

What is at stake at Cancun and beyond for India?

A Summation of the National Symposium on Trade and Globalization
Conducted in New Delhi, India on 18 –19 August 2003.

A National Symposium on Trade and Globalization was jointly organized by the Government of India (GOI) , United Nations Development Programme (UNDP) and United Nations Conference on Trade and Development (UNCTAD) on 18-19 August 2003 at New Delhi. The objective of the Symposium was to enable the GOI to consult with its stakeholders before the 5th World Trade Organisation (WTO) Ministerial Conference in Cancun, Mexico. It was also an opportunity to have objective, focused and informed discussions on the issues on the Doha work programme. Around 150 participants from the Government, NGOs, think-tanks, academia, private sector and law firms attended this symposium. International experts from different parts of the world also shared their views.

The symposium was inaugurated by Honourable Union Minister of Commerce and Industry, Government of India, Mr Arun Jaitley. Ms Lakshmi Puri, Director, Trade Division, UNCTAD and Mr Maurice Dewulf, Acting Resident Representative, UNDP also spoke on the occasion providing their perspectives. The GOI made available its negotiating team, comprising *inter alia* of Mr Dipak Chatterjee, Secretary, Ministry of Commerce and Industry to interact with the stakeholders.

A: Overview

The key issues raised at the Symposium can be summarized as follows:

1. It was stressed that development issues raised by developing countries in key areas of *Special and Differential Treatment, Implementation Issues and TRIPS and Public Health* should be moved back into the center stage of negotiations.
2. *Market Access* negotiations on agriculture and industrial products needed to reflect the development aspirations of developing countries. Important issues to India in agriculture included the reduction and elimination of subsidies, and importance of special products and special safeguards mechanism. On industrial products, the principles of less than full reciprocity in respect of transition periods, low obligations, and low bindings were important for small and medium enterprises (SMEs) in India.
3. *Singapore Issues* i.e. investment, competition policy, transparency in government procurement and trade facilitation, still lacked clarity and Cancun was not the place to build consensus on these issues.

Making a presentation of the key findings of the UNDP publication **Making Global Trade Work for People**, its lead author Mr Kamal Malhotra, Senior Trade Advisor, UNDP underscored that trade was not an end in itself, but a means to development. It should contribute to meeting vision 2020 goal of India of becoming a developed country. Trade was a tool for human development and poverty reduction. This was underpinned at the highest political level by the UN Millennium Declaration and Millennium Development Goals (MDGs), especially MDG 8 on an open, equitable, rule-based, predictable and non-discriminatory multilateral trading system so as to have a pro-poor and development friendly trade regime.

Expert opinion emphasized that India's strategy on the road to Cancun should focus on the need to obtain a balanced result. India had a key stake in the multilateral trading system, both in terms of a defensive and a proactive agenda. In terms of its defensive agenda, India needed the policy space to pursue industrial and development strategies. The proactive agenda addressed squarely the supply side and competitiveness problems. It was pointed out that the technology and capital constraints needed to be removed so that India could become a player in international markets. Also, it was pointed out that the outlook of the Indian economy showed the increasing importance of services to national development and performance of the external sector. Of particular importance to India was Mode 1 on cross-border consumption of services and Mode 4 on movement of natural persons supplying services. At the same time, participants stressed that India must be aware of the agenda of other trading partners including in opening up India's large and growing market; use of regional trading agreements and bilateral free trade agreements to get the best deals on trade; and pursue practices that eroded the development denominator.

An opinion was expressed that the Singapore issues still lacked clarity. Countries were divided on these issues from a North-North and North-South basis as well as South-South. However these issues were being pushed strongly by some countries. India has been one of strongest opponents of the Singapore issues and should continue to maintain a firm stance. Other developing countries have also carried the same view but many have not foreclosed continued study and discussion of issues including on the definition, scope, coverage, special and differential treatment, implication of linkage with WTO dispute settlement mechanism and enforceability. An important perspective to keep in mind in dealing with the Singapore issues was that the implications of any possible WTO disciplines were fully understood and took fully into account the development concerns and priorities, as well as the capacities of developing countries. While there was no economic justification or clear social welfare gains that might arise from the Singapore issues, negotiations on these issues may be forced upon developing countries at Cancun. In the light of such an eventuality, India needed to be prepared with a Plan B, alternative options, that push for development-friendly agreements.

