TWN Trade & Development Series 4

The New Issues and Developing Countries

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Third World Network

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This is part of a series of papers on trade and development that the Third World Network is publishing on issues that are of public concern for countries of the South in particular and for the international community and public in general. The aim of the Papers is to generate discussion and contribute to the search for appropriate policies towards development that is oriented to fulfilling human needs, social equity and environmental sustainability.

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CONTENTS

1:	**Introduction**	1
2:	**Trade and Environment**	10
3:	**The Trading System and Internationally Recognised Labour Standards**	22
4:	**Competition Policy and Restrictive Business Practices**	30
5:	**Other Issues**	37
	Corruption	37
	Other new issues	38
	Conclusion	40

1 Introduction

This paper discusses the background to the new issues which industrial countries wish to incorporate into the World Trade Organisation (WTO) agenda and the overall context and objectives within which these new issues are being pushed in the WTO, and its consequences for developing countries. Particular focus is on the issues of Environment, Labour Standards and Competition Policy. The issues are placed in the context of the overall thrust of the policies of the industrial countries, and the Fund-Bank and the WTO, to lock developing countries into an international liberal economic order which may result in an uneven development of the world and the developing countries, similar to the fate that overtook them in the 19th century.

In 1979, when the Tokyo Round of multilateral trade negotiations at the (old) General Agreement on Tariffs and Trade (GATT) were concluded, the Chief Negotiator for the United States said this would be the last negotiation of the 20th century.[1] Within two years, the US was back with demands for a new round of negotiations, and a new agenda to cover "new areas". The new trade agenda was first aired before the US Congress, and at other official and non-official fora, and then at the GATT Consultative Group of 18 for a GATT Ministerial Meeting.[2] Very early in this exercise, there was even some talk from the US side of this being a "North-South" round, but this terminology very quickly disappeared from the US trade lexicon.

At the 1982 GATT Ministerial Meeting and in the preparatory process for it, the US presented a wide-ranging agenda for a new round of negotia-

tions in some new and many old areas including agriculture—subjects that had been brought up in one form or another in the Tokyo Round—but had been put aside. Europe was at first "cool" to the US proposals. Ultimately, the 1982 GATT Ministerial Meeting agreed on a work programme, including one for "exchange of information among interested parties" on services. This exchange of information that took place on the GATT premises was sought to be made into a GATT agenda. The original US proposal was to amend the General Agreement, and add the word "services" wherever "goods" or "products" occur, making the entire GATT as it existed applicable to trade in goods and services. But quickly the US and Europeans grasped that such a wholesale application would be against their own mercantalist interests.

All this ultimately led to the launching of the Uruguay Round—in two tracks: one in the area of goods and the other in services.

This should serve to caution those who think that a study process can be started within the WTO and that it would involve no commitment to negotiate and the issue could be "studied" to death. This last happens only in areas of interest to the developing countries, not in areas of interest to the North.

But the philosophy behind the Round was part of the agenda of an intellectual effort on the radical right[3] to turn back the New International Economic Order and create a liberal international economic order or what is now known as the neo-liberal order —a return to the liberal order of the late 19th century (that actually prevailed only for a brief 20 years or so on the European continent, and enforced by colonial rule in much of Asia and Africa for a longer period, and which resulted in arresting their industrialisation and even achieving de-industrialisation).[4]

The Uruguay Round agenda did not include all that the US or Europe wanted. But the concluding statement of the Chairman of the Punta del Este Ministerial meeting mentioned some of the agendas of the US, and

European Community, and those raised by others that were not covered by the agreed Uruguay Round negotiating agenda; some of these were referred to the Trade Negotiations Committee that was being set up to run the negotiations; others including export of hazardous substances, commodity arrangements, restrictive business practices and workers' rights were mentioned as subjects on which "a consensus to negotiate could not be reached at this time"[5]—leaving open the possibility of their being included if a consensus was later found within GATT's continuing machinery.

Several of the new issues on the Uruguay Round agenda, issues not in the traditional areas of GATT competence (trade in goods), were brought in under the rubric of "trade-related", and as issues causing "trade-distortion" and needing rules and disciplines to reduce or eliminate such distortions.

In the subsequent discussions in the Trade Negotiating Committee and in individual negotiating groups, at the insistence of the developing countries, the scope of negotiations was limited to issues related to trade and directly distortive of trade. In the discussions at that time it was noted that any human activity, even population policies, would have an effect on international trade, but that this was no argument to bring every issue (which legitimately lie within the sovereign domestic jurisdiction of countries) within the GATT and Uruguay Round ambit. When any new or additional investment takes place in a country, starting a new production line where none existed before or augmenting an old one, this would have an effect on trade—imports and exports—but that could not mean that the country's production policies could be brought under disciplines or even multilateral scrutiny. This reasoning commanded very wide consensus, and the terms of negotiations were settled on this basis. The US, European, and Japanese arguments to use the "trade-related" to cover all economic activities and prevent state roles in the developing world (thus locking them into a colonial-era type of unequal international division of labour) did not succeed.

When the "trade-related investment measures" (TRIMs) issue came up before the TRIMs negotiating committee, Japan and the United States sought to lay out a wide ambit for the negotiations, and said any governmental measure relating to an investment, domestic or foreign, would distort trade and should be brought under multilateral disciplines, and investors (domestic or foreign should be able to challenge such domestic policy regulations before the multilateral system. But this was not accepted and ultimately it was agreed that the negotiating group could only look at investment measures of countries that are directly related to trade and are distortive of trade. Even here, as negotiations proceeded, it became clear to the "demandeurs" (US and Japan and, to some extent the European Union) that any agreement would be feasible only on the basis of clarifying the existing GATT provisions (Articles II and III) and no more.

Similarly, in the services negotiations, at the very beginning, the US and some of its allies began with the proposition that since services had to be supplied at the place where it was produced, a services agreement must mean the right of a service provider to invest and establish oneself in the country to be able to provide the service and, once "established", should have all the rights of any national investor to branch out into any other field of activity. Even the right of foreign non-governmental organisations providing some voluntary service was said to be covered.

This too was not accepted, and the negotiations could go forward, not on the basis of a "negative list" (all services would be open for foreign supplier, excepting those specifically listed as not permitted), but only on a "positive" list, namely countries setting out in their schedule the commitments they would make to provide market access in a service, and subject to various limitations. Four methods of delivery were recognised, and the right to invest or establish was only one such mode, and countries were to be free to decide which mode of delivery they would accept or commit themselves to. In the case of investment (commercial presence) they were to be able to stipulate the extent of such commercial presence—

a branch office, joint ventures and the permissible share of foreign capital etc. etc.

The final Uruguay Round agreement, and the various provisions, have to seen against this background and as one establishing a balance of rights and obligations among participants. Several of the new agenda issues being pushed by the industrial countries are no more than an attempt to win what was given up in the negotiations, and create a new balance in favour of the North.

By the time the Uruguay Round negotiations were "concluded"[6] at official level in Geneva in December 1993, and all the texts including the one for the establishment of the WTO as a permanent forum for trade negotiations in areas covered by the annexed agreements, were settled, the United States and the European Union (EU) had already begun talking about "new issues".

Many of these "new issues" were those that the US or the European Community had sought to bring up and put on the Uruguay Round agenda at Punta del Este, but had to give up, and/or those that had come up as "demands" under various negotiating items in some of the Uruguay Round agenda but again had to be given up.

