

## *Doha : Anticipating Cancun*

by  
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### **Introduction**

The institutionalisation of world trade is one of the major achievements following the end of World War II. However, the process has not been a smooth one. Difficult decisions had to be made in the process and countries were not always in agreement on the issues involved. With the shift from the General Agreement on Tariffs and Trade (GATT) to the World Trade Organisation (WTO), following the conclusion of the Uruguay Round of negotiations in 1994, the world appeared ready to deal with the growing complexities of trade issues occasioned by major technological advances and other developments in the global economy.

The sad part of this global trade transformation process is that developing countries (forming the majority of the world's population) seem to have extracted little benefit from the process compared to developed countries. For that reason, the relationship between developing countries with both GATT and WTO has been an adversarial one. The fourth Ministerial meeting in Doha is hailed as having significantly altered this state of affairs. This is largely so because Doha dared to confront the concerns of the developing world. However, the post-Doha negotiations point to fundamental differences between developing and developed countries within WTO. This finds clear expression in the issues negotiated post-Doha. Unfortunately, the lack of agreement and the failure to meet important deadlines in the negotiations place enormous challenges on the forthcoming September Ministerial meeting in Cancun, Mexico. This important meeting will have to demonstrate a high level of political will and wisdom if the future of the WTO is to be guaranteed. What are the main concerns?

### **Trade-Related Intellectual Property Rights (TRIPS)**

The philosophy behind the Agreement on TRIPS is to protect and enforce intellectual property rights in order to 'strike a balance between the long term social objective of providing incentives for future inventions and creation, and the short term objective of allowing people to use existing inventions'. What has become clear, though, is that stringent protection of intellectual property rights is not without problems. It has serious implications for the provision of vital medicines to deal with public health challenges facing most developing countries, especially in Africa.

In view of the severe impact that an over-protection of intellectual property rights may have on public health, developing countries pushed, in Doha, for some flexibility in the interpretation of patent protection rules to create space for them to override patents in response to national public health challenges. In this regard, Doha could be said to represent a degree of victory for developing-country members of WTO, as Trade Ministers adopted a special declaration that creates room for countries to grant compulsory licences for the production of generic medicines to deal with public health emergencies such as HIV/AIDS, tuberculosis, malaria and other epidemics. The potential benefit of this is that developing countries can produce drugs cheaper than if they were to purchase them from big

multinational patent-holder pharmaceutical companies. What is disappointing, however, is that negotiations on the finalisation of this issue have reached a dead end, as countries fail to agree on how the issue should be concluded.

Equally contentious in the post-Doha negotiations on TRIPS is the question of the patentability of life forms. While developed countries are in favour of life forms patenting, developing countries are strongly opposed to it, as life forms patenting does not seem to hold out benefits for most of the developing world. Most of the companies that have the capacity to conduct top-level scientific research leading to patenting are multinationals based in developed countries.

Developing countries are of the view that living organisms are humanity's collective wealth and heritage over which no single individual or group of individuals should have exclusive rights of ownership. Thus, they argue that the right to exploit life forms should not exclusively be the preserve of an individual or a group, but should be for the general benefit of mankind.

Patenting life forms has severe implications for the development of agriculture and for the general food security of most of the developing countries, Africa in particular. Through patent rights, big multinational companies manipulate and monopolise the productivity of seeds, through genetic modification, to the detriment of agricultural development in Africa and the developing world in general. This is one of the issues the Cancun Ministerial will have to grapple with.

### **General Agreement on Trade in Services (GATS)**

The proliferation of private service-provider companies and/or agencies, mostly in the developed world, has led to an ever increasing involvement of these service providers in the provision of services in most countries. Furthermore, it has also created conditions for countries to trade in services. The coming into force of GATS in 1995 was thus a response to this reality. GATS provides a services-trade framework where services are internationally supplied in four modes:

- **Mode 1: *Cross-border supply*** (for example, a foreign-based company providing services into a country from the outside);
- **Mode 2: *Consumption abroad*** (referring to the right of citizens to purchase services from a company based abroad);
- **Mode 3: *Commercial presence*** (the right of a company to operate in foreign territories); and
- **Mode 4: *Presence of natural persons*** (that is, the possibility of foreign persons to temporarily stay in a foreign country for purposes of service provision).

These modes of international service supply have pitted developing countries against the developed world even post-Doha, as the two do not emphasise all the modes equally. Developed countries place their emphasis on the first three modes, while developing countries see mode four as holding out opportunities for them to export their human resource to developed countries. As most globally competitive private service-provider companies are largely based in developed countries, it is not surprising that the emphasis of developed countries falls on cross-border supply, consumption abroad and foreign commercial presence.

The desire of developing countries to export their human resources to developed countries (as provided for in mode four) comes up against the stringency of developed countries in regulating the entry of foreigners into their territories. On the other hand, the insistence of developed countries on the liberalisation of the services sector in order to allow companies to do business worldwide (as provided for in mode three) is seen by most of the developing world as a serious threat to their countries' sovereign right to provide services to their citizens.

Furthermore, most developing countries see the liberalisation of the services sector as posing a challenge to the development of small enterprises domestically, as liberalisation would expose small domestic companies to fierce competition with highly competitive multinational companies from the North.

The services sector is the largest employer in the world, employing one in ten employees world wide. The role of the services sector as the main employment provider is something most developing countries are prepared to protect dearly. For that reason, these countries are not ready to make liberalisation commitments as per GATS's principle of 'voluntary commitment'. It is not surprising, therefore, that only one country in the whole of Africa, Senegal, has thus far made an offer to liberalise some of its services sectors. In light of all this, the call by most developing countries for the WTO to conduct an impact assessment on the liberalisation of services seems to make sense.

