the WTO members. And one of these would be for the WTO membership to restore decision-making authority to where it belongs in a rules-based organisation, namely, the members and the General Council.

Ever since Lamy took over, and particularly after the 2005 Hong Kong Ministerial Conference, he has in a sense staged a coup d'etat of sorts. Until then, decision-making had rested fully and squarely with the Ministerial Conference and, when it was not in session, with the General Council. Even informal decision-making at the level of heads of delegation was at the level of the General Council, at meetings chaired by the Council chair.

Lamy effectively cut this short by holding informal heads-of-delegation meetings of the TNC (where no records are kept) and presenting their outcomes to the General Council, where they are merely 'taken note of'. This has continued to the point where Lamy told a questioner at the Davos forum that he would not call a ministerial meeting to finalise a deal until the negotiations were 'nearly there'.

A Ministerial Conference is mandated by the Marrakesh Agreement Establishing the WTO (Article IV.1 of the agreement uses the mandatory 'shall') at least once in two years, and the General Council at its meeting in October 2007 took note of the chairman's statement about his consultations, but no decision was taken.

Perhaps a starting point for the WTO members to restore confidence in the system among the members and their public and to ensure transparency would be to restore decision-making to the General Council and make clear to all officials, including the Director-General, that they are 'contracted parties' and not contracting parties to the Agreement – words addressed by the US to Dunkel at the post-Brussels TNC in the Uruguay Round, when he tried to suggest some compromises from the chair.

Another measure would be to make clear that the WTO is a member-driven organisation, and not one where it is manipulated by officials or where officials arrogate to themselves the remit of the membership.

Another, needing a decision by the General Council, would be to restore the decision-making stipulated in Article IX.2 of the Marrakesh treaty and rein in the WTO Appellate Body, which has been using the 'negative consensus' stipulation to engage in rule-making and creating new obligations, under the pretence of interpretation.

Chakravarthi Raghavan is Editor Emeritus of the *South-North Development Monitor (SUNS)*. This is an edited version (21 March) of an article which appeared in *SUNS* (No. 6403, 30 January 2008).