

MONITORING REPORT ON THE ACTIVITIES OF THE WTO: POSITIONS OF THE DEVELOPING COUNTRIES

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The paper starts with a review of the developments related to the Third Ministerial Conference of the WTO, held in Seattle, which represents a turning point in the history of the WTO. Then, after reviewing the recent developments within the framework of the dispute settlement mechanism of the WTO, the paper focuses on the positions of the developing countries with respect to the major issues discussed recently at the WTO fora. It examines topics such as special and differential treatment in favour of the developing countries; trade and development; investment; competition policy; government procurement; transfer of technology, and the Trade-Related Aspects of Intellectual Property Rights (TRIPs); and the systemic issues, i.e., those relating to the institutional problems and functioning of the WTO. The study concludes that the OIC countries should establish effective consultative mechanisms amongst their governments and private sector representatives to determine common priorities and policies to be pursued collectively during the trade talks.

1. INTRODUCTION

The slowdown of the world economy as a result of the 1997 Asian Crisis was reversed mainly due to the demand increase in the United States and the recovery in the Asian emerging markets in 1999. The demand increases in private consumption and investment in the US benefited the countries in North America, Asia (excluding Japan) and to a lesser extent in Western Europe. The Russian Federation and Brazil also recovered from the Crisis. The strong investment trend in the US concentrated on the high technology sectors, particularly the information technologies. The high technology companies in the US acted as the engine of this development. The computers and mobile phones were the most dynamic branches within the information technology sector.

However, in such a recovery period, the performance of the developing countries, excluding the emerging markets in Asia, was not quite promising mainly due to the continuously deteriorating trend of

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commodity prices, excepting crude petroleum prices which more than tripled, from \$10 a barrel in February 1999 to more than \$30 at the beginning of 2000. "... the annual average prices of non-fuel commodities fell to a ten-year low" (WTO, 2000d, p.6).

The continuous fall in non-fuel commodities eroded the hopes and expectations of the developing countries about the future benefits of the liberalisation process being implemented under the umbrella of the World Trade Organisation (WTO).

After a five-year implementation of the WTO Agreements, the developing countries could not observe any improvement in their positions. In trade, despite the liberalisation process, areas of export interest to developing countries, particularly agriculture and textiles and clothing, remain heavily protected. Capital markets in developing countries are opened up, whereas labour markets in developed countries are being protected. In developing countries, balance of payments problems and high external indebtedness still continue. They are still highly dependent upon commodities for production, employment and foreign trade. They lack modern technology to enlarge their production base. Developing country firms have enormous difficulties to enter world markets, particularly the industrial countries' markets because they have to confront huge multilateral corporations. The income gap between the developed and the developing countries has become wider.

These persisting imbalances in the world economy and existing inequalities in terms of rights and obligations in various WTO agreements led the developing countries to lose their confidence in the multilateral trading system established at the end of the Uruguay Round. Mainly because of such factors, developing countries have announced their complaints and clearly explained their ideas about the scope and substance of the WTO agreements and the functions of the Organisation itself during the Third Ministerial Conference held in Seattle, US, in December 1999.

The present paper aims to summarise the developments which took place during the Seattle Ministerial Conference and take up positions of the developing countries with respect to the major issues being discussed recently at the WTO fora. These include special and differential treatment in favour of the developing countries, trade and

development, investment, competition policy, government procurement, transfer of technology, the TRIPs, and the systemic issues. Furthermore, because of its importance, the paper also summarises recent developments within the framework of the dispute settlement mechanism.

2. THE THIRD MINISTERIAL CONFERENCE

The Ministerial Conference is the highest decision-making organ of the WTO. It convenes at least every two years. The First Ministerial Conference was held in Singapore from 9 to 13 December 1996 and the second one in Geneva from 18 to 20 May 1998. The Third Ministerial Conference of the WTO was held in Seattle, Washington, from 30 November to 3 December 1999. The US chaired the session. Pakistan, Burkina Faso, and Colombia were the other Office Members. Ministers and senior officials from more than 150 countries attended this meeting.

Before the Conference, expectations about its outcome were quite high. First of all, the Third Ministerial Conference was expected to launch another round of multilateral trade negotiations. Especially, the European Union was calling it the **Millennium Round**. On the other hand, the US, being the host of the Conference, preferred the term **Seattle Round**. However, the outcome was quite a disappointment against all expectations. The Conference ended without an agreement. A very dim atmosphere about the future of multilateral talks replaced the expectations for further liberalisation of the global trade in almost all areas.

In September 1998, the General Council, the executive body of the WTO, started the preparations for the Third Ministerial Conference in Geneva. The Council aimed to prepare a draft declaration to be submitted to Ministers. This declaration would define the future work programme of the WTO including further trade liberalisation objectives.

As required by the Second Ministerial Declaration, adopted in Geneva in May 1998, the preparatory work concentrated on the following areas:

- (a) issues and proposals relating to the implementation of the WTO Agreements;

- (b) issues and proposals relating to already mandated negotiations on agriculture and services and “built-in agenda” in other areas;
- (c) issues and proposals relating to the follow-up of the High-Level Meeting on the Least-Developed Countries, held in 1997;
- (d) issues and proposals relating to other possible work on the basis of the programme initiated at the Singapore Ministerial Conference such as “new issues” and
- (e) any other matters concerning multilateral trade relations of WTO members.

In addition to these issues, an additional work programme on electronic commerce was to be included in the preparatory work.

The proposals of the member countries relating to the draft agenda of the Conference were gathered over the 14-month period. As of 25 November 1999, 248 proposals had been submitted in more than 20 subject areas, of which more than 50 per cent were submitted by the developing countries. The greatest number of proposals was in the area of agriculture (46 proposals), services (25 proposals), TRIPs (15 proposals), industrial products (14 proposals), and “new issues” (37 proposals).

