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**MILLENNIUM ROUND AGENDA:
A GLOBAL PERSPECTIVE**

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Foreword

The year 1999 is likely to be a crucial year for the world trading system. The 3rd Ministerial Conference at Seattle in late November will be instrumental in finalising the Agenda for opening new trade negotiations under the aegis of the World Trade Organisation (WTO). These negotiations will envisage a course for global trade policy in the 21st century. Early GATT negotiations focussed primarily on liberalising trade through tariff negotiations. But the last round of trade negotiations, the Uruguay Round covered a vast spectrum of areas focussing on further reduction of tariffs and elimination of non-tariff measures. Now after five years of multilateral trading system under the WTO, a new round of fresh trade negotiations will begin from 1st January 2000. A general consensus is emerging for strengthening the multilateral trading system by resolving serious discrepancies of the system in terms of existing loopholes and new issues that have a direct bearing on international trade.

Countries are on the verge of deciding the speed of globalisation for the next millennium. The Quadrilateral Group comprising European Union, the US, Canada and Japan have principally agreed to launch a Millennium Round of multilateral trade negotiations to liberalise trade further and draft new rules to manage new types of economic transactions among nations. But some countries, especially from the developing region, are sceptical about this Millennium Round and prefer to keep the Agenda of negotiations to "Built-in" Agenda. The "Built-in" Agenda already covers variety of issues from the "Final Act" due to in-built review mechanism. However, many new issues that have emerged after the Uruguay Round negotiations are not included in the "Built-in" Agenda. Thus, a sharp divide in the WTO membership is evident on the new Agenda itself. Finalisation of the new agenda will be a gigantic task in view of reservations and preferences of trading partners.

There are more than two dozen topics that can find place in the Millennium Round Agenda. Countries have already identified certain specific topics for opening new negotiations. They are in the process of aligning themselves with various negotiating groups based on their preferences and reservations. Earlier negotiations have shown that

quid pro quo is an essential element of trade negotiations. Each country may strive to bargain on a specific issue in the Millennium Round. But in return, it must accommodate interests of other trading partners. Thus, a broad round of multilateral trade negotiations will allow a better opportunity for reciprocal understandings, leading to successful conclusion of the round beyond the limited "Built-in" Agenda.

India is doubtful of the gains from the Millennium Round and prefers to limit the scope of new negotiations to the "Built-in" Agenda. But so far, except for few countries, the majority of the WTO membership seems to prefer a Millennium Round. India is going to the new negotiations without aligning with any dominant interest group. But it has entered into scores of bilateral understandings on specific issues with different countries. It will be an advantage for resurgent India to align with strong negotiating groups in the new round. The second phase of economic reforms in India is in the offing and a more liberal approach can result in greater gains from the Millennium Round. It is an era of globalisation and liberalisation. The world is coming to terms with this paradigm. The global perspective on the Millennium Round suggests that on number of issues, India and US share similar views. India and other developing countries stand to gain a great deal from new negotiations. A better negotiating strategy will be an aggressive posture by aligning appropriately with different interest groups while negotiations of the Millennium Round are on. A more proactive approach based on progressive liberalisation will be an appropriate strategy to deal with fresh WTO negotiations. The time is ripe as the Millennium Round aims to establish global free trade by 2010.

This paper makes an attempt to highlight all the potential areas that can find place in the new Agenda. Besides, it also presents a perspective of major preferences and reservations of members and different negotiating groups that may significantly influence the new round of negotiations. This paper gives a plethora of topics and dominant interest groups to assist strategic positioning in the Millennium Round of negotiations.

This paper is part of the Rajiv Gandhi Institute's Working Paper Series on international economic relations and is meant to stimulate a debate on trade-related issues.

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Millennium Round Agenda: A Global Perspective¹

P.D. Kaushik

The "Millennium Round" agenda is in the finalisation stage at the World Trade Organisation. Member countries appear to be more or less proactive on this issue for resolving serious discrepancies in the newly established multilateral trading system. In late 1999, Commerce Ministers from member countries will be attending the 3rd Ministerial Conference at Seattle to decide on the next round of negotiations for the global trading system. Undoubtedly, the key questions confronting the members are "whether there should be a new round of WTO negotiations and what will be the nature of such a round"?