Some of them, including the issue of investment and a GATT for Investment, have been on the "agenda" of the US establishment (academics, think tanks etc.) from the 1970s.[7]

At the December 1993 official level meeting of the Trade Negotiations Committee supposed to formally conclude the negotiations, the United States and the EU began talking of the need for the WTO-to-be to address new issues—and brought up all their old demands from the Tokyo Round and the preparatory processes for the Uruguay Round. At one stage, an effort was made, as a price for concluding the negotiations itself, to get a commitment from developing countries to negotiate in future on

these new issues. But this failed. And in the preparatory committee set up to prepare for the Marrakesh final meeting, the effort was renewed; but several developing countries made clear they would not countenance any attempt to get their Ministers to negotiate on these new issues as future agenda items at Marrakesh. It was agreed that while individual ministers could in their speeches voice any of their concerns, there will be no negotiations at Marrakesh to include any of them on a work programme or as a future agenda issue.

Yet, at Marrakesh, the United States and the EU came back formally with their new "demands"—resurrecting under new names all their old demands, and some new ones. Several of the developing countries also proposed their own items—but most of these were intended to counter the North's agenda.

The Chairman of the Marrakesh meeting, Mr. Sergio Abreu Bonilla of Uruguay, mentioned them in his concluding speech at that meeting. They were mentioned as subjects raised by Ministers. And the Chair noted that a function of the Preparatory Committee for the WTO would be to discuss suggestions for additional items on the agenda of the WTO's work programme. But contrary to the way the listing of the items in the Chairman's concluding speech are being presented in the media by the interested parties (as issues that have been put on the WTO agenda), the concluding statement shows there was no consensus to bring any of them on the WTO agenda.

The Abreu statement listed the subjects raised by Ministers: examination of the relationship between the trading system and internationally recognised labour standards, between immigration policies and international trade, trade and competition policy, including rules on export financing and restrictive business practices, trade and investment, regionalism, the interaction between trade policies and policies relating to financial and monetary matters, including debt, and commodity markets, international trade and company law, establishment of a mechanism for com-

pensation for erosion of preferences, the link between trade, development, political stability and alleviation of poverty, and unilateral or extra-territorial trade measures.[8]

As other papers presented at this meeting and documents made available show there are a number of problems arising out of the implementation of the Uruguay Round, some where the Ministers adopted Declarations and decisions at Marrakesh, and some immediate built-in agenda. Except for some technical problems relating to the notifications, little attention has been paid to these questions since Marrakesh, neither in the Preparatory Committee nor in the WTO and its bodies, nor by the secretariat.

In 1992, and later in 1993 (November-December), when the institutional arrangements relating to the agreements were being considered, and there was a great deal of doubt whether all developing countries would accept all the agreements, there was talk of a "GATT plus" among countries willing to accept all the new agreements, and the old GATT continuing for others. The EU which had originated the idea of a multilateral trade organisation, brought developing countries to its view by presenting it as an important element to block "US unilateralism". The single-undertaking concept was also invoked to ensure that everyone signed on to every agreement. And the integrated dispute settlement mechanism, with provision for cross-retaliation was "sold" to developing countries as necessary to control US unilateralism, and to the US as a way to enforce rights in TRIPs and Services against the developing world through cross-retaliation. And developing countries were persuaded to sign on, with the argument that if they did not the major industrial nations would leave the GATT and set up a GATT-plus.

The launching of the Uruguay Round, the agreements concluded under it and the establishment of the WTO with its integrated dispute settlement mechanism, and the efforts now to bring new issues into the WTO can be best understood in terms of the objective of the leading industrial nations to create a level-playing field for their transnational corporations

(TNCs) and facilitate a TNC-led integration of developing countries into the "global economy" in a neo-liberal order reminiscent of the one that prevailed for about 20 years in the later half of the 19th century.

Some of the current proposals, ranging from the proposals of the Bergsten group (within APEC and now being promoted as a WTO agenda for Singapore), for a zero-tariff world free trade by the first decade of the next millennium, to proposals for investment regime in WTO etc. can only be understood and evaluated in terms of the efforts to bring about the neo-liberal order, on the basis of the so-called Washington Consensus[9], and the promotion of a particular form of "integration" of Third World economies into a "global economy"—a strategy of development based on a rapid integration of developing countries into the world economy through the instrumentality of Transnational Corporations.

Ironically, these moves have come when the pendulum is swinging back in terms of economic theories and development fashions, and the world economy itself is in a state of flux. The backlash in the North against this particular type of "globalisation" or "integration" is also responsible for some of the new issues coming up prominently, and in terms of a trade-agenda.

Bringing many areas of domestic policy under multilateral trade obligations, would enable these disciplines to be enforced by invoking the WTO's Dispute Settlement Understanding (DSU), the integrated dispute settlement system, under which a dispute can be raised against any member, and binding rulings obtained, and rights enforced through trade retaliation, including cross-retaliation to enforce them. The DSU, read with the substantive agreements, can be used to raise trade disputes on the grounds of "Nullification and Impairment".

In terms of GATT Article XXIII, such nullification and impairment can arise out of a failure to carry out an obligation; a non-violation complaint i.e. application of a measure (whether or not in conflict with any provi-

sion of the agreement) or the existence of any other situation. Similar provisions are found in other agreements. Non-violation complaints are for the moment excluded in the trade-related intellectual property rights (TRIPs) agreement, but this exclusion is to be reviewed after five years.

As the Secretary-General of the United Nations Conference on Trade and Development (UNCTAD) put it in his Report to the Ninth Session of the UNCTAD, this extension of multilateral trade obligations into additional areas of domestic policy "would imply that global governance would be carried out within the framework of trade agreements."[10]

Almost from day one of WTO, the focus has been on the new issues, with the WTO head going around the world canvassing support for some of the issues raised by the US and EU. The affairs of the WTO are of course shrouded in mystery, a veil of non-transparency which those outside cannot easily pierce. But to our knowledge, no one has formally raised this aspect in any WTO body. Representatives of the developing world are as responsible for this state of affairs as those of the developed.

2 Trade and Environment

Strictly speaking, the environment is not a new trade agenda issue. It is already on the agenda of the Singapore Ministerial Meeting as a consequence of the Marrakesh Ministerial Decision on Trade and Environment which established the Committee on Trade and Environment.

Environment, Ecology and Development have been issues before development economists, even before the Stockholm UN Conference on Environment, and certainly thereafter. The Brundtland Commission (March 1987) report and the action taken on it by the UN General Assembly heightened public awareness of ecological issues and this also had an influence on the development community, academics and NGOs, but not the ongoing Uruguay Round negotiations.

But after the 1989 mid-term review, and during the run-up to the Brussels Ministerial Meeting (1990) of the Uruguay Round, when it became clear that the heavily-protected and heavily-subsidised agricultural industry in the North would be brought under GATT disciplines, several agricultural and farmers' lobbies of the North began to invoke the environment issue. Some genuine concerns for protection of the environment became mixed up with some pseudo-concerns that were aired for "protecting" the Northern "farms" and their heavily subsidised production. Some Europeans (Austria, Nordics etc.) attempted to bring up the environment issue at Brussels, seeking a GATT work programme. But this did not succeed.