B: Implementation Issues and Special and Differential Treatment

Participants were deeply concerned that deadlines were being missed on these issues. They were also concerned about the tactics used by developed countries to brush aside the implementation issues and concerns of developing countries that (a) the Uruguay Round Agreements were asymmetric in the generation of benefits for developed and developing countries; (b) developed countries were not implementing some of their obligations faithfully; (c) S&DT (Special and Differential Treatment) in many areas were not operational or legally binding. The experience with implementation shows that it is important to exercise caution in the negotiations of new agreements and not to bank on the generosity of trading partners in interpretation and faithful implementation of the agreements in letter and spirit. An approach is called for which would respect the Doha mandate on expeditiously addressing and resolving implementation issues.

It was noted that on S&DT, an approach for negotiations was being developed by the Chairman of the General Council. It comprised of categorizing 88 agreement specific proposals into 3 categories. Several proposals have been submitted by India on such issues as dispute settlement, SPS (Sanitary and Phytosanitary Measures) etc. A comprehensive package which had economic and commercial value for developing countries needed to be agreed upon and adopted at Cancun. This experience with the operationalization of S&DT provisions indicated that developing countries should be careful not to negotiate commitments and agreements which they would have difficulty in implementing in the future. S&DT must be underpinned by a conceptual construct which encompasses human development goals, policy space, competitiveness and the perspective that it was in the interest of both developing and developed countries as well as the multilateral trading system. Such an S&DT framework should be mainstreamed into each negotiation areas under the Doha work programme. India should also be aware that the notion of differentiation may be used as a divisive tactic and may prevent coalitions among developing countries on key negotiation issues such market access and the Singapore issues.

C: Singapore Issues

It was noted that the negotiation on the Singapore issues were subject to “explicit consensus” among WTO members on modalities. There are varying interpretations over “explicit consensus” and over modalities between some countries saying it would cover only procedural aspects, while developing countries were concerned that modalities will imply negotiations. There is pressure for de-bundling of issues including modalities. It was emphasized that India must be cognizant that the main and real interest of the proponents of the Singapore issues was market access into developing countries and that any WTO commitments would be binding in perpetuity. India should also be cognizant of the costs of implementation, who would bear such costs, and if the obligations could be implemented with existing capacities; and the impact on strategic national policies to promote industrialization. The consideration of the issues is to be based progressively on clarification of issues, examination of modalities, agreement on modalities based on explicit consensus, and launching of negotiations. At this stage, the process is still at the

first stage of clarification of issues so there is no basis for launching of negotiations. Further, a large number of developing countries, ACP countries and LDCs are concerned also about the Singapore issues overloading the agenda of the WTO and further marginalizing their participation. Concern was expressed that there should be no linkage between the Singapore issues and negotiations in other areas.

- Investment: An investment framework should assure that investment flows are stimulated to developing countries and are directed to best serve their economic, social and development objectives. There is no guarantee that an investment agreement would do so, as the conceptual basis for such an agreement is quite weak. However, should negotiations be launched then a development-friendly framework is required and this could include the following options for India: negotiate outside the single undertaking (or restore draft UN Code of Conduct on TNCs); focus on greenfield investments i.e., export-oriented FDI; a very cautious approach to dispute settlement and investor protection such as State-to-State dispute settlement only; confine agreement to goods, as services are covered under GATS; and flexible instruments that could feature in an investment framework include GATS Mode 3 where exceptions can be scheduled in the liberalization commitments or GATS Article VII where countries can join when they are ready for such an agreement.
- Competition policy: India and other developing countries might have an interest in a multilateral framework for competition, as they were demanders of it in the past from the time of Havana, to deal with anti-competitive practices and M&As which affect trade. Already certain existing WTO Agreements, such as GATS, include elements of competition. Some of the key issues flagged for India included the following: (a) all countries should have domestic competition policy and law; (b) cooperation among countries' competition authorities can be useful if it offers a structured framework of voluntary cooperation and which could be built up later to include other elements, depending upon the level of comfort reached with each other; and (c) each Singapore issue should be dealt with separately, i.e., unbundled, and not a part of single undertaking, and in this spirit deal with competition policy issues. The key benchmark is that competition framework should enable developing countries to deal better with anti-competitive practices within their countries as well as in international markets that affect the capacity of their enterprises to compete fairly.
- Transparency in Government Procurement: The key issue was that developing countries should be enabled to procure public goods at best value whilst safeguarding their flexibility to take necessary measures to foster the capacity of domestic enterprises especially their small and medium enterprises, and other issues of national interest. It has been estimated that the size of government procurement market is around US\$2.1 trillion in OECD countries and \$1.3 trillion in non-OECD countries and the corresponding potential contestable markets are US\$1.8 trillion and US\$ 287 billion.