Momentum is building at the WTO for a new comprehensive "Millennium Round". Many members are pressing for further trade reforms, while few remain unconvinced. On a wider canvas, scepticism about the benefits and costs of further trade reform has largely been voiced by the developing countries. Most countries have favoured a new round, barring only a few. But members are surely divided on the issues to be taken up in the new round of trade negotiations. Thus, the finalisation of agenda will be a gigantic task in view of reservations and preferences.² Variety of issues from the "Final Act" will find place in the agenda due to in-built review mechanism. Besides, new issues have

¹ This work is greatly inspired by three prominent writers, namely Michael J. Finger, Anne O. Krueger and John Croome. I would like to place my sincerest thanks for Prof. Bibek Debroy, without his advice this work would have remained incomplete. I acknowledge the constant support of my colleagues and friends for their suggestions. Lastly, I would like to thank Dr. Sekhar Raha for his words of encouragement.

² The Cairns Group prefers further liberalisation of trade in agriculture, while European Union has reservations on export subsidies and import restrictions. Likewise, all members have different views on other subjects, barring few issues where there is general consensus. The paper makes an attempt to highlight reservation and preferences of each negotiating group and their likely chances of success in the new negotiations.

emerged during the transition stage of implementation, which will likely find place due to growing concerns.

The Final Act is futuristically oriented containing an agenda for continuous negotiations drafted during the Uruguay Round negotiations. The Uruguay Round of trade negotiations lasted for almost eight years (1986-1994), which culminated into a set of multilateral trade agreements. The Uruguay Round established the World Trade Organisation, which overhauled and strengthened the GATT rules on trade in goods, included new rules on trade in services and protection of intellectual property rights under the multilateral trading framework, and incorporated wide-ranging commitments by individual countries to liberalise trade policies.

The futuristically oriented "Final Act" prevents the WTO from becoming redundant with changing requirements and time. This agenda requires members to complete unfinished negotiations of the Uruguay Round and regular review of specific provisions/agreement itself. Several agreements contain commitments to launch new negotiations by 1st January 2000. The future agenda comprises to commence negotiations on the Agreement on Agriculture and General Agreement on Trade in Services (GATS). Besides, the WTO Ministerial Declaration instructed the WTO General Council to prepare a work programme that could support decisions at the next Ministerial Conference to open negotiations on a wide range of subjects - every subject taken up at the Uruguay Round plus five or six more.³ Indubitably, developing countries will have an interest in each of the topics and will play an active role in how they are shaped.

Since the establishment of the WTO, the developing countries' share of world trade has increased significantly over the past three decades. A number of developing countries have played a key role in the past during the Uruguay Round negotiations, and are likely to take part more vigorously this time with new entrants in the GATT/WTO system. However, there is a fear that a "two-speed WTO" is emerging at Geneva.⁴ The industrial countries and a significant group of developing countries are moving ahead, but the least developed countries seem to be falling farther behind. Their share of world trade is slipping, even in

³ Agreement to such a work programme is however a long way from agreement to open a new round.

⁴ Finger (1998) describes the situation as a "duality in the representation and participation of developing countries in the WTO".

primary products category where their exports are generally concentrated.⁵ There is an increasing concern that such countries are not able to effectively participate in the newly established multilateral trading arrangement. Consequently, most LDCs are unable to play a significant role in the decisions making of the organisation, nor they are likely to meet their Uruguay Round obligations within the given transition periods.

With lots of pulls and pressures in Geneva, it gives an impression that the new round of trade negotiations at the WTO will be a futile exercise for many and beneficial for handful few. Superficially this could be the impression, but in reality there are distinct advantages on many accounts for the Millennium Round. Three major reasons for the new round are as follows:

- The global welfare benefits from a new round would be huge.
- The "built-in" agenda in the Final Act is not enough.
- Protectionist backsliding must be stopped.

Global Welfare Benefits

An OECD report concludes that welfare gains from the Uruguay Round negotiations are likely to exceed US \$ 200 billion annually.⁶ However, the Uruguay Round was unable to liberalise many sectors that were protected in many economies causing disparate distortions in international markets. The report stresses that further liberalisation could generate even larger welfare gains than the Uruguay Round.

More studies point out that halving trade barriers could realise estimated welfare gains of around US \$ 400 billion annually. Complete elimination of trade barriers could generate gains of around US \$ 750 billion annually. Some studies suggest that earlier and more comprehensive market opening generate larger gains than later and less comprehensive liberalisation. Besides, the markets and enterprises tend to adjust for anticipated market openings. Thus the "announcement effect" arising from forthcoming global trade reforms will in itself generate earlier gains.