However, the efforts to reach a consensus on the draft declaration failed and the Third Ministerial Conference had to commence in an ambiguous environment. Furthermore, although the Conference was initially scheduled to start in the morning of 30 November, it could only be formally opened in the afternoon of the same day because of the anti-WTO street demonstrations by non-governmental organisations (NGOs). At the Plenary Session, the Ministers adopted a four-point agenda including the following items to:

1. review WTO activities and evaluate implementation of past agreements;
2. adopt a Ministerial text and examine any other action necessary for the future work of the WTO;
3. elect officers for the next Conference and
4. decide on the date and venue of the next Conference.

The Chairperson of the Conference, US Trade Representative Ambassador Charlene Barshefsky, announced the creation of four open-

ended Ministerial Working Groups on the key issues of the draft declaration at the plenary meeting in the afternoon of 30 November. These groups would cover the issues of Agriculture, Implementation and WTO Rules, Market Access, and the Singapore Agenda and Other Issues (Table 1). Another working group on Systemic Issues was established to address the members' concerns regarding the broader institutional issues of improving active participation of all members in WTO activities, transparency and relations with civil society. In addition, an Ad Hoc Group on Trade and Labour Standards was established to take up proposals submitted by some Members on 2nd December. A Committee of the Whole, chaired by Ambassador Barshefsky, was also established as the overall co-ordinating body for this working structure (WTO, 1999, p.1).

However, during the deliberations of these Working Groups, no consensus could be reached on the declaration. Since it was understood that the deadlock on the draft declaration could not be solved at the plenary, the Conference ended without an agreement. Soon after the Conference, talks to break this deadlock commenced. However, the future of the trade negotiations seems to be dim with only two exceptions: agriculture and services already mandated to begin in 2000, as the WTO Members have already agreed and written into the Agreement on Agriculture (Article 20) and the General Agreement on Trade in Services (GATS, Article XIX). These two topics constitute the major agenda items of the new trade talks in Geneva. Then, whether the WTO members will want to add other topics or complete the agenda that was under discussion in Seattle remains to be seen.

The reasons behind the deadlock and the following suspension of talks in Seattle can be summarised as follows:

First of all, the developed countries, the US, the EU and Japan were very keen to protect their trade interests in various areas. While doing so, they never compromised. The US, in particular, did not pay any attention to the other countries' opinions, wishes or interests. Furthermore, the developing countries were quite disappointed because of the negative attitude of the developed countries towards them and because they and the least-developed countries felt further marginalised during the deliberations in Seattle.

Table 1
The Full Structure and Issue Coverage of the Groups Established at Seattle

Committee of the Whole	Overall body for the working structure Chair: US Trade Representative, Charlene Barshefsky
Working Group on Agriculture	Agriculture Chair: Minister for Trade and Industry, George Yeo (Singapore)
Working Group on Implementation and WTO Rules	Issues relating to implementation of WTO Agreements and decisions; WTO rules Chair: Minister for International Trade, Pierre Pettigrew (Canada)
Working Group on Market Access	Non-agricultural market access Chair: Minister of Trade, Industry and Marketing, Mpho Malie (Lesotho)
Working Group on Singapore Agenda and Other Issues	Investment; Competition; Trade Facilitation; Transparency in Government Procurement; Other elements of the Work Programme Chair: Minister for International Trade, Lockwood Smith (New Zealand)
Working Group on Systemic Issues	Improving active participation of all Members in WTO business; Transparency; Relations with Civil Society Chair: Minister for Foreign Affairs, Juan Gabriel Valdes (Chile) Co-Chair: Minister for Commerce, Business Development and Investment Anup Kumar (Fiji)
Ad hoc Group on Trade and Labour Standards	Trade and Labour Standards Chair: Vice-Minister for Foreign Trade, Anabel Gonzalez (Costa Rica)

Source: WTO (2000a), *Annual Report 2000*, World Trade Organisation, Geneva, 2000, p.30.

On the other hand, the developing countries were more active in this meeting as compared to the earlier WTO Conferences. During the deliberations, they have rejected the idea of including new issues in the agenda of the WTO before full implementation of existing liberalisation commitments by the developed countries. In this regard, many developing countries suggested that, starting with the Third Ministerial

Conference, the WTO work should be devoted to a process of “Review, Repair and Reform” (the Three Rs).

Furthermore, they insisted that the developed countries must respect the provisions on special and differential treatment of the developing countries. Actually, WTO agreements define special and differential treatment arbitrarily. The developing countries wanted these provisions to be clarified and to be based on specific development criteria instead of arbitrarily defined transition periods. The developing countries also stressed that the issue of trade and labour should not be the subject of further discussion under the WTO, but should be addressed within the framework of the International Labour Organisation (ILO).

On the other hand, the developed countries wanted to expand and intensify the WTO functions and operations during the proposed new round of multilateral trade negotiations in addition to its present agenda. Actually, the scope of the WTO is being enlarged with the inclusion of more trade-related matters in its agenda since the First Ministerial Conference in Singapore. Better known as Singapore issues, these included labour standards, competition policy, trade and investment relationship, government procurement, etc.

The US insisted on the necessity of including liberalisation of trade in services, agriculture, industrial tariffs, market access, genetically modified products, trade and environment, government procurement and electronic commerce in the future agenda of the WTO. But it did not want to discuss the issues of competition and dumping. Against these, the EU proposed to include trade and labour issues in the future work programme of the WTO, while objecting to the inclusion of agriculture in the agenda. The EU defended strongly its Common Agricultural Policy (CAP) in Seattle. The EU sought to protect textile products and to limit entry of hormone and genetically modified organisms (GMOs) and particularly food. Furthermore, the EU and Japan wanted to bring dumping, trade and investment issues and competition policy under the WTO.