- Trade facilitation: Trade facilitation and related initiatives should enable developing countries to spur modernization of their trade infrastructure and help strengthen the backward linkages with production and forward linkages with markets. The need to consult with stakeholders to take into account their interests was stressed. The resource implications for trade facilitation would be tremendous and, for this reason alone, caution is required despite the obvious benefits of trade facilitation.

D: Agriculture

It is important for India to engage in the negotiations to achieve the objectives of Doha work programme and accomplish long term goals of agricultural liberalization. It is important to discipline trade distorting policies with a view to have a pro-poor agriculture policy. It is also important for India's development policy, to raise agriculture growth to contribute to increasing the country's share in world trade. In this light there is need to build a case to resolve the stalemate on agriculture and to assure that the results improve the livelihood of very small farmers and their dependents which number some 650 million in India.

Key negotiation objectives highlighted at the Symposium included significant reduction in subsidies, meaningful market access (including elimination of tariff peaks and escalation) and meaningful S&DT including dealing with impact of liberalization on net food importing developing countries. S&DT related to rural development and food security was also specifically identified as an objective of the agriculture negotiations in the Doha Declaration. It was noted that India's bound rates were 100-300% but on 89% of them the applied rates were below 50%. While noting that some reform is taking place on subsidies, including through the Common Agriculture Policy (CAP) reform, it would appear that the overall levels of subsidies by OECD countries were not being reduced. Rather the support was simply being shifted from the amber box to the blue and green boxes. It was recognized that India had called for reductions of support measures and placing of caps on green and blue box measures (along side tariff reductions). In terms of S&DT, India had proposed that some "special products" be exempted from tariff liberalization commitments. It also sought to invoke a right to "special safeguards mechanisms" in case of import surges or national emergencies to meet food security needs and rural livelihoods. It was mentioned that the persistent decline in commodity prices added to the difficulties in agriculture. It was also pointed out that ever since India removed its quantitative restrictions in the late 1990s, the diversification of its domestic agriculture was affected. Thus reduction in tariffs if not accompanied by reductions in domestic support and export subsidies by developed countries may have adverse effects for Indian agriculture. In this context, some participants observed that the latest US/EC proposal, submitted on 14 August 2003, did not reflect the interests of developing countries. Thus, India with other developing countries would submit a response to this proposal.

The participants highlighted that in parallel to the focus on negotiations under the Doha work programme, India also needed to articulate a strategic view on development of

agriculture and a coherent approach between domestic policy on agriculture and related policies and evolving international disciplines.

India has to develop, diversify and add value to its agricultural production structure and become competitive, and thus compete in international markets including in exporting high value products. Some issues in this regard included the rising cost of inputs which impinged on competitiveness of agricultural production and exports; non-tariff barriers such as SPS; and constraints in financing and other instruments including measures identified, for example, by the Monterrey Conference on Financing for Development and the World Summit on Sustainable Development.