The issue was then sought to be pursued through the GATT machinery (GATT Council and GATT Contracting Parties).

Subsequently, the preparations for the 1992 United Nations Conference on Environment and Development (UNCED) Rio Summit and the actual Earth Summit, gave a new fillip to this issue. There was an upsurge of interest among the NGOs in the North and the South (both environmental and development) and this gave rise to wider debates on Trade, Environment and Sustainable Development and the rise of an "environment lobby". A large number of NGOs raised several genuine concerns of theirs over the environment—focusing on Fund/Bank structural adjustment policies and policies of trade liberalisation forced on these countries that marginalised the poor and increased poverty. But there were also a number of northern interests who raised the environment banner to protect their own high quality of life, and shifting the burden of environment on to the South, and advocated use of trade instruments, including unilateral trade sanctions, towards this end.

The so-called dolphin-tuna dispute—over US action in banning imports of tuna caught by processes that did not ensure US definitions of dolphin safety—gave further strength to the environment lobby. The GATT panel came down on the US import restrictions—not on the ground that conserving dolphin would not be covered by the GATT Article XX exceptions about conserving natural resources, but on the ground of US extra-territoriality and the US acting in a discriminatory way as between US and foreign tuna fishers.

Nevertheless, the ruling whose adoption was blocked by the US, was projected by environment NGOs as an instance of GATT being against dolphins. All these public debates persuaded many countries to take up the trade/environment interface in the GATT. As a result, a moribund GATT working party (Group on Environmental Measures and International Trade) set up in the aftermath of the 1972 UN Environment Conference at Stockholm, was revived to examine the interface. And at

the December 1993 official level meeting of the Trade Negotiations Committee and the GATT CPs session, a sub-committee on Trade and Environment was set up as a part of the preparations for the Marrakesh Ministerial Meeting. This led to the Ministerial Decision at Marrakesh[11] for establishing the Committee on Trade and Environment (CTE), with broad terms of reference. The CTE was asked to report to the first biennial meeting of the Ministerial Conference of the WTO which is to review the work and terms of reference of the CTE.

The preambular paragraphs of the Decision was made part of the CTE's terms of reference. These preambular paragraphs include references to the Rio Declaration and Agenda 21, the work programme envisaged in the General Agreement on Trade in Services (GATS) and the relevant provisions of the TRIPs.

Within these broad terms, the CTE was asked initially to address:

- the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;

- the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system;

- the relationship between provisions of the multilateral trading system and (a) charges and taxes for environmental purposes; (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling;

- the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental pur-

poses and environmental measures and requirements which have significant trade effects;

- the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements;

- the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions.

The CTE was also asked, as an integral part of its work, to consider the work programme envisaged in the Marrakesh Ministerial Decision on Services and Environment and the relevant provisions of the Agreement on TRIPs. The issue of "Domestically Prohibited Goods", an item on the GATT work programme since the 1982 Ministerial Meeting, is also on the agenda of the CTE.

The CTE has had several rounds of formal and informal meetings on each of these eight agenda items, and is now in the process of drawing some conclusions to report to the Singapore meeting.

The industrial countries want a mini-package of agreements on the items on the CTE agenda at Singapore. In particular, they want decisions to be taken on trade measures under Multilateral Environment Agreements (MEAs) and on Ecolabelling.

The motivation appears to be that decisions on these two issues would meet the demands of their domestic environment lobbies.

A basic issue is whether multilateral trade obligations of the GATT/WTO system conflict with the ability of countries to undertake, in accordance

with national priorities, an appropriate level of domestic environmental protection and undertake trade measures for them, and whether transborder and global environment concerns could be so addressed by national actions.

Article XX of the GATT (General Exceptions article) permits WTO members to depart from their GATT obligations for legitimate national policy objectives. These exceptions include those under XX (b), measures to protect human, animal or plant life or health; and under XX (g)conservation of exhaustible natural resources.

These have generally been interpreted as allowing actions at national level to protect the environment. If such action has any transborder effect (imports of products from other countries), GATT principles have to be obeyed, particularly the non-discrimination principle in Article I (General Most-Favoured-Nation treatment) and Article III (equality of treatment for imported and domestic products), as well as the concept of least trade restrictiveness.

In the dolphin-tuna dispute (involving restrictions on imports of Mexican tuna), US invoked the Article XX (b) to argue that it could act to conserve natural resources beyond its own domestic jurisdiction and waters, and could also impose "secondary sanctions" to ensure that its policies would be followed fully.

The panel said that any action to protect the environment or conserve natural resources beyond one's own national jurisdiction should be pursued through international cooperation and multilateral agreements, and not unilaterally.

There were also similar cases, such as the Austrian efforts directed against tropical timber products (from the ASEAN), through a certification scheme about "sustainably managed" forests, and some similar moves in other European countries for labelling schemes. Austria gave

up its plans even before it could come up for dispute settlement and panel ruling.

The dolphin-tuna measure as well as the tropical timber one were basically attempts to meet the concerns of domestic environment lobbies who wanted actions to be taken to influence policies of other countries through unilateral trade sanctions.

A similar issue that has come up, and that has gone through the WTO dispute settlement process (including a final Appellate Body ruling) is over the US gasoline standards measures—aimed at improving the quality of air over some of the metropolitan regions by restrictions on the quality of gasoline to be sold at pumps. But the restrictions it imposed on imported petroleum products, by setting different methods to judge compliance with standards and methods of calculation, as between domestic and foreign refiners, was held to be GATT illegal.

The Appellate body made clear that the right of WTO members to take national actions to protect their environment was not challenged, but only that in doing so, Members must conform to the requirements of the GATT and other WTO covered agreements. The Appellate body appears to have expanded the scope for some national actions, by ruling that in cases covered by the particular exception, it was enough to show a "nexus" between the action taken and the objectives of (conserving an exhaustible natural resource—in this case the quality of air) and not the "necessity" test (required in respect of protection of human, animal or plant life and health), namely, whether trade restrictions are needed for the objectives to be achieved or other measures were possible. It has also suggested that the balance between the general obligations and the measures under the exception is a delicate one that could be judged only on a case by case basis.[12]

Proposals have been made before the CTE by the developed countries, particularly Europe and New Zealand for an amendment or agreed

interpretation of Article XX to ensure that individual dispute panels will not have any discretion in judging the measures taken and their compatibility with GATT.

The CTE has three basic proposals:

- the status quo approach, namely, leaving the situation as it is, with particular trade policy measures subject to the WTO DSU;

- an ex-post approach, namely, when trade measures under an MEA run counter to the GATT obligations, specific waiver should be sought and obtained; and

- an ex-ante approach, namely amending Article XX or adopt an agreed interpretation, that would in effect exempt all actions purported to be taken under MEAs from the WTO dispute settlement process.

The real problem arises, not when there is a wide global consensus that results in an MEA with trade provisions, but an MEA with much less global consensus and adherence, by which a region or group of countries could use an MEA among themselves to restrict trade with others who are not parties to the MEA. There are also issues arising out of MEAs with specific trade provisions (like the Montreal Protocol on ozone depleting substances) and trade measures of countries pursuant to an MEA) which could be protectionist, discriminatory and unilateral. Annex ante approach would legitimise all these and leave countries which are not members of the MEA without any remedy over their WTO rights.