Whereas the developed countries keep proposing, one after the other, new issues like electronic commerce, biotechnology, etc., for inclusion in the agenda of the WTO, they are rather slow to undertake their commitments in the already agreed areas such as agriculture, textile, etc.

At Seattle, there were major differences between developing and developed countries, and amongst the developed countries themselves. The Third Ministerial Conference will be criticised for its lack of inclusiveness and representativeness, because there was also the problem of restricted participation and 'green room' negotiations to which only developed and a limited number of developing countries were invited. In such an environment, the developing countries strongly objected to the inclusion of various topics, which could jeopardise their development aspirations and might even lead to the collapse of their domestic industries. Actually, it can be said that in such an environment of strongly conflicting interests, the Seattle Conference was doomed to failure.

3. DISPUTE SETTLEMENT

It has recently been announced that 194 disputes were registered within the framework of the dispute settlement mechanism since the WTO's inception in January 1995. The number of cases increased from 25 in 1995 to 47 in 1997 and then declined continuously to 30 in 1999 (Table 2). During the period 1995-1999, 77 disputes were resolved.

Table 2: Annual Progress of Disputes
(Number of Cases Filed)

1995	1996	1997	1998	1999	2000 (Jan.-May)
25	39	47	44	30	9

Source: WTO, Press Release: WTO's Unique System of Settling Disputes Nears 200 Cases in 2000, Press/180, 5 June 2000.

The countries involved in this mechanism as complainants were the US with 60 cases out of 194, the European Communities with 50 and Japan with 8 cases. All the developing countries, of which India, Brazil, Mexico and Thailand were the most active ones, made only 50 complaints. As respondents, the US was involved in 42 cases, the EC in 28, Japan in 12, and all developing countries in 67 cases.

In 26 cases, these disputes were related to the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT). The Agreement on Agriculture was cited in 25 cases, Trade-Related Aspects of Intellectual Property Rights (TRIPs) in 21, Trade-Related Investment Measures

(TRIMS) in 15, textiles in 13 and the General Agreement on Trade in Services (GATS) in 9 cases (WTO, 2000, p.2).

The dispute settlement system is based on well-defined rules, procedures, and timetables for completing a case. At the first stage, the system aims to settle the trade disputes through consultations amongst the disputing parties. During the period 1995-1999, the countries themselves resolved 41 cases out of 77. If the parties themselves cannot solve the case, the Dispute Settlement Body (DSB) sets up a panel to settle the disputes. This panel makes recommendations on the dispute in the light of the WTO agreements. The panel's report is adopted by the DSB. In the DSB, the decision can be rejected only by consensus. These procedures are to be completed within a certain timetable. The WTO members are bound by the results of the panels and, if necessary, the Appellate Body.

In general, it is assumed that the dispute settlement mechanism ensures the just implementation of the rules and regulations of the international trade system. However, in practice, the panels and the Appellate Body are criticised for interpreting the WTO Agreements in such a way as to increase the obligations of developing countries and the rights of the developed countries.

The dispute settlement system is also quite complicated and needs specialisation in formulation of complaints and responses. Lack of such an expertise is a major handicap for some developing countries, particularly the least-developed ones.

Furthermore, the WTO Secretariat plays a leading role at every stage of panel proceedings. It suggests the names of experts. If parties cannot agree on them, the Director General names the panellists. On the other hand, these panellists also know that if they are not in line with the WTO Secretariat, they will not be called again. The Secretariat also provides notes to the panels on the intentions and meanings of the provisions in question. This way, the Secretariat guides panels to reach a decision in a particular direction. Of course, at the beginning, it was not considered that such interventions might jeopardise the fair and full implementation of the WTO Agreements. However, after observing the dispute settlement system for five years in operation, it appears that the whole system needs to be reviewed in such a way as to eliminate these types of problems.

4. POSITIONS OF THE DEVELOPING COUNTRIES

During the First WTO Ministerial Conference in Singapore in December 1996, the developing countries suddenly found themselves obliged to accept or at least to discuss the topics of interest to the developed countries within the framework of the multilateral trade negotiations. Issues like information technologies, financial services, basic telecommunications, labour standards, trade and investment relationship, rules of competition, government procurement, etc., were included in the Agenda of the First Ministerial Conference in Singapore. Furthermore, they had to conclude an information technology agreement (ITA) in Singapore just two years after the conclusion of the Uruguay Round. Previously, the conclusion of such an agreement would need a long negotiation process during which all the pros and cons of the topic could be discussed in detail.

This process continued after the First Ministerial Conference in Singapore, the agreements were also concluded in the fields of financial services and basic telecommunications in addition to the ITA. But the developing countries could not obtain, in their favour, reciprocal commitments from the developed countries in areas of interest to them such as agriculture, textiles and clothing, movement of natural persons, etc.

Out of 137 WTO members, 99 are developing countries (or 72.3 per cent), including 29 least-developed countries. Furthermore, out of 28 countries that are now in the process of accession to the WTO, 14 are developing countries, including 7 least-developed countries. However, in such an organisation composed mostly of the developing countries, decisions and policies are still determined by the developed countries.

On the other hand, as we have seen in the section summarising the developments during the Third Ministerial Conference above, the developing countries were quite active during the negotiations. They have openly put forward their problems, sought for solutions and argued with the developed countries on the latter's commitments towards the developing countries which were written into the WTO Agreements. Below, we will examine the demands and positions of the developing countries within the framework of the multilateral trading system.

4.1. Special and Differential Treatment in Favour of the Developing Countries and Trade and Development Issues

Multilateral trade liberalisation efforts at the global level are continuing on a regular basis within the framework of the World Trade Organisation (WTO). In this framework, the most important principle is the idea of non-discrimination. That principle is better known as the most favoured nation (MFN) clause and requires that any trade concession extended to a country must be automatically and immediately extended to all other WTO members.