⁵ Finger (1998) quotes from (Amjadi, Reincke and Yeats) the Sub-Saharan African countries have a declining share not only of total world exports, but in the export categories most important to them are foods, agricultural materials, minerals and fuels.

⁶ OECD (1998) "Open markets matter: the benefits of trade and investment liberalisation", OECD Publication, Paris.

Built-in Agenda

At the end of the Uruguay Round, members decided to include a "Built-in" Agenda provision in especially for two key sectors- agriculture and services. Negotiations in these areas are already mandated to start by early 2000.

Reforms in these sectors can provide substantial benefits for the global trading community, including developing countries. In the case of agriculture, it is reported that halving the protection could almost achieve gains of around US \$ 90 billion, which almost touches US \$ 150 billion from complete elimination. Likewise, halving trade distortions in services can generate global gains of around US \$ 250 billion. However, if negotiations are limited to only these sectors then it is highly unlikely that members could achieve significant gains from these negotiations. Therefore, a comprehensive round covering wide ranging trade-related issues would give bigger gains and greater opportunities for success as chances of *quid pro quo* are more.

Undoubtedly, the gains from "Built-in" Agenda are large. But, many "market access" issues including industrial products still remain unresolved. There are high tariffs on industrial products in many economies, impeding further gains from trade for developing countries. In the recent past, some economies have commenced unilateral market reform process, a new round will enable these economies to receive negotiating "credit" for those reforms.⁷

Developing and transition economies (including new entrants) would greatly benefit from a broader coverage than the "Built-in" Agenda. Studies suggest that all economies benefiting from a package involving agriculture, manufacturing and services, the biggest gainer in terms of proportion to GDP will be developing regions in Asia, Africa, the Middle East and Latin America.

Protectionist Backsliding

Naturally, a new round will help governments avoid backsliding on their market access commitments. Due to various factors, many economies experienced financial collapse and erosion of markets. While currency devaluation improved the export competitiveness, weaker demand and financial problems prevented to achieve these competitive gains. These reasons coupled with many other determinants have

⁷ Foreign Affairs & Trade (1999), "Global Trade Reform: Maintaining Momentum", Government of Australia Publication, Australia.

impeded the reform and liberalisation process in many countries. Increased exports will be vital to maintain balance of payments stability and sustained economic growth. A new round can help to keep markets open and fix recovery in many adversely affected countries.

It is almost clear that protectionist sentiment against import competition is growing in many WTO member countries. The most effective way to counter such pressures is to keep global trade reform process move forward. And the most effective way of doing so is by launching a new comprehensive WTO round or the "Millennium Round" in Seattle.

The WTO Agenda

The Uruguay Round negotiations led to an improved framework of multilateral rules for governing international trade. Prolonged negotiations left no member at an advantage or disadvantage in the Final Act. Serious efforts were made for improving access to foreign markets for both goods and services. The WTO framework constitutes a set of legal bindings on members in the form of multilateral and plurilateral agreements. The "Agenda" on Final Act makes an attempt to further eliminate distortions in international trading rules to facilitate trade and protection of intellectual property rights.

The WTO Ministers in their 1998 Declaration at Geneva noted that they "remain deeply concerned over the marginalisation of least developed countries and certain small economies and recognise the urgent need to address this issue."⁸ The Declaration also welcomed actions that had been taken by the WTO and by other organisations in response to a call in the WTO Ministerial Declaration of 1996 for a plan of action to improve the least developed countries' capacity to respond to opportunities offered by the trading system.⁹

The existing multilateral framework comprises of GATT 1994, for trade in goods, which has twelve associate agreements. Besides, it has seven understandings and decisions to guide the operational framework of the WTO. Trade in services is governed by the General Agreement on Trade in Services (GATS) and the TRIPS agreement protects intellectual property rights. The WTO work programme attempts to cover almost all areas for identification of specific trade related issues in the existing arrangements and new issues emerging from changing business environment.

⁸ WTO 1998a, paragraph 6.

⁹ WTO 1996, paragraph 14.