Developing countries generally have been opposed to any ex-ante approach (blanket waivers in advance) and feel that the current status quo of checks and balances should suffice. But if something more is needed, at best there could be a case-by-case recourse to waivers.

Of the over 120 odd MEAs, very few have trade provisions, and those that do have such provisions, have not given cause for disputes. But there are concerns about future MEAs.

The issue of ecolabelling is another item being mainly pushed by developed countries who want to get multilateral recognition for their setting autonomously eco label standards. Some of the environment lobbies of the North, and industries, favour such eco labels that would cover the so-called Product and Process Methods (PPMs) in respect of a product, so that products produced in another country not using a particular PPM could be kept out.

There is a difference of view within the developed countries, with the US claiming that non-product PPMs are allowed under the Technical Barriers to Trade (TBT) agreement. Developing countries don't agree, and in any event don't want the scope to be extended. The main reason is that PPMs involve a value-judgement by each country on the balance within a country, and no scheme or measure should enable the more powerful to dictate the PPM for others.

At the same time, developing countries want to bring under multilateral disciplines the proliferating ecolabelling schemes, particularly those formulated and administered by private bodies—which under the TBT have more leeway than governmental standards. Developing countries want ecolabelling schemes brought under multilateral disciplines on the basis of equivalencies and mutual recognition—with each country able to set its own standards according to its own values as stipulated by Agenda 21, a more universal agreement at level of Heads of Government/State reached at Rio de Janeiro Earth Summit in 1992.

On the issues of trade liberalisation and environmental concerns, as well as environmental benefits of trade liberalisation, an Australian paper has brought up issues that it seeks the CTE to address and report on to the Singapore meeting. The themes sought to be covered are:

- role of complementary and effective environment policies in addressing any environmental concerns raised by trade liberalisation,

- environmental benefits of removing trade restrictions and distortions, in relation to high tariffs, tariff escalation, subsidies and high internal taxes including (i) action to address concerns of low-income commodity-dependent countries, and (ii) agricultural trade reforms.

The paper argues the need to address concerns of low-income commodity-dependent countries, the widening disparity between them and the rich industrial world and the importance of expansion and diversification of their export opportunities including diversification, market opening opportunities to be complemented by policies to improve supply capacity.

But beyond this, and asking the CTE to highlight these in its report to Singapore, and the need to address tariff escalation and high tariffs for processed commodities and complimentary actions in other international fora on these commodity issues, the Australian paper is rather vague on these questions.

It is much more specific on agricultural trade reform and reducing trade distortions by domestic support, border protection and export subsidies and the need for further reform.

But with the EU having refused to consider any action on agricultural trade reform, excepting in the context of the built-in mandate for further reforms at the end of the six-year implementation period, the Australian move (supported by some of the Cairns Group beneficiaries of the Uruguay Round) has given rise to some suspicion that Australia (leader of the Cairns Group) has used the concerns over the situation of the low-income commodity-dependent developing countries to push for further

accelerated trade liberalisation in agriculture and the second stage of the reform process.

On TRIPs, Malaysia and India had initially raised issues of life-patenting and other problems. The issue of life-patenting and genetically manipulated micro- and macro-organisms, and plant variety protection are due to come up for review after five years. Subsequently, India tabled a paper dealing with these questions, as well as issues of transfer of environmentally beneficial or sound technologies and or their involuntary use. Very recently, it appears to have narrowed down some of these, though the aim and reasoning are not very clear.

Domestically prohibited goods: This was an issue that came up at the 1982 GATT Ministerial Meeting and was made a part of the Work Programme. After raising it, its sponsors (Sri Lanka and Nigeria) did not pursue it very much and the GATT secretariat too conveniently ignored it. It again surfaced in the runup to Punta del Este. But its sponsor, Nigeria, was not even present at Punta del Este and it was not put on the negotiating agenda. But it continued on an off-and-on basis in the GATT machinery, with an understanding that a decision on this would be reached along with the Uruguay Round. A Committee worked on the issue of Domestically Prohibited Goods (DPGs) for some time, and a draft (with some square brackets) was readied for Brussels; that committee, after Brussels, did some subsequent work in an effort to reach a consensus, but did not proceed further during the long impasse on the Uruguay Round.

A principal problem was that the US wanted the decision not to apply to auto parts, and the pharmaceutical and chemical industry—i.e. it wanted to be able to export such items even if banned domestically, and not have any obligation even of notifications. In the hurry to conclude the Uruguay Round in December 1993, the GATT secretariat did not even mention this pending issue, and the commitment to reach an accord along with the Uruguay Round; and everyone seemed embarrassed by questions from

the media. It was then brought up as an item to be dealt with as part of the work of the subcommittee on trade and environment, and now by the CTE.

Unlike conventions like the Basel convention on toxic waste trade which attracts much public and NGO attention, the non-transparent ways of functioning of the WTO, has resulted in not enough public attention being paid. There has even been an attempt by some of the industrial countries to limit the scope and exclude, for example, food additives, cosmetics and consumer products on the ground that these are not really issues of "environment".

The African group of countries have called for measures to increase the transparency of trade in DPGs, and Nigeria has proposed a notification scheme. Beyond requiring that a WTO member imposing restrictions to ban or severely restricting any product on its domestic market, "should examine" whether the reasoning would require equivalent measures on all domestic production of such products, there is really no obligation not to export or export only after informed consent of the importing country.

A notification requirement in the WTO does not also automatically create any balance of rights and obligations enabling dispute settlement and binding rulings!

The aim of some of the major industrial countries to get a mini-package of "environmental decisions" (exceptions for MEAs, ecolabelling etc.) are very clear: it would meet the concerns and demands of their vociferous domestic lobbies, and once these are out of the way, the industrial countries could easily ignore further actions through the CTE on issues of interest to the developing countries and the wider environment/ development communities of the South and the North.

There is an issue that has not so far surfaced in the official WTO/CTE discussions, but one that has the potential for serious adverse conse-

quences. This is the concept of "eco-dumping" and the right to levy "countervailing duties" advanced by several of the environment NGOs of the US and Europe. Sometimes these have been advanced in the context of internalisation of costs and their reflection in prices, sometimes in terms of resource accounting. While some parts of the concept make sense in terms of environmental protection, and some seem attractive in the sense of usability of the concept to ensure fair prices for commodities, it teems with many problems. Coupled with the concept of PPMs, the eco-dumping and countervailing duty concepts could be potentially a powerful instrument for trade harassment and protection against individual competitive producers and exporters. Developing country academics and activists would need to study this issue more carefully and in depth.

3 The Trading System and Internationally Recognised Labour Standards

The trading system and internationally recognised labour standards have become one of the most controversial, and most polarised issue, along North-South lines, on the international agenda.

The proposal for a WTO social clause, linking multilateral trade rights and obligations with labour standards was put forward shortly before the Marrakesh meeting for formally concluding the Uruguay Round. It figured in speeches at the Marrakesh Ministerial meeting, with the US and France prominent. Since then, it has been proposed as a new trade agenda item, in non-papers by the US and Norway, for the WTO preparatory process towards the Singapore Ministerial Conference.[13] Immediately after Marrakesh, the International Labour Organisation (ILO) Director-General Michael Hansenne (former Labour Minister of Belgium who, with France, and a few others in Europe favour a social clause in the WTO) brought up the issue at the ILO and got a working party set up in the ILO for pursuing this.