However, one exception to this principle is the special status of the developing countries. In this regard, the *Agreement Establishing the World Trade Organisation* recognises that “there is need for positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development”. Additionally, the *General Agreement on Tariffs and Trade* (GATT 1994), which deals with trade in goods has a section (Part 4) on “Trade and Development”. That section includes provisions on the concept of non-reciprocity in trade negotiations between developed and developing countries: when developed countries grant trade concessions to developing countries, they should not expect the latter to do the same in return. This principle of granting special concessions to developing countries is known as “special and differential treatment”. The General Agreement on Trade in Services (GATS) similarly allows developing countries some preferential treatment under the heading “Economic Integration” (Part 5 of GATS).

In most of the WTO Agreements, the developing countries are allowed extra time to fulfil their commitments. Some provisions in the fields of textiles and clothing, trade in services, and technical barriers to trade aim to increase the developing countries’ trading opportunities through greater market access.

Furthermore, some provisions relating to safeguards, anti-dumping, etc., require that the WTO members should consider the interests of developing countries while adopting some domestic or international measures. Similarly, some provisions are also designed to support developing countries while dealing with technical standards and animal and plant health standards.

In addition to these measures in favour of the developing countries in general, the WTO *Decision on Measures in Favour of the Least-Developed Countries* adopted in Marrakech on 15 April 1994 provides that the members should take positive measures in favour of the least-developed ones. Moreover, during the First Ministerial Conference of the WTO held in Singapore in December 1996, the Ministers adopted the *Comprehensive and Integrated WTO Plan of Action for the Least-Developed Countries*. It aims basically to further integrate the LDCs into the multilateral trading system, to enhance their trading opportunities, and to improve conditions for investment, export expansion, and diversification. For this purpose, it foresees an increased co-operation between these countries and the WTO, aid agencies, multilateral financial institutions and regional banks.

In October 1997, a high-level meeting, with the participation of the aid agencies, multilateral financial institutions and the LDCs themselves was held in Geneva. At the Meeting, an inter-agency technical assistance programme for the LDCs, the “Integrated Framework” was launched to help the LDCs increase their trade capacities and business opportunities. Furthermore, some preferential market access measures in favour of the LDCs were announced by 27 WTO members. These are: the European Communities with 15 Members, India, Korea, **Malaysia**, Mauritius, **Morocco**, Norway, Singapore, South Africa, Switzerland, Thailand, **Turkey**, and the United States.

However, the provisions in the WTO Agreements foresee general and nebulous types of measures in the context of the special and differential treatment of the developing countries. For this reason, the developing countries want them to be clarified and to be written explicitly into the agreements.

Furthermore, many developing countries state that while they have made progress in liberalising their own markets, developed countries were quite slow in this respect, particularly in areas of export interest to former countries, like agriculture, textiles and clothing, etc. Without consolidating their liberalisation process, the developed countries are rather concerned to expand WTO agreements to include additional and new forms of economic activities such as labour standards, trade and investment issues, genetically modified products, electronic commerce, etc.

However, while they are doing so, they refrain from respecting their commitments under the WTO agreements. They postpone reducing protection for conventional industries in which they fear the competition of the developing countries. But these industries are quite important for the developing countries because they are the major sources of employment, income and foreign exchange. Furthermore, liberalisation of these industries and increased competition in them would enable the developing countries to improve their own markets and thus to promote their economic development. Moreover, the value added obtained in these industries could increase their investment capacity and further induce their development efforts. Of course, this will be a very important step towards the eradication of poverty and may reverse the marginalisation trend of the least-developed countries in the world economy. Actually, these developments may further improve the productive capacity of the industrial countries, since such machinery would be demanded from them.

However, against these facts, the developed countries propose that more advanced developing countries should further open their markets to products of the least-developed countries. They further state that negotiations amongst the developing countries should be encouraged to open their markets to each other's products. These ideas originating from the developed countries aim to misdirect the discussions on trade and development relationship and to conceal the responsibilities of those countries towards the developing countries under the WTO Agreements. Furthermore, the basic understanding in the Uruguay Round of trade negotiations and the resulting trade agreements adopted with the *Marrakesh Declaration* in April 1994 is that discrimination will only be allowed between the developed and the developing countries, not between the more advanced developing countries and the least-developed countries. This phenomenon is repeatedly pronounced in various agreements and decisions within the framework of the WTO. In this regard, the Ministerial Declaration adopted at the Second Session of the Ministerial Conference of the WTO on 20 May 1998 in Geneva states the following:

“We renew our commitment to ensuring that the benefits of the multilateral trading system are extended as widely as possible. We recognise the need for the system to make its own contribution in response to the particular trade interests and development needs of developing-country Members. We welcome the work already underway

in the Committee on Trade and Development for reviewing the application of special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members, and in particular the least-developed among them. We agree on the need for effective implementation of these special provisions.”

But, all these provisions in the WTO agreements and decisions by the Ministers were not sufficient to generate tangible and fruitful results in favour of the developing countries, in general, and the least-developed countries, in particular. Just the opposite, from the point of view of the developing countries, the results of the WTO agreements are as follows:

- “7% reduction in exports during 1997/98,
- 15% reduction in prices of raw materials,
- reduction of direct investments as two thirds of these investments, estimated at US\$ 644 billion in 1998, went directly to Europe and the USA and only one third ... went to Africa,
- rise in foreign indebtedness,
- decline in the official aids,
- deterioration of balance of payments...” (NBE, 1999a, p.41).