The current sluggish progress (near an impasse) on the negotiations on GATS is also indicative of a majority of WTO members' unwillingness to open up their services sectors to competition.

### **Agreement on Agriculture (AoA)**

Agriculture is one of the most important sectors of trade in the world. It is the sector that is responsible for the production of food that feeds all nations. The importance of this sector is even greater to Africa, as most of its economies are agriculture-based, making agriculture a sector on which economic life in most African countries depends. It is not surprising, therefore, that the WTO Agreement on Agriculture has seen the developing world and the developed countries pitted against each other.

The AoA does not prevent the developed countries from giving massive financial support and agricultural subsidies to their farmers. For example, the domestic support and subsidies the EU provides to its farmers is estimated at US\$360 billion per year, while the US also subsidises its farmers massively. Ironically, the heavily subsidised agricultural produce from developed countries is expected to compete with that from the developing world where farmers receive virtually no subsidies. Clearly, the playing field is not level.

The response of the EU, in Doha, to the call by the developing world that it should scrap its subsidies was a mere indication of readiness to negotiate the issue further. No practical commitment to either scrap or reduce the subsidies was made, corroborating the widely-held view that doing away with agricultural subsidies is anathema to most Europeans.

The commitment to further negotiations on the AoA by the developed countries has yet to show results. The recent willingness of the EU to consider reform of its common agricultural policy is encouraging. However, the developed world has made no movement with regard to guaranteeing market access of agricultural products from developing countries to their (developed countries) markets. This is one of the factors contributing to the lack of progress on the negotiations at the WTO on agricultural subsidies and market access. The March 31 deadline went by with no consensus emerging. In view of this impasse, developing countries are likely, as they have argued before, to push for a position that can counterbalance

the subsidies received by farmers from the developed world, that is, *developing countries should be given the right to raise tariffs on agricultural products from the developed world in order for them to protect their farmers and their special agricultural needs*. What is clear, however, is that the fifth Ministerial meeting in Cancun will need to demonstrate a very high degree of political maturity if this issue is to be amicably resolved.

## **Implementation issues**

Doha has been hailed as a development round. This is so not only because the talks were concluded successfully as compared to the 1999 fiasco in Seattle, but also due to the development-friendly commitments made by developed countries. Disappointingly, the implementation of the commitments has remained a source of stormy disagreement in the post-Doha negotiations. For example, no agreement has emerged on the important issue of special and differential treatment for Least Developed Countries (LDCs) and the enhancement of market access for goods coming from these countries. Of the developing world, Africa stands to benefit the most from the special and differential treatment as 34 of the world's 49 LDCs are on the African continent. Implementation issues are among the issues that add to the complexity of issues that Cancun will have to confront.

## **Singapore issues**

The Cancun Ministerial is critical not only because it holds the key to breaking the logjams that seem to characterise WTO negotiations after Doha, but also because it is where a decision will need to be taken regarding the resumption of negotiations on competition policy and law, trade facilitation, transparency in government procurement and investment (known as the Singapore issues). With the current impasses at WTO, it would appear that most Ministers from the developing countries in Cancun are likely to oppose the resumption of negotiations on the Singapore issues as it logically makes sense for them to be engaged only after the above issues on the Doha agenda are finalised.

## **Conclusion**

The pace of post-Doha negotiations at WTO seems to debunk the widely-held notion that Doha represented a development round. This notion is in serious doubt considering the fact that negotiations have been characterised by deadlocks and deadlines missed on a number of issues. What is clear, though, is that Cancun will be an uphill battle for Trade Ministers, as they certainly hold the key to breaking the impasses. Many had hoped that the G8 meeting in Evian, France, could have helped defuse the tension at the WTO by signalling some compromise by the political leadership of the globe's leading countries. In spite of France's request, G8 leaders brushed aside issues related to trade, leaving them to the Cancun Ministerial. This makes the responsibility of Cancun even greater.

For the restoration of most of the world's confidence in the WTO as the custodian of global trade, developed countries will have to demonstrate political will to listen to the concerns of the developing world. Among other things, developed countries need to show concrete commitment to contributing to the agricultural development of the developing world by substantially reducing domestic and export subsidies to their farmers; providing more clarity with regard to the interpretation of WTO rules on TRIPS *vis-à-vis* public health and renége on their insistence on patenting life forms; and agreeing to the implementation of the commitments made in Doha, particularly with regard to special and differential treatment and the enhancing of market access for goods from LDCs.

If substantial commitments and compromises are not made on the above issues, Cancun is likely to become another Seattle – a scenario that could possibly sound the death knell for the WTO, thus reversing the progress the world has made in organising and institutionalising trade on a global scale.

### **Suggested Reading**

- Charles Ntwaagae, ‘The Road to Cancun: How ready is Southern Africa?’ - Presentation delivered to the WTO-Friedrich Ebert Stiftung Civil Society Conference in Cape Town, 23-24 May 2003
- Garth le Pere, ‘Free and fair trade under a dark cloud’ in *Sowetan* 29 May 2003
- Garth le Pere, ‘The WTO and the post-Doha Agenda’ in *Global Insight*, No. 20, July 2002
- SEATINI, ‘Recommendations from the Sixth SEATINI Workshop held in Arusha from 2-5 April 2003’ Vol. 6 No. 06, 2003
- WTO, ‘Declaration on the TRIPS Agreement and Public Health’, 14 November 2001
- WTO, *GATS: Facts and Fiction*, 2001

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