The subject of Trade-Labour Standards has a long history—and goes back to the first half of the 19th century (during the mercantilist era), for example, when several of the legislations of developed countries of those days had some provisions purporting to be aimed at regulating international trade on moral grounds. At the time of the founding of the ILO, Britain which had lost its pre-eminence as the leader of the industrial revolution and a centre country, raised the issue; the UK again raised the issue at the ILO meet in Philadelphia. And in the 1920s, several European countries had additional tariffs on imported goods from countries with

"inferior conditions" of employment.[14] Some like Canada, USA, and the UK prohibited goods made by convict labour.

The Havana Charter and the International Trade Organisation (ITO) envisaged under it had provisions about "fair labour standards".[15] It must, however, be noted that the entire scheme of the Havana Charter and the ITO, which never came into force because of the US Senate refusal to ratify, was part of a different architecture. The Havana Charter and the ITO were envisaged to be one of the pillars of the post-war multilateral economic system, dealing with trade, and regulating both governmental and corporate behaviours. It was an essential part of the post-war economic philosophy and goal of full employment. The International Monetary Fund (IMF) and the World Bank, the two other pillars, have lost the role envisaged in that architecture. Merely invoking the Bretton Woods name and relating the WTO to that (as the WTO head does), not re-create that architecture, and without that architecture, the various provisions of the ITO are lifeless.

When the General Agreement (1947) was put in place provisionally, incorporating mostly the Havana Charter provisions relating to governmental trade policy and the exchange of tariff and trade concessions, only the references to convict or prison labour was brought in as a part of the Article XX General Exceptions.

With the post-war economic policy in industrial countries based on full employment and Keynesian economics, and with an unprecedented economic growth and rising per capita incomes, there was little reason for invoking the concept of "fair labour standard" or of "unfair trade" because of "inferior conditions of employment". At the time of the Havana Charter, much of the developing world was "unfree" and "colonies" and had no competing industries, or even any industries worth the name, and "development" was far away from the horizon of the then powers-that-be.

But first with Japan, and later with other developing countries, who began climbing up the first rung of the industrial ladder—textiles and clothing industries and exports—and compete, special protectionist measures came into play. But these were viewed as departures or derogations from GATT—the Cotton Textiles Agreement during the Kennedy Round, and later the multifibre agreement (MFA) which incorporated, as a derogation from GATT, the concept of "market disruption" caused by low-priced imports, attributed to low labour costs.

Unfair and unjust to the developing countries who were trying to catch up with their missed opportunities of the 19th century industrial revolution, these arrangements reflected perhaps the relative economic power equations, and were compromises reached without any moral arguments injected into them. But gradually, the protectionist forces against the rising competition began gathering strength, and the issue of "fair trade" and "labour standards" began to be invoked.

In 1979, the US proposed that the GATT's preambular objective of "raising standards of living" should be pursued to consider (a) differential standards within a country that favour the export sectors and (b) conditions dangerous to life and health at any level of development.

Such proposals, it should be noted, whether from governments of industrial countries or organised international labour, were mainly directed against manufacturing sectors of the developing countries and their exports. Agricultural and plantation commodity exports, with perhaps worse labour conditions than in industry, were never much the focus of attention. Such exports were not competitively threatening domestic production; and the loose disciplines in agriculture enabled the US and Europe to protect and shield themselves in particular areas of agriculture where the exports from the developing world were price-competitive.

The US again raised this question of labour standards at Punta del Este, but the Chairman's summing up at that time noted there was no consensus on this and other issues.[16]

In July 1987, the US asked the GATT Council to establish a working party to study the question[17]—the relationship of internationally recognised labour standards to international trade. But no decision could be reached because of wide opposition. The internationally recognised labour standards that the US then mooted were freedom of association, freedom to organise and bargain collectively, freedom from forced or collective labour, minimum age for employment, and measures setting minimum standards in respect of conditions of work.

The US itself has never been a party to any of these ILO conventions, but the argument was advanced that US Constitution and practice guaranteed these and the workers enjoyed higher rights than under ILO Conventions. But recently, in response to a questionnaire to all ILO member-governments, the US has explained, for example, that it had been unable to join the ILO convention against forced labour, because several States were privatising prisons and allowing the use of prison labour.[18]

Since 1987, from time to time, the US raised the issue, though often its delegates (under the Republican administration) appeared to be doing a pro forma job, but never in a way that would have jeopardised the new round of negotiations and the US objectives. It should be noted that after Punta del Este, the US raised the issue in the GATT Council, only after the Uruguay Round negotiations got organised, and all the problems had been sorted out, and the negotiating process had began.

In September 1990, the US raised the issue again in the GATT Council, seeking a working party and with amended terms of reference relating to three standards—freedom of association, freedom to organise and bar-

gain collectively and freedom from forced labour. Again there was no consensus.

Since about mid-1980s, the US has included references to workers rights in its schemes of generalised system of preferences, and other preferential trading arrangements. The European Communities sought to include references to minimum labour standards in the Lome Convention. Some international commodity agreements have references to labour standards (International Rubber Agreement, International Sugar Agreement etc.), but on a "best endeavour" basis.

The US 1994 legislation for implementing the Uruguay Round agreements, in S. 131, directed the US President to seek the establishment of a working party in the WTO to explore the links between international trade and workers' rights, taking into account differences in levels of development among countries, the effects on international trade of systematic denial of such rights, ways to address such effects, and for developing work programmes to coordinate the work of the WTO working party with that of the ILO.

The high and persistent unemployment in the industrial countries, and the slow growth rates (due to the macro-economic policy stances) that make no dent on the unemployment rates, have spawned the current debates about unfair competition and loss of jobs due to the lower labour standards. The new and euphoric talk about globalisation and liberalisation, the concerns among the public and workers of the North, over the perception that the TNCs are shifting production to locations abroad where labour is cheap and profit returns high, and the "downsizing" operations of TNCs that not only shed blue-collar jobs, but increasingly white-collar and professional and management jobs, have fuelled the demands in the North for trade-labour standards linkages. The high levels of unemployment now prevailing in the North, with no sign of its abatement, is partly responsible for the worries and concerns of the working classes, and middle classes, in the industrial world. Unfortu-

nately, for them, solutions don't lie in trade-labour standards link, but in the basic change of policies in the North to return to full employment.

The debate has been injected with a high moral tone, and this makes perhaps solutions difficult. The moral tone has been adopted by the Northern trade unions and the ILO itself invoking images of exploited child labour, bonded (or slave-like) labour, and unsafe and hazardous working conditions in many factories and commercial enterprises. This is probably because it is easier to raise emotions and gather support on a moral and human rights issue than on one based on economic questions.

And while organised labour in the North, and the governments raising the issue like France and the US, present their "demands" for links by referring merely to the three or four "core" labour standards, some of their expositions and arguments suggest that it is just a beginning to bring the issue on the WTO agenda—leaving room later to expand these standards and bring about "rising standards" for workers of other countries in line with their productivity, and thus ensure "fair" competition in international trade.

On the other side of the argument, several governments are advancing some specious arguments against rights of workers per se, based on so-called cultural and other values of individual societies. There can be little support for this idea, that is often expressed in private though not in public, about differing values of societies and hence differing approaches to labour rights in a modern capitalist economy.