For this reason, in line with the provisions of the WTO Agreements in various fields, and the decisions by the Ministers and particularly the relevant paragraphs of the Second Ministerial Declaration, effective and concrete measures should be taken to reverse the negative effects of the WTO Agreements on the economies of the developing and the least-developed countries.

On issues of interest to LDCs, they demand appropriate measures from developed countries to improve their productive capacities and overcome supply constraints, including free market access conditions for all products from LDCs to developed countries, and elimination of non-tariff barriers.

Regarding any new rules to be introduced to the WTO Agreements, LDCs must be excluded from commitments that are not in line with their development needs, capacities and aspirations.

4.2. Investment

Recently, the developing countries increased their efforts to liberalise their economies and at the same time their policies towards FDI. Of course, the developing countries are in need of foreign investment, because they, in general, lack enough capital to finance the costly development projects that will help accelerate their growth and development. Furthermore, foreign investment is useful in supplementing the inflow of foreign exchange, and foreign direct investment especially is expected to transfer technology and management know-how, and may provide easy access to international markets. Foreign investment may take the forms of foreign aid, foreign loans, portfolio investment and foreign direct investment (FDI). Foreign aid is not a reliable source. Loans have to be repaid with interest. Portfolio investment has a short-term nature, and for this reason, is not stable and reliable, and may also cause serious foreign exchange and financial crises as it did during the 1997 Asian Crisis. Foreign direct investment appears to be a suitable form of foreign investment from the point of view of the developing countries. But, FDI also has certain implications: First of all, it involves repatriation of profits, i.e., it again results in outflow of foreign exchange. Secondly, it does not necessarily transfer or disseminate technology. Thirdly, and most importantly, it may easily become a monopoly in the host country because of the capacity of its production plants and size of its capital. Of course, it is not difficult to guess the adverse impacts of monopolies in any economy through their control over the price and quantity of production.

During the past decade, developing countries widely removed controls over foreign investment and encouraged it, particularly foreign direct investment, to invest in their countries. Presently, there is a warm welcoming environment for foreign investors in developing countries as compared to the period before the collapse of the former Soviet Union. Taking advantage of such a positive environment, major industrial countries, particularly the EU, attempted to push the foreign investment issue under the principles, rules and procedures of the WTO Agreements. With this move, the major developed countries aimed at limiting the control and flexibility of developing countries on foreign investments. In other words, their objective is to protect and maximise the rights of foreign investors and minimise their obligations towards the developing countries, rather than channel the flow of investment into the developing countries.

Developed countries recently increased their pressures to convince developing countries to expand the scope of the Uruguay Round Agreement on Trade-Related Investment Measures (TRIMS) which has already created a set of multilateral rules for liberalisation of investment regimes. In particular, the European Union (EU) is pushing hard to continue with the process for multilateral negotiations on investment under the WTO which was started at the First Ministerial Conference in Singapore in December 1996. In reality, the Singapore Conference established a Working Group just to study the relationship between trade and investment issues. However, the EU is obviously not satisfied with the study results of the working group and the inclusion of investment issues in the agenda of the WTO in Singapore is regarded as an initial step towards a multilateral agreement on the matter. Moreover, it is not a secret that the EU's basic aim is to reach a Multilateral Agreement on Investment (MAI) within the framework of the rights and obligations of the WTO Agreement.

The EU intends to give foreign investors full rights to invest and establish themselves in almost all sectors, excluding defence, in any WTO member, obtain 'national treatment' for foreign direct investment (FDI), much like that extended to domestic investments and without any discrimination. Furthermore, it aims to ensure effective implementation of the obligations undertaken in the agreement through the mechanism of Dispute Settlement Understanding (DSU) already established under the WTO.

Actually, the EU's MAI intends to eliminate all political flexibility of a country regarding foreign investment. Presently, a country has all policy choices regarding FDI: It is free to permit foreign investment, or limit foreign activity only to some selected sectors or stop completely the inflow of foreign investments in certain sectors. It may also determine freely its policy towards local capital and investment: It may grant special rights, immunities, or exemptions for domestic investors or free them from certain obligations or liabilities. Furthermore, a country may specify conditions for FDI, such as equity ceilings, ownership restrictions, etc. If the MAI is concluded and obtains the WTO umbrella, member countries of the WTO will lose all their controls over foreign investment and foreign investors will assume every right without any responsibility. They will have the freedom of entry and exit and of transfer of profits whenever and wherever they want to.

The problem lies in the conflicting interests of the foreign investors and the host country. Foreign investors like to invest in the least problematic and the most promising areas with quick and maximum profits. But there is no doubt that the priorities of the foreign investors do not coincide with those of the host country. Due to such concerns, the host country likes to guide FDI regarding the production sectors and the geographical location of the production plant. For this reason, the developing countries are very cautious about the EU proposal of the MAI. They do not want to just observe the decisions of the foreign investors and watch undesired developments, such as production in non-priority sectors (fast food and beverages industries) and production plants located in already developed regions.

Developing countries, particularly the African ones, are against any negotiations for an agreement on investment policy and rules in the WTO. They state that the Working Group on the Relationship between Trade and Investment should focus on positive and negative effects of FDI on development, the obligations of foreign investors to their host countries and the obligations of the home countries to ensure that their companies comply with their obligations.

Lastly, developing countries do not need to sign such a multilateral investment agreement in order to attract FDI. If FDI seeks security, certain guarantees and facilities in the host country, these can be provided through national laws, rules and procedures.

4.3. Competition Policy

The developed countries want to conclude a new agreement on 'competition policy'. In this context, their basic intention is to provide for an environment in which their companies will be able to enter any country and compete 'equally' with local ones. Of course, 'equal competition' here definitely implies a competition between multilateral giant corporations and local firms. It is not hard to guess the end result of such a competition on 'equal' grounds.