E: Non-agricultural market access (NAMA)

In the discussion on India's participation in the NAMA negotiations it was emphasised that India needed to take into account a number of strategic considerations. One was the tariff reform agenda involving tariff cuts from 300% in 1991 to 25% in 2003, which envisaged further cuts to maximum of 20%. Another was the proliferation of the regional trading agreements (RTAs) and that India has started to negotiate some such RTAs with several other countries. Further, about 60-70% of India's tariffs were bound, ranging from 25% and 40%.

The meeting was informed of the expert analysis conducted of the modalities on NAMA negotiations. The Chairman of the concerned WTO Committee on NAMA had proposed a tariff reduction formula similar to the harmonizing formula whereby the maximum coefficient would be a function of each country's national tariff average. His revised proposal of 11 August 2003 was more demanding in terms of tariff cuts. The latest joint Canada/EU/USA proposal proposed a simple ambitious Swiss formula on a line-by-line basis. Furthermore, it introduced a system of credits providing less ambitious tariff cuts for developing countries that bind more than 95% of their tariffs. It was expressed that these first two proposals imply ambitious tariff cuts and demand strong liberalization effort from developing countries. The Swiss type formula would require more dramatic tariff reduction and put more liberalization pressure on developing countries and India. The Indian proposal is more moderate, leaving space for industrial and development policy purpose. India considers that developing countries need to keep reasonably high level of tariffs on sensitive products, leaving them unbound.

The importance of the principle of "less than full reciprocity" in the possible commitments was stressed. The outcome of the negotiations should provide some policy flexibility for domestic industrial development purpose. It was expressed that sectoral elimination should be undertaken on a voluntary basis, and some of the sectors, in particular auto components and electronic goods, identified in the Chairman's proposal for tariff elimination could have adverse effects on industrial strategies. Genuine market access liberalization needs to be accompanied by the identification and removal of non-tariff barriers.

F: Services

The service sector agenda is a crucial component for ensuring trade benefits and development gains of developing countries. The most important outcome of the services agenda may include: securing an increasing market share for suppliers of services from developing countries in foreign markets; effective implementation of Article IV and XIX, which have to be supported by an enhanced non- reciprocal access of services exports of developing countries to developed market economy countries; commercially meaningful commitments on Mode 4 and labor intensive services; and ensuring the right of developing countries to implement measures to strengthen domestic services sector and to pursue national policy objectives; preserving the GATS architecture, and implementation of disciplines for emergency safeguards measures and for the treatment of economic needs test (ENT).

From the Indian perspective, the services sector is considered as one of the engines of development. Main areas of priorities in the ongoing GATS negotiations are the total elimination of barriers to the movement of natural persons and of ENT as well as domestic regulations affecting the professional services. In the longer-term perspective, it was recommended that the Government of India might explore the possibility of setting up an Indian Observatory of Trade in Services. This may be conceived as cyber super-structure to monitor performance of services industries, as well as their progress in the elimination of trade barriers affecting all modes of supply in particular Mode 4. This venture may be conceived as a network of academic and research institutions and most relevant actors from the public and private sector.

G: Trade-Related Aspects of Intellectual Property Rights (TRIPS)

On the Doha Declaration on TRIPS and Public Health, India would like to see a consensus develop on paragraph 6 based on the 16 December 2002 Chairman's text. There should be no further watering down of this text.

While it is quite clear that the TRIPS discussion in Cancun will take place mostly around the TRIPS and public health area, this should not crowd out other important developmental issues of relevance to developing countries, especially India, as the agreement affects almost all aspects of development strategy, from agriculture and food security to industrial and technology policy. These issues include geographical indications, technology transfer and traditional and indigenous knowledge and resources.

On geographical indications (GIs), Article 22 (protection of GIs), Article 23 (additional protection in respect of wines and spirits; negotiations for establishment of multilateral registry) and Article 24 (certain exceptions) continue to be the focus of further deliberations. While India's position was to extend the GI beyond wines and spirits the participants felt that further study was needed on the commercial benefits of GIs for India.

On technology transfer, the increasing importance of knowledge-based economy would require flexibility in terms of technology transfer and innovation, and impediments to technology transfer, innovation and imitation should be addressed swiftly. Trade related technical support in that area should be operationalized, and ways of amending TRIPS have to be found in the WTO. Articles 66 and 67 as well as provisions such as the Bolar Provisions could be utilized.