There is probably wide support among civic society of the South on issues of human rights, and labour rights—more than what many governments would like to believe—and for international pressures on their countries and employers to behave.

However, it is one thing to raise international and national conscience on such questions, and use "peer" pressure on countries, and quite another

to use the WTO machinery for enforcing labour rights. Apart from anything else, these are counterproductive.

The problem of bringing the issue on WTO agenda is also different. The WTO is a system of contractual relations based on rights and obligations of its members. Its Dispute Settlement System provides for a Member aggrieved at not being able to exercise its rights because of the failure of another to carry out obligations to raise a dispute and, if its case is upheld, either be able to get the other party to carry out its obligations, or exercise its own right to retaliate i.e. "withdraw equivalent (trade) concessions" that would help restore the balance of rights and obligations.

The WTO has no provision for "collective" sanctions, but only for individual members, with authorisation, taking trade actions (retaliation or withdrawal of concessions) to restore a balance between complainant and defendant. And when "core" labour standards are presented as fundamental human rights, whose violation, whether or not a particular country is party to that ILO convention, is a matter for the collectivity of the international community and conscience, for such violation to be judged by the tripartite ILO or the UN as a political body, the trade retaliation through the WTO is a problematic and dangerous precedent. It would enable the powerful countries to use such sanctions or threat of such sanctions to exercise their will over the weaker countries.

Also, the WTO and trade sanctions can hit only the export sectors of a country—where often the conditions of labour are much better off—and the abuses complained of are often in the domestic sector production and consumption. A WTO trade retaliation thus would not even help the affected workers. But it is advanced on the ground that this would compel or "persuade" a government not enforcing the standards to do so. Several of the countries often cited with having child labour and abusive conditions of work, in fact have probably excellent statutes, while the problem is one of enforcement. But when the US Labour Secretary could get up at the recent International Labour Conference to

say that a rich country like it does not have the funds to establish the extensive labour enforcement machinery, and in any event can't prevail much against state and local authorities, can the developing countries do so or can they be coerced to do so?

4 Competition Policy and Restrictive Business Practices

The subject of Competition Policy and Restrictive Business Practices (RBPs) has been before the international community for at least 50 years. The need to discipline the behaviour of private corporations acting in concert in restraining competition has been recognised even before in many functioning market economies. Notable has been the US Sherman Act and other anti-trust legislations which in many ways have guided other national efforts. It has been axiomatic that the benefits of a free market will accrue to the consumer, and ultimately enable the free market to function efficiently, only when there is free play of competition, and any attempt by one or a group of private interests to prevent such competition is against public interest. Where a monopoly is inherent or inevitable, there has been state intervention to make it a public monopoly, subject to parliamentary overview and control, or subject to heavy state regulations of the private monopoly.

Competition and related laws are also designed or used for consumer protection, price regulations, dealing with Intellectual Property Rights (IPRs) which are state-ordained monopoly but often balanced by competition laws, trade laws, foreign direct investment, misleading advertising and unfair competition.[19]

Thus, it is no surprise that anti-competitive business practices have been on the agenda of international organisations dealing with trade. The Havana Charter, which dealt with the government role in international trade, and for rules to regulate some government interventions and control in international trade, also envisaged control of the anti-competitive activities of business-corporations acting in restraint of trade.

Chapter V of the Charter, and Article 46, laid out the general approach, the obligation of each ITO member to take appropriate measures and cooperate with the ITO "to prevent, on the part of private or public commercial enterprises, business practices affecting international trade which restrain competition, limit access to markets or foster monopolistic control, whenever such practices have harmful effects on the expansion of production or trade and interfere with the achievement of any of the other objectives set forth in Article 1". A whole gamut of procedures for a Member to seek consultation with other members, for complaints to the ITO and investigation by it, including asking another Member to furnish all relevant information and cooperation among members for remedial actions, were prescribed.

The General Agreement was a provisional agreement merely dealing with governmental measures in the area of international trade, put into place pending the entry into force of the Havana Charter. But it had no provisions on the behaviour of private parties—RBPs.

In 1954, efforts were made at the GATT to remedy this defect and deal with the situation[20], but this did not get far. In November 1958, GATT Contracting Parties recognised that international cartels might hamper expansion of world trade and economic development of countries and interfere with the objectives of the GATT.[21] A GATT convened expert group agreed there was a need to deal with such practices and GATT should do it, but differences on the nature of the action prevented further action. A decision was, however, taken for ad hoc notification and consultation to deal with conflicts of interest among contracting parties. The procedure was never invoked.[22] After it became clear that the Havana Charter would not enter into force, efforts were initiated at the UN and the ECOSOC (which had convened the Havana Conference) for initiation of processes to deal with RBPs. An Ad Hoc Committee on RBPs was set up by ECOSOC, and this proposed an international code largely on the lines of the provisions in the Havana Charter. But it did not command enough support for entry into force. And when the United Nations

convened and set up the UN Conference on Trade and Development, anti-competitive practices of private corporations, particularly those affecting trade and development of the developing countries began receiving attention. This was because of the recognition that many such RBPs affecting the trade and development of the developing countries originated outside their borders and needed some international rules to deal with them.

The issue figured on the agenda of UNCTAD II (New Delhi 1969), and at UNCTAD-IV (Nairobi, 1976) a decision was made for initiating actions at international level. This in turn led to negotiations under UNCTAD auspices on this issue which resulted in the adoption by the UN General Assembly (Resolution 35/63 of December 1980) of the "Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices" (The Set). This was made applicable to all transactions in goods and services. Its adoption became possible only after compromises recognising and legitimising non-arms-length transactions involving TNCs—between parent and subsidiary, or among subsidiaries—but still allowing actions in domestic law in cases of abuse of dominant market power.

The Set though is only a voluntary guideline, placing a moral obligation on governments to introduce and strengthen legislation in this area and ensure that their enterprises, public and private, abide by the code. There are some vague provisions for consultations among governments on the issues. The industrialised countries have repeatedly (at the five-yearly review conferences) turned back the efforts by developing countries to make the code a binding international legal instrument and for some "teeth" to secure cooperation of a country in whose territory or jurisdiction the anti-competitive practice arises with detrimental interest to other countries.

And while developed countries use these competition laws to hit anti-competitive practices and their negative effects on their domestic mar-

kets, they have generally ignored or often even encouraged export cartels whose activities affect other countries. Developing countries particularly have found it difficult to cope with these, and the cooperation of the developed countries in investigating and discovering such practices has been lacking.

The entire theory of competition and restrictive practices have also undergone some subtle changes over the last decades. Even before the war, but more so in the post-war era, the trade is essentially intra-industry, with trade in the same or similar products, final or components, and competition based on product differentiation and trade mark use etc. In this situation, there has been the concept and theory of oligopolistic competition serving public interest as efficiently as the normal competition among many producers envisaged in the classical market theories.

It has been taken to the point that a GATT secretariat study[23], detailing the simulation models used, about the benefits of the Uruguay Round, and an alleged $510 billion annual income gain (after ten years), had three models for estimating increase in merchandise exports under the liberalisation, and the welfare gains arising from these. The highest benefits were shown to be arising in conditions of monopolistic competition, which the GATT economists said is nearer to the real world than the world of perfect competition!