Actually, a competition policy in its original sense should aim to break the monopoly of the giant corporations and create a more competitive environment via supporting the small and medium size

firms against the monopolies. For example, anti-trust laws aim to protect the competitive environment in the US. However, the developed countries plan to make use of the WTO's basic principle of 'non-discrimination'. They argue that local firms cannot be treated more favourably than foreign companies because of the said principle. They propose that the WTO member countries should conclude an agreement on competition policy that would provide equal competitive opportunities in the local market for foreign products and foreign companies established in the host country. In other words, foreign firms can be allocated equal opportunities as locals, and any government measures to favour local companies will not be permitted. Thus, multilateral giants should be treated like local companies without weighing or comparing them in size, experience, competitiveness, know-how, business practices, etc.

Of course, such an understanding would be a threat to local companies, as they are smaller and have fewer resources to compete with giant corporations. Furthermore, multilateral corporations may easily compensate their temporary losses with their earnings from other regions until they wipe out the local companies. In other words, in such an unequal environment, the principle of 'non-discrimination' would work as a discrimination against the local companies in the developing countries.

If the new comprehensive round as proposed by the EU were launched at the end of the Third Ministerial Conference, competition policy would be one of the agenda items. Developing countries have opposed the inclusion of this proposal for the next round of trade negotiations. They argued that since the issue is too complicated, the WTO's Working Group on the Relationship between Trade and Competition Policy should continue to study the issue instead of trying to develop multilateral rules in this area.

According to the developing countries, the Working Group, while studying the issue, should consider different levels of development and different levels of institutional environment in the member countries of the WTO. Furthermore, it should also focus on ways and means to strengthen developing country firms to face challenges from large multinational corporations seeking to monopolise local markets of developing countries.

Furthermore, the developing countries also insist that such a multilateral legal framework should be developed under the United Nations Conference on Trade and Development (UNCTAD), since it is a more experienced institution in the area of trade and development, and competition policy is very critical from the development perspective.

The developing countries also argue that if such an agreement is concluded amongst the WTO member countries, transnational corporations will easily penetrate markets in developing countries and increase their power around the globe. Considering that some of these corporations are economically much bigger than most of the economies of the developing countries, such an international support for them may even produce adverse effects for the developed countries themselves.

4.4. Government Procurement

Government spending, including current expenditures and investments, defines a large part of a developing country's income. In some countries, government spending is the largest economic activity. It covers purchases of goods and services, defence expenditures and investment projects such as building schools, hospitals, housing, public works, roads, dams, industrial complexes, etc. In many developing countries, the volume of government spending is larger than their exports or imports. For this reason, government procurement in developing countries is a very attractive and appetising area.

The procurement activity is, in general, considered within the framework of the national sovereignty of a country. Governments could decide on how this money is to be spent, ways and means of tendering and the system of procurement of goods and services. Governments would be responsible against laws and procedures of the country but not against any foreign authority or body.

However, although the matter is not related to international trade, developed countries managed to include it in the agenda of the WTO. At the First Ministerial Conference in Singapore in December 1996, a decision was taken to establish a working group to study only 'transparency' in government procurement practices and develop an agreement on this limited topic.

The Working Group on Transparency in Government Procurement examines transparency in government procurement practices and works to develop an appropriate agreement on transparency. However, there are clear indications that major developed countries, particularly the US and the EU, consider this agreement as an initial and interim step. They plan to enlarge that agreement on transparency to a full-fledged agreement on government procurement. The basic aim in this respect is to open fully the markets of developing countries in the area of government procurement for foreign companies. In this way, foreign companies would have the same rights as locals to bid for public sector projects without any discrimination. In other words, they would be given 'national treatment' and 'most-favoured-nation (MFN) treatment' rights.

Actually, the intentions of the developed countries are quite clear: they aim to obtain 'national treatment' and full 'market access' for their companies in the area of government procurement through a step-by-step approach starting from an innocent agreement on transparency in government procurement. Some developing countries agree, in principle, to conclude such an agreement only within the framework of the transparency idea, but without developing it into a full-fledged agreement on government procurement providing full market access for foreign companies. On the other hand, other developing countries oppose it considering that if such an agreement on transparency were concluded under the WTO, that would mean acceptance of the inclusion of the issue of government procurement within the framework of the WTO. For this reason, at a later stage, it would be very difficult to stop a full agreement on national treatment and market access if the issue is included into the WTO agenda as a permanent item.

Transparency in government procurement may produce better results in developing countries through increasing the supply base and lowering the cost of the purchases. However, the issue should not be allowed to expand to national treatment and full market access for foreign companies mainly from developed countries. The inclusion of provisions on national treatment, full market access, most-favoured-nation (MFN) treatment, etc., will not generate the same environment in the developed and developing countries. Nobody can claim that a developing country company may have the same and equal chance or opportunity with a developed country company in any country, for example in the US. Presently, companies from developing countries do

not have access to government procurement in developed countries. Even if very exceptional ones may have access to some public contracts, they may face an anti-dumping investigation. For this reason, multinational corporations and powerful firms of the industrial countries will have every right and advantage to access to government procurement in developing countries but not the other way round.

The principle of national treatment, if accepted by the developing countries, will prohibit subsidising domestic suppliers and domestic products. The result will be to put a brake on the development of local industries and domestic firms. Local industries and companies may be wiped out because they will not be able to compete with big foreign firms in supplies for government procurement.

On the other hand, the principle of MFN, i.e., non-discrimination between the countries, will also limit the developing countries' decisions to select amongst the suppliers. Because their resources are limited, sometimes, the developing countries' governments have to evaluate some other points in addition to the cost of the project, such as financial assistance from other governments, transfer of technology, and other facilities to be supplied by the bidders or their governments, etc. Any agreement on these grounds will remove the freedom of developing countries' governments regarding their decisions on government projects.