The "Built-in" Agenda in the existing framework explicitly covers Agriculture and Services. But it also includes reviewing of twelve other

Framework of WTO Rules

Multilateral Agreements

Trade in Goods

- General Agreement on Tariffs and Trade 1994 (GATT 1994)
 - Agreement on Customs Valuation
 - Agreement on Pre-shipment Inspection
 - Agreement on Technical Barriers to Trade
 - Agreement on Application of Sanitary and Phyto-sanitary Measures
 - Agreement on Import Licensing Procedures
 - Agreement on Safeguards
 - Agreement on Subsidies and Countervailing Measures
 - Agreement on Anti-dumping
 - Agreement on Trade Related Investment Measures (TRIMs)
 - Agreement on Textiles and Clothing
 - Agreement on Agriculture
 - Agreement on Rules of Origin
- Understandings and Decisions
 - Understanding on Balance-of-Payments Provisions
 - Decision on Shifting the Burden of Proof
 - Understanding on State Trading Enterprises
 - Understanding on Rules and Procedures Governing the Settlement of Disputes
 - Understanding on Binding on Tariff Concessions
 - Decision on Trade and Environment
 - Trade Policy Review Mechanism

Trade in Services

- General Agreement on Trade in Services (GATS)

Intellectual Property Rights

- Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)

Plurilateral Agreements

- Agreement on Trade in Civil Aircraft
- Agreement on Government Procurement
- Agreement on Information Technology Products

Source: Indian Industry's Guide to the WTO (1999)

associated agreements under GATT 1994. The Understanding on Procedures Governing Settlement of Disputes is also to be reviewed in the New Round. The established "Agenda" also includes review of some of the provisions of Trade Related Aspects of Intellectual Property Rights.

The review of existing rules constitutes a major part of the "Built-in" Agenda along with some plurilateral agreements, such as Agreement on Government Procurement and Agreement on Information Technology Products. The efforts are primarily to expand the scope of the existing arrangements and to cover additional items on the Annexed list. Besides, the Uruguay Round negotiations also made an attempt to link trade and environment. However, general consensus could not be achieved during earlier "Rounds". Thus, the existing agenda for the Millennium Round will take up trade and environment from an understanding stage to a full-fledged multilateral agreement. Definitely, the "Built-in" Agenda is closely linked to the Uruguay Round negotiations, which commits WTO members to further negotiations, or to review the rules in the context of changing global trading environment.

Key issues: For Developing Countries

1. Uruguay Round liberalisation commitments, particularly on **Textiles and Clothing**, must be carried out.
2. **Tariffs bargaining** (market access bargaining generally) should be across-the-board, not zero-for-zero sectoral negotiations.¹⁰ The selection of sectors would be strongly influenced by the industrial countries' interests, so sectors of export interest to developing countries should be pursued aggressively.
3. In the **Services** negotiations, movement of natural persons must be actively negotiated. Developing country's comparative advantage in construction and in the provision of professional services is at stake here.
4. A **Rules Based System** must be maintained. This calls for more transparency, openness, and particularly for an effective and respected dispute settlement mechanism.

Understandably, these are key issues for developing countries on the "Built-in" Agenda. But the changing global environment, excessive non-

¹⁰ Quid pro quo for sectoral negotiations.

tariff protectionist measures and rapid technological developments have once again emphasised on the need for review of these issues. Currently, more issues have cropped up in the form of electronic commerce, trade and competition, labour standards, trade and investments, trade facilitation, etc. Lots of pulls and pressures within the member countries will see inclusion of some of these issues in the New Round. Besides, rapid technological developments have also thrown new issues from the "Built-in" Agenda for further consideration. For example, electronic medium allows delivery of most services without actual movement of natural persons. Thus, the issue of movement of natural persons under GATS, vital from the point of view of developing countries, is blunted. Conversely, the new issue under the same category could be to push for Article VII of GATS, which concerns mutual recognition of qualifications required essentially for the supply of services. Likewise, there are diverse issues in each area that could ultimately lead to significant changes in the "Approach Plan" of developing countries in finalising the Millennium Round Agenda. However, trade negotiations on agriculture and services are imminent, beside other WTO rules. A critical analysis of status report on each area makes an attempt to highlight potential areas of negotiations in the New Round.

Agriculture

The Agreement on Agriculture states "members agree that negotiations for continuing the process...of substantial progressive reduction in support and protection...will be initiated" by January 1, 2000.¹¹ It explicitly mentions that negotiations shall encompass:

- a) experience from implementing reduction commitments under the agreement,
- b) the effect of these commitments on world trade in agriculture,
- c) non-trade concerns, special and differential treatment to developing region covered by WTO, and
- d) what further commitments are necessary to achieve the objectives of establishing a fair and market-oriented trading system specified in the agreement.