A frequently used example, by economics professors to illustrate these are the Coca-Cola Pepsi-Cola competition in the soft-drink industry. The GATT economists preferred to illustrate this world of oligopolistic competition with reference to the computer industry and the competition between IBM and Compaq corporations which allegedly were responsible for bringing prices down for consumers and thus increasing their welfare.

There are of course two problems involved with these concepts, vis-a-vis the developing countries.

Whatever the pros and cons of this concept of oligopolistic competition among the industrial countries, the developing countries face the problems of vertical integration characteristic of transnational corporate activities in the developing world. It is all inter-industry rather than intra-industry, and small and segmented markets. For example, the merger of Colgate and Palmolive some years ago, and more recently of the pharmaceutical firms Ciba-Geigy and Sandoz may or may not have had monopolistic effects in their home markets or in their export markets in industrial countries. But the former in India immediately created a high concentration and monopoly power. The Ciba-Geigy and Sandoz merger is creating problems in some product lines even in Europe. In Switzerland till recently the state did not intervene against cartels and laissez-faire applied to the detriment of public interest. Thus, at international levels, the concepts of competition policy and issues of intra-industry and inter-industry trade and competition have different implications.

Another problem with this concept of oligopolistic or monopolistic competition is that in economic theory, the profits maximised by firms are either distributed as dividends and incomes to shareholders or used for further investments and thus benefit the public, and thus monopolistic or oligopolist competition that enables profit maximisation with better consumer benefit is of public benefit and advantage. But when such competition takes place in the developing world, say between Coca-Cola and Pepsi Cola, the first casualty are the local and indigenous soft-drink producers, the capital employed there as well as the labour. Even if this can be tolerated by arguments about a better, cleaner and safer soft-drink (and there can be some major questions raised on these), the profit-maximisation and capital accumulation accrues to the home country of the capital. Coca-Cola and Pepsi-Cola may be "global" firms, but they are American firms, with predominant American capital and shareholders and the benefits are for the American public. It does not necessarily advance the process in the periphery. The problem becomes no different, and perhaps more acute, if it is viewed as a desirable IBM-Compaq competition, competition between two giants. It has undesirable side

effects in terms of the ability of the non-industrialised countries to catch up and innovate etc.

Several of the covered agreements of the WTO have provisions in them relating to competition laws and policies—mostly they preserve the right of states to use competition law for public purpose. Such provisions can be found in TRIPs, in the GATS and other agreements. But the scope for multilateral cooperation, and obligations for countries to cooperate to stamp out anti-competitive practices originating in one country or region with effects elsewhere are mostly absent, or minimal and pro-forma.

During the Uruguay Round negotiations on TRIMs, apart from the attempt to bring in by the backdoor all investment policies of countries under multilateral disciplines, even the efforts to attack only the governmental measures without dealing with the corporate behaviour of TNCs that have provoked such TRIMs were hotly debated. When a TNC uses inputs from its parent or some subsidiary elsewhere, instead of sourcing supplies domestically, it may be an "efficient" way of maximising profits, but does not improve the economy of a country. Hence government policies relating to local content, which are GATT-illegal, have now been eschewed. However, there could still be scope for countries to use their competition laws if they can show (by quasi-judicial processes) that the TNC foreign sourcing of inputs, when cheaper local supplies are available, is part of an anti-competitive policy. In any event, developing countries successfully resisted disciplines on the export-linked TRIMs, arguing that their measures requiring exports is related to the TNC practices against it. Hence the provision in TRIMs that at the time of the next review after five years, the issue of investment and competition policy would be examined.

Even now, in terms of promoting competition policies in the WTO, the industrial countries seem to be moving in terms of cooperation among themselves, but not with developing countries. An EU Commission paper says that a WTO agreement for closer coordination and enforce-

ment of domestic competition laws "might need to be limited initially to the industrialised economies and those developing countries which had the administrative machinery needed to handle sensitive commercial information". This approach has some serious implications for developing countries, who are much more the victims of such anti-competitive behaviour of transnational firms based in the industrial world, and have much difficulty in investigating and discovering evidence and ability to take action.

Given the longer experience of UNCTAD in the administration of The Set, perhaps there is a case for more studies and discussions at UNCTAD that could provide a better comprehension of the differing problems and the best way of multilateral actions to deal with them.

In fact the issues of foreign investment, technology transfers and restrictive practices and the competition issues are so interlinked that none of these could be dealt with in isolation, and there is no international organisation with competence. Only the UN can convene such a conference to address all the issues and see whether an overall framework is needed and if so of what nature, where, and how.

5 Other Issues

Corruption

A new issue that the US seeks to raise is one about "corruption" in the award of government contracts and procurement. The argument is that US businesses who by US law are prohibited from paying bribes lose out in biddings on government contracts and procurement in the developing world to their European, Japanese and other rivals because of payments made to foreign political figures and officials, and which are permitted to be deducted for tax purposes. It has proposed that as a first step towards solution there should be "transparency" and "notification" to the WTO, and later converting the current plurilateral government procurement code into a WTO covered agreement that everyone has to join.

Corruption is undoubtedly an evil that despoils public life. In the poorer countries, with limited resources, it also involves a huge waste of resources. No one can seriously quarrel with the need to eradicate it and bring to book officials and those holding high offices who abuse their power and positions for this.

But if it is to be seen as an issue distorting international trade, namely, award of contracts or procurement on other than considerations of market forces, should not heads of governments, presidents and prime ministers who go round the world with their country's leading businessmen seeking businesses also be punished? Should the net not be cast wide enough to catch those who get on the phone to influence foreign leaders by promises of other quid pro quos? A recent study in UK has brought

out that corruption has increased, and not decreased, after deregulation and reduction of government role and increasing reliance on the market.

A more basic question, and one that applies to all the new issues is whether the WTO is the best instrument to deal with them. Or, is corruption not a major political issue to be tackled through international political instruments that will bring to justice those who take bribes in countries, and the corporations abroad and their executives who ought to be punished equally. Related to these are a host of issues, including commissions and payments, tax avoidance etc. Facilitated by the transfer pricing activities of TNCs, with money secreted abroad in secret bank accounts and off-shore banking facilities. Can one element alone be dealt with while ignoring others?

Other New Issues

The statement of Chairman Abreau at Marrakesh had listed a number of other issues most of which have received little attention. Time and space prevents any detailed discussion of each of them, but some brief comments are in order:

The issue of immigration policies of countries is a necessary counterpart of both the issues of investment policy and the right of investors to be able to invest. The 19th century liberal order that is now being sought to be brought back, where there was freedom for investors had as its counterpart freedom to migrate and immigrate. There were few or no barriers. In terms of economic theory and factors of production, mobility for capital without equal mobility for labour, will make for a more asymmetric world. There are a number of issues involved, but not much attention has been paid.

In terms of GATS, there was an attempt at balancing it, by making movement of natural persons as one of the modes of delivery of services.

But in the GATS negotiations, there has been little or no movement, and any "offers" have been circumscribed by national policies (and saving of national regulations) relating to visas, immigration etc. This whole area needs some investigation.