For this reason, the developing countries, being aware of their capacities, potentialities and limits, devote a special attention to the subject of government procurement. They like to decide on their procurement priorities and processes by themselves. They are of the view that the work of the WTO working group, if it resumes, should not go beyond an examination of elements for an appropriate agreement on transparency. Furthermore, they insist that if an agreement is to be concluded on government procurement, it must be a plurilateral type in the WTO context, not a multilateral one, i.e., binding only the signatory countries, but not all WTO members. That agreement may be composed of only some guidelines, but it should not be binding, particularly on the developing countries.

Furthermore, since the subject of government procurement is already excluded from the national treatment and MFN obligations under the current provisions of the WTO, and they will be affected negatively, the

developing countries do not need to change these current provisions.

4.5. The TRIPs and Transfer of Technology

Technological developments, transfer of technology and intellectual property rights hold an important place in trade talks. In general, technology is being developed by the economically powerful companies of the developed countries. The developed countries have considerable advantages in this area. They are very keen to protect their interests and their pioneering position. For this reason, major developed countries insisted strongly on concluding an agreement to protect their technological inventions during the Uruguay Round of trade negotiations. However, the developing countries objected to the idea of including such an agreement in the framework of the WTO. At the end, the countries compromised only to include trade-related aspects of intellectual property rights. Against this compromise solution, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) still aims to protect all intellectual property rights (IPRs) and the developed countries do not miss any opportunity to enlarge its scope.

The TRIPs Agreement sets minimum standards for countries to adopt for IPRs. However, because these standards are taken from the legislation of developed countries and the TRIPs Agreement imposes them on all WTO members, the developing countries have to change their national laws, rules and procedures to comply with the TRIPs obligations. The TRIPs Agreement also includes provisions for permitting the patenting of life forms.

Forms of IPRs include patents, copyrights, trademarks and trade secrets. The patent holder has every ownership right to use, sell or lease the patented item for a certain period of time. Under the TRIPs agreement, the minimum period of patent protection is 20 years.

The developing countries had until 1st January 2000 to make necessary modifications in their national legislation to implement the TRIPs as of the beginning of the current year. On the other hand, developed countries had to comply with the TRIPs obligations by 1st January 1996. The least-developed countries were allowed until 2006.

Due to their high cost, research and development activities are being carried out in large companies or corporations. The results of these activities can be protected by patents, copyrights, etc. Article 27.3(b) of the TRIPs Agreement permits patenting of essential products and life forms such as food, medicine, seeds, etc. A small number of multinational corporations operating in the life sciences industry dominate and control the production of seeds, pesticides, food and pharmaceuticals by making use of IPRs. Such a control over the supply of these products means that multinational corporations are able to control their prices. Furthermore, their control over the supply and prices of these essential products means that multinational corporations have control over people's access to food and health.

UNDP's Human Development Report 1999 states that, in 1998, the top ten corporations in the commercial seed industry controlled 32 per cent of the US\$ 23 billion industry; in pharmaceuticals, 35 per cent of the US\$ 297 billion industry; in veterinary medicine, 60 per cent of the US\$ 17 billion industry; and in pesticides, 85 per cent of the US\$ 31 billion industry.

Developing countries as producers and consumers of food, veterinary and agricultural products are very much concerned about Article 27.3(b) of TRIPs because of their dependence upon the patented products of multinational corporations operating in the field of biotechnology. They reject the TRIPs Agreement's requirement for mandatory patenting of some life forms and some natural processes. Furthermore, they demand that the said Article should be reviewed in a way to prevent the patenting of plants, animals and all other living organisms and their parts and the natural processes that produce them.

While the developing countries, particularly the African Members of the WTO, want to review the substance of the said Article, some developed countries, particularly the US, oppose this idea and argue that the review should be limited to the implementation of Article 27.3(b) but not the substance. However, the developing countries argue that patenting of micro-organisms –natural living organisms– and microbiological processes –the natural processes that produce them– under Article 27.3(b) contradicts the basic patenting criteria, since natural organisms and processes that exist in nature are discoveries and not inventions. For that reason, natural organisms, i.e., plants, animals

and micro-organisms, and processes that produce them should not be subject to patents.

Actually, one cannot even imagine patenting of traditional farming techniques and practices or not allowing the exchange of seeds because of the patent protection on them or copyrights over traditional knowledge. But all these points need to be clarified within the framework of Article 27.3(b) of the TRIPs Agreement.

Furthermore, the patenting of natural organisms and processes by monopolistic multinational corporations will cause serious adverse effects on trade, development, environment, food security, poverty, and welfare of people. Such patents are not acceptable from the ethical and religious points of views.

Additionally, the TRIPs Agreement has important implications for developing countries regarding the transfer and dissemination of technology, and consequently their economic and social development. The protection of IPRs is likely to have adverse effects on the transfer and dissemination of technology. The concept of patenting itself aims to reward the patent holder with extra benefits which, in turn, means an extra cost item for the product. If this bonus is not paid, a patent holder may easily refuse to transfer the technology. Of course, such factors affect negatively the economic and industrial development aspirations of the developing countries.

The present trend in the world economy is rather the transfer of the production processes of goods around the globe than the transfer of technology. Multinational corporations locate their production facilities in different developing countries in order to take advantage of the cheap labour and natural resources. In such cases, the technology is not transferred, only the production process is located at different geographical places. The developing countries do not acquire the patented technology.