On traditional knowledge, India has a Plant Variety Protection Act that protects farmers' rights and traditional knowledge. India may adopt UPOV which would erode some of the farmers' rights contained in the present act. Experts recommended that the African proposal on patents for life forms be supported. India has asked for the linking of TRIPS and the Convention on Biological Diversity (CBD), and for full disclosure of the genetic source of pharmaceuticals and further that indigenous knowledge should be brought into TRIPS.

H: Global Trade “as if People Mattered”: Keeping Development in Focus

The final session, which was on “global trade as if people mattered”, confirmed the importance of integrating human development and poverty eradication goals into the negotiations of the multilateral trading system. It was underscored that international trade was a means towards development and eradication of poverty and should not be seen as an end in itself.

While the importance of global integration could not be discounted, the record of the 1990s had been highly discouraging. Developing countries were much more prone to international transmission of deflation and other problems due to rapid and unmanaged trade liberalization. There is often a powerlessness of developing countries in cushioning effects on employment and livelihood. The fiscal constraint due to increasing trade liberalization was another factor that limited developing country governments' ability to conduct well-focused development policies.

Thus, it was felt that multilateral trade negotiations need to be guided by an integrated human development perspective in the background. Seattle 1999 was a watershed and concerns were raised by governments and CSOs on the global trade regime. Many WTO policies had a negative impact on industrial and development policy of developing countries, and this was making it increasingly difficult for poorer countries to move up the value addition chain. Arguments with opening of trade should not be mixed with fairer trade. The panel observed that the current regime of trade sanctions created imbalances as threat of sanctions by developing countries was less credible.

The main messages of the UNDP co-sponsored book titled Making Global Trade Work for People were reiterated:

1. Trade should be a means to human development rather than an end.

2. Current trade regime focuses too much on trade liberalization and market access and less in providing policy space to developing countries.
3. Empirical evidence suggests that liberalization is not a reliable or sufficient mechanism for self-sustaining growth and poverty reduction, let alone human development.
4. Gender discrimination is all pervasive. The trouble with export-driven growth is that it happens at the expense of gender equality.
5. Multilateral trade rules should look for harmonization not standardization.

It was stressed that the trade regime should allow for diversity in national institutions and standards. Countries should have the right to protect their institutions and development priorities and no country could impose its institutional preferences on other countries.

The appropriate trade policy depended not only on the trade regime but also on domestic policy that a country can pursue successfully. Scarce domestic resources should not be diverted to risky globalization policies. Investment is primarily a development agenda and each country should have freedom to promote its own agenda.

Stability and growth in agriculture were essential to alleviate poverty, reduce social tensions and strengthen democracy. Thus, the focus on negotiations for agriculture should strive for an all-inclusive growth. These will also benefit developed countries in terms of increased market opportunities and developing countries should have flexibility in policy making.

Substantial public support for development policies has to be built. If people matter in global trade, then a system of development policy must be set up based on principles of redistribution, for the creation of jobs, income transfer, social security, and skill formation.

In sum the session delivered the following key messages on trade and development:

1. Multilateral trade negotiations need to be guided by an integrated human development perspective in the background.
2. Domestic development strategy should inform the negotiations, which should provide specific provisions for safeguards for those that could be negatively affected. For an informed decision to take place, it is important to assess the possible human development impact beforehand and communicate it efficiently and analytically to trade negotiators.
3. Trade negotiations should internalize the importance of protecting development policy autonomy at the domestic level. Developing countries must insist on and ensure throughout the process of negotiations that their policy autonomy is preserved.

4. The international community at large and industrialized countries in particular should view the multilateral trading system from the perspective of the goals and targets set by the Millennium Development Goals, and specifically from the perspective of the MDG 8 which is about a broader development partnership.

A development friendly multi-lateral trading system should give utmost importance to development policy space of developing countries and be supportive of it. This – an equitable trading system - is the most crucial mechanism through which the MDG 8 on global development cooperation can be fulfilled to achieve poverty eradication and other goals within the deadline.