The issue of rules on export financing was brought up by some developing countries even at the 1982 GATT Ministerial Meeting. This too has some implications for development and trade. It has implications for resources for development, but also in terms of unfair trade through the terms of export finance that is feasible for the industrial countries, but not for developing countries. There are some OECD guidelines in this area, but the whole area needs further work and study, and involving developing countries, as recipients and exporters. The financial and monetary issues and their nexus to trade has been raised on various occasions by developing countries and some industrial countries too. These have direct trade implications, as also in terms of development and ability to establish capacity for trade and exports. Unfortunately, repeated attempts to deal with these have been frustrated, and prevented and blocked by the World Bank and the IMF and the majors who control them.

A related issue, and one that has been more frequently coming up since the collapse of the Bretton Woods system, is the wide fluctuations and variations on exchange rate markets and their effects on trade. The European Commission has sought to raise it forcefully whenever the issue of agricultural liberalisation and its Common Agricultural Policy came under scrutiny. It raised the issue in the runup to Punta del Este, at Punta del Este and during the Uruguay Round negotiations. IMF, the purported expert body, in some studies and papers, has presented some variegated views. It has suggested that these exchange rate variations can be and are hedged on foreign exchange markets and thus needing no action. However, such hedging operations are not costless, and more so for developing country exporters and small and medium enterprises. There are also problems of adverse effects on medium- to long-term

investments, recognised in some IMF staff papers, but not too often in official policy pronouncements.

During the Uruguay Round final stages, the EU has ensured that actions can be taken by importing countries to counter price fluctuations due to variations of exchange rates in the area of agriculture. As a result of the Uruguay Round—tariffication of all support and non-tariff protection, and the way it has been done—even after the cuts in tariffs, the tariff barriers are very large and exchange rate fluctuations are marginal. Yet Article 5 of the Agreement on Agriculture has Special Safeguard Provisions to protect domestic producers. But in the case of industrial products, where exchange rate variations have impacts on exports and imports, there is no equivalent provision!

Commodity markets, mentioned in the Abreu statement, originally included in the Havana Charter, and subsequently an important item on UNCTAD agenda, appears now to have become parentless and an orphan of the liberal policies. Even UNCTAD-IX made no effort to address these questions, and even economic thinking appears to have neglected this issue.

These and others mentioned in the Abreu statement are of importance, more so if the WTO and its processes are used to extend the scope and area of multilateral disciplines to areas of domestic activity as the industrial nations seem intent. If they are not taken on board, and tackled, not only will the inequity in the system increase, but the system will become fragile.

Conclusion

Developing countries took an active part in the Uruguay Round negotiations, but largely actedon their own, without much effort at coordination. This is reflected in the outcome. There are now more developing coun

tries, and the new issues have some serious consequences for the future of their countries. And while, the industrial world has been meeting and concerting among themselves (within the Quad, in Europe-US Summits and half-yearly talks, within the OECD, and numerous conferences organised by them to promote these issues, the developing world has been largely passive. The informal group of developing countries have become non-functional. Even the regional and sub-regional groups have not been active enough, but have been allowingthe major nations and the WTO secretariat to push them around. The initiative to organise meetings within the South needs to be carried forward and continued with consultations among capitals, governments, and Geneva diplomats. Otherwise, South governments, civil society and negotiators will receive a harsh judgement at the hands of history.

Endnotes

1. Trade and Development Report, 1994, p170 FN. 286
2. John Croome (1995), Reshaping the World Trade System, World Trade Organisation, pp11-12
3. See Charles Gore (1996), "Methodological Nationalism and the Misunderstanding of East Asian Industrialisation", UNCTAD Discussion Paper No. 111, pp8-15, about the use of Fund/bank structural adjustment policies and now the new trade rules to enforce this neo-liberal paradigm.
4. Paul Bairoch (1993), "Economics and World History: Myths and Paradoxes", London, Harvester; Paul Bairoch and Kozul-Wright, "Globalisation Myths: Some Historical Reflections on Integration, Industrialisation and Growth in the World Economy," UNCTAD Discussion Paper No.113, UNCTAD; Mica Panic (1988), "National Management of the International Economy," London, Macmillan
5. Statement by the Chairman, MTN. DEC/Chair, 20 September 1996, GATT
6. In fact only the texts of the agreements, and even these subject to "revision" to correct errors and ensure internal consistency, were "locked up". The traditional exchange of tariff concessions for market access —in goods and services —had not been completed, particularly those involving developing countries,

and had not even seriously started for many of them. This went on almost till the Marrakesh meeting, with many (including the European Union) complaining they had neither been provided nor had seen the US schedules. This itself was an interesting commentary on the "promises" of the Uruguay Round and the way they were kept: the developing countries were supposed to be provided increased market access and export opportunities in return for their accepting increased disciplines in many new and old areas. But all the negotiators, more so from the developing world, were so anxious to send back home the accords (with final modified texts most often negotiated elsewhere and presented to them in the very last days without any chance to study or get changes) that they had to accept, they sounded euphoric at that time.

7. Chakravarthi Raghavan (1990), Recolonisation: GATT, Uruguay Round and the Third World, TWN, Penang, p58 and FN 14, p64
8. Third World Economics, No. 88/89, p21 [GATT document MTN.TNC/MIN/(94)6, 15 April, 1994
9. Paul Krugman (1995), "Dutch Tulips ...", Foreign Affairs, July/August 1995, Vol 74, No.4, pp26-28
10. Report of the Secretary-General of UNCTAD to the ninth session of the UN Conference on Trade and Development, TD/366/Rev 1, para 215.
11. Decision on Trade and Environment, "The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts", GATT Secretariat 1994, pp469-471; Decision on Trade in Services and Environment, ibid pp457-458
12. World Trade Organisation, "United States—Standards for Reformulated and Conventional Gasoline", Report of the Appellate Body, WT/DS2/AB/1996-1.
13. Chakravarthi Raghavan (1996), "Barking Up the Wrong Tree: Trade and social Clause Links", Third World Economics No. 129, pp11-15; for latest developments on this in the WTO see South-North Development Monitor—SUNS Nos. 3760, 3777 and 3784; and for ILO discussions see SUNS Nos. 3768, 3770, 3776 and 3778.
14. See G. Hansson, Social Clause and International Trade, Croom Helm Ltd. London, 1983.
15. Article 7 of the Havana Charter provided: "(ITO) Members recognise that measures relating to employment must take fully into account the rights of workers under inter-governmental declarations and agreements .....(and) all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognise that unfair labour conditions, particularly in production for export, create difficulties in international trade, and accordingly each Member shall

take whatever actions may be appropriate and feasible to eliminate such conditions within its territory."

The Charter provision required that ITO members, who are members of the ILO, shall cooperate with the ILO in giving effect to this undertaking and in all matters relating to this ITO itself was required to consult and cooperate with the ILO.

The ITO's general provisions about consultation and dispute settlement (Art. 93 and 94), and providing for decisions by the ITO Executive Board based on majority voting to authorise withdrawal of concessions, were applicable to this provision about labour standards.

16. GATT Basic Instruments and Selected Documents, 33rd supplement, 1987.
17. GATT documents L/6 196 of 3 July 1987 and L/6243 of October 1987; also SUNS 1755 p5.
18. Labour: US Can't Observe Core Labour Standards, SUNS 3640 pp2-5; United States: Captive workers, cheap labour, SUNS 3646 pp 6-7
19. UNCTAD, TD/B/RBP/Inf. 37
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