The developing countries want to clarify the TRIPs Agreement's provisions that formulate the transfer and dissemination of technology to developing countries, particularly the LDCs. In this way, they expect that the developed countries would respect their obligations on

technology transfer set out in the TRIPs Agreement. Actually the developing countries are in need of the new and modern technology developed by the industrial countries or their companies to meet the basic needs of their people. Being aware of the technology barriers between themselves and the industrial countries, the developing countries indispensably try to remove these barriers and seek measures to close the technology gap. However, patents or similar instruments at the hands of multinational corporations working in this area make it very difficult to attain these objectives. Nevertheless, the developing countries should insist on reviewing and amending the TRIPs Agreement of the WTO in order to make IPRs more sensitive to and supportive of their development expectations.

4.6. Systemic Issues

These issues cover the concerns of the developing countries relating to the institutional problems and functioning of the WTO. In this context, the developing countries complain about the working procedures of the WTO. In Geneva, it is not an easy task for the delegations of the developing countries and particularly the least-developed countries to follow up all the meetings within the framework of the WTO because of the intensity of the calendar of meetings. The developing countries are not given enough time to consider the pros and cons of the new proposals under the WTO.

For this reason, they demand the rationalisation of working procedures and of the calendar of meetings in Geneva. In this regard, negotiations on the proposals should start after sufficient time has been allowed for trade policy authorities to consider their pros and cons. Furthermore, the WTO should take the necessary measures to ensure the full participation of all developing countries at all stages of the negotiations and to secure an equitable representation of the developing countries at the Secretariat. The transparency, inclusiveness and representativeness of the WTO should be strengthened. Actually, as a result of these criticisms by the developing countries and civil societies in industrial countries, a working group was established on 'Systemic Issues' at the Seattle Conference to address such concerns of the member countries and to improve the active participation of all members in WTO activities.

5. CONCLUSION

The failure of the WTO Seattle Conference has shown that the points of difference in the views of the industrial countries amongst themselves and between them and the developing countries will not be easily compromised and they are mostly related to the substance of the topics. During the preparatory phase and the Ministerial Conference itself, developing countries generally were more concerned about the costs and benefits of the already-concluded WTO Agreements. They have made serious complaints about their implementation and stressed the need to correct the problems of implementation. Without finding solutions to these problems within the framework of the WTO, most of them do not accept to consider or take up the new issues proposed by the developed countries such as investment, competition policy, government procurement and intellectual property rights, etc.

The developing countries were disappointed because of the non-implementation in their favour of the provisions of the WTO agreements such as the special and differential treatment, market access, etc. Additionally, it was believed that the WTO Agreements would improve the access of developing countries to markets of the industrial countries, particularly in agricultural products, and textiles and clothing. However, the expectations about the benefits of the developing countries from the liberalisation of the world trade could not be materialised. All promises and promising forecasts at the beginning were replaced by disappointment on the part of the developing countries.

The industrialised countries are still using the same argument while trying to inject new issues into the WTO's agenda. They claim that these issues, particularly the inclusion of investment issues and the multilateral agreement on investment, are in the interests of the developing countries. The developing countries strongly reject such arguments and assert that they themselves can properly decide what is in their interest and what is not.

The developing countries are against any negotiations on new issues before solving satisfactorily problems of implementation. They also insist that the WTO should not assume any mandate over new issues that are not related to trade. The developing countries are also against the inclusion of any topic in the WTO Agenda that may restrict their

development options and policies. Furthermore, they criticise the efforts of the developed countries to bring every issue within the WTO framework, although at the international level, there are more appropriate fora to discuss and negotiate such matters, like the ILO in the case of labour standards, and the UNCTAD in the case of all trade and development related issues.

According to the developing countries, the whole system of the WTO needs urgent and fundamental reforms. The future agenda or work programme of the WTO should be devoted to a process of “Review, Repair and Reform”. Such a reformed WTO should turn into a ‘development-oriented’ organisation. The transparency, inclusiveness and representativeness of the WTO should be strengthened. The WTO should take necessary measures to ensure the full participation of all developing countries at all stages of negotiations and to secure an equitable representation of the developing countries at the WTO Secretariat. Furthermore, special and differential treatment in favour of the developing countries as envisaged in various WTO agreements should be clarified and implemented. The imbalances in several WTO Agreements which have major implications for development policies and/or export interests of developing countries should be corrected.

At the moment, there is a relative silence around the circles of the WTO. Among other things, developing countries and particularly the OIC countries should use this temporary period to establish effective consultative mechanisms amongst their governments and private sector representatives. Through such mechanisms, they should identify their common economic, commercial and developmental priorities and interests. After evaluating them within the framework of the implementation of the already-concluded WTO Agreements and new issues pushed by the developed countries into the Agenda, they should determine common policies to be pursued collectively during the trade talks.

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ANNEX

WTO CHAIRPERSONS FOR 2000

General Council	Amb. Kåre Bryn (Norway)
Dispute Settlement Body	Mr. Stuart Harbinson (Hong Kong, China)
Trade Policy Review Body	Amb. Iftekhar Ahmed Chowdhury (Bangladesh)
Council for Trade in Goods	Amb. Carlos Pérez del Castillo (Uruguay)
Council for Trade in Services	Amb. Sergio Marchi (Canada)
Committee on Trade and Environment	Amb. Yolande Biké (Gabon)
Committee on Trade and Development	Amb. Ransford Smith (Jamaica)
Committee on Balance-of-Payments Restrictions	Amb. Milan Hovorka (Czech Republic)
Committee on Regional Trading Agreements	Amb. Edsel T. Custodio (Philippines)
Committee on Budget, Finance and Administration	Mr. Hakki Akil (Turkey)
Working Group on the Relationship between Trade and Investment	Amb. Man Soon Chang (Korea)
Working Group on the Relationship between Trade and Competition Policy	Prof. Frederic Jenny (France)
Working Group on Transparency in Government Procurement	Amb. Ronald Saborío Soto (Costa Rica)

Source: WTO, *Press Release: WTO Chairpersons for 2000*, Press/165, 8 February 2000.