No completion date is specified, but the "peace clause" on the imposition of countervailing duties expires at the end of 2002.¹² Informal

¹¹ Article 13 of Agreement on Agriculture.

¹² Article 20 of Agreement on Agriculture.

discussions of market access, domestic support, export subsidies and issues of interest to developing countries are already under way in the WTO Committee on Agriculture. The commitment to new negotiations is not questioned by any government, and is accepted as one of the major area in the WTO's built-in agenda. Application of tariff quotas,¹³ a key instrument in the application of market access commitments, has been a technical topic of particular concern.

More than 20 national submissions have been received from WTO members, like Australia, New Zealand, the US, European Union, Canada, etc. on specific matters. Members like Pakistan, Peru, etc. have dealt the negotiating agenda with issues concerning developing countries. It is evident from the response that application of tariff quotas is a major concern. Differences between quota administration mechanisms employed by individual countries and divergent interpretation of the provisions have been raised at various levels at the WTO. Other subjects that have emerged for attention are domestic support and export subsidies, both widely regarded as principal issues for future negotiations. Besides, the "blue box" payments,¹⁴ special safeguard mechanism,¹⁵ role of state-trading enterprises,¹⁶ special and differential treatment to developing countries, are some of the other issues on which general consensus is emerging at diverse platforms.

The existing agreement allows Korea and Japan extra margin to restrict imports of rice. But this margin is time bound, until the end of 2000 for Japan, 2004 for Korea. If either country wants to maintain it, the country must negotiate the right to do so, and according to the agreement, "shall confer additional and acceptable concessions as determined in that negotiation."¹⁷

The leading protagonists in the agriculture negotiations are likely to be much the same as they were in the Uruguay Round, i.e. with all kinds of preferences and reservations. On one side, the United States

¹³ **Tariff quota:** Trading mechanism that provides for the application of a customs duty at a certain rate to imports of a particular good up to a specified quantity (in quota quantity), and at a different rate to imports of that good that exceed that quantity.

¹⁴ These are payments made by governments under production-limiting programmes.

¹⁵ Article 5 on Agreement on Agriculture.

¹⁶ The role of state enterprises in developing countries is viewed by many as distorting agriculture trade, rather than stabilising supplies and prices.

¹⁷ See Agreement on Agriculture-Annex 5, Section A paragraph 4; Section B, paragraph 9.

will seek to improve market access for its own wide range of agricultural products. While, the European Union will seek to maintain the import restrictions, export subsidies and domestic support measures that make up its Common Agricultural Policy. The Cairns Group,¹⁸ again will press for more liberalisation. In fact, this group is likely to dominate the agriculture negotiations against protectionism. The developed countries will be teaming up together with the European Union, because of similar agricultural policies. Developing countries are worried about the loss of preferential access to the European Union, food-importing developing countries are worried about costs and about security of supply, if industrial countries' overproduction and consequent inventories were eliminated. This lineup is not without its contradictions, e.g., the United States advocates to maintain its protective policies for sugar, while Canada prefers protectionist measures for its dairy products.

Key issues in Agriculture

Agriculture
Market access
negotiations must
begin by 1 Jan. 2000

- The "peace clause" suspending countervailing duties against certain subsidies expires at the end of 2002.
- Liberalisation commitments of the Uruguay Round are yet to be implemented.
- Negotiations on Agriculture begin before implementation of Uruguay Round liberalisation.
- Informal discussions of market access, domestic support, export subsidies and issues of interest to developing countries are already under way in the WTO Committee on Agriculture.
- Application of tariff quotas, a key instrument in the application of market access commitments has been a topic of particular concern.
- Annexes allow Korea and Japan extra margin to restrict imports of rice. This margin is time bound, until the end of 2000 for Japan, 2004 for Korea. Extension would have to be re-negotiated.
- The "sides" were clearly drawn at the Uruguay Round: (A) United States, Cairns Group, seeking market access for their exports. (B) The European Union, defending the CAP; Developing countries who want to preserve preferences and net food importers.

¹⁸ The Cairns Group comprises Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay.

In fact, the developing countries (whether or not they are members of Cairns Group) will be pursuing for improvements in market access for agriculture commodities. Given the general tariffication achieved during the Uruguay Round, improvements in market access will be largely a matter of tariff bargaining. The bottom line of bargaining in agriculture negotiations will largely be dependent on moves of various regional groupings. For example, the APEC Summit decided to agree to back fish and fish products (currently excluded from the Agreement on Agriculture) for inclusion. Likewise, it also decided to take up the food sector as well as oils and oil seed products. Few developing countries will focus primarily on negotiated changes in tariff quota administration to gain market access for their agricultural exports. Several developing countries dependent on exports of sugar, rum, bananas and beef have complained that complex quota arrangements are a serious impediment to their trade. Thus, future alignment for developing countries is evidently foreseen as an informal group constituting of developing countries, including members and non-members of the Cairns Group. This group will make an attempt to find common ground within themselves to counter any protectionist measures at the Millennium Round negotiations.

Services

The General Agreement on Trade in Services commits Members to "enter into successive rounds of negotiations". It stipulates- "beginning not later than five years from the date of entry into force of the WTO Agreement, i.e. 1 Jan. 2000 and periodically thereafter, with a view to achieving a progressively higher level of liberalisation".¹⁹ The agreement on services is an open-ended one, which requires individual member's commitment for liberalisation. Once committed, the member needs to follow the general principles of MFN and national treatment. It covers all types of trade in services.

A provision pressed for by several developing countries states that "[n]egotiating guidelines shall establish modalities for the treatment of liberalisation undertaken autonomously by Members since previous negotiations ...".²⁰ Usual connotation of this phrase refers not to credit for binding at the WTO (a reform that had been unilaterally implemented), but a way to earn credit for a liberalisation without

¹⁹ See GATS, Article XIX, paragraph 1.

²⁰ See GATS, Article XIX, paragraph 3.

formally binding it. Several developing countries have expressed their serious concerns on this matter, because they underwent significant unilateral liberalisation during the Uruguay Round.

Key issues in Services

<p>Services negotiations must begin by 1 Jan. 2000; periodically thereafter.</p>	<ul style="list-style-type: none"> ● Uruguay Round agreement specifies that the guidelines for negotiations shall establish self-governing modalities for liberalisation. ● WTO Secretariat has prepared notes on trade in individual sectors, eliciting on the economic effects of services' liberalisation, on shortcomings of data on trade flows. ● Members have agreed to a sector-by-sector discussion of regulatory and other problems that might affect trade in services on which negotiations could be useful. ● Not yet completed "rules" negotiations, e.g., on safeguards, public procurement, subsidies, may carry over to a new round. ● Realisation by developing countries that their own liberalisation needs contributed to success in negotiations on financial services and on basic telecommunications. ● Negotiations on movement of natural persons and on maritime transport have not been successful. ● A broader negotiation that allows trade-off across sectors may be key to success.
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Since the ending of the Uruguay Round negotiations, there have been four sectoral negotiations on market access. The maritime transport negotiations ended inconclusively. The negotiations on movement of natural persons have achieved little success, while negotiations on basic telecommunications services and financial services were more successful. These negotiations were successfully concluded because developing countries viewed the overall process as one of domestic reform (they recognised the value of their own liberalisation).

The market access perspective was however the only one that influenced the maritime transport negotiations. On market access, some of the larger countries were likely to be significant net losers; and there were no offsetting gains for them in other sectors. The negotiations

have been suspended and it is possible that more could be achieved in a broader negotiation allowing balancing across sectors.²¹

Negotiations on some of the "rules" of the GATS were not completed at the Uruguay Round and are likely to carry over to the next round. Safeguards, public procurement, and subsidies are important areas. The major industrial countries have not been sympathetic to the need for a safeguard provision in the agreement, while several developing countries have argued that inclusion of an emergency safeguard provision would make countries more willing to take on bound liberalisation commitments. Cross-border supply of professional services may be an area in which both developed and industrial countries will see benefits, if problems of recognition of qualifications and licensing can be worked out.

Institutions:

The WTO

The WTO, extended dispute settlement provisions and the system of regular trade policy review are the results of prolonged Uruguay Round negotiations. There is no indication of any member raising concern in any fundamental respect, or to add substantially to further their scope of work. However, "functioning" of these institutions is frequently questioned. The US, supported by Canada, initiated a move to improve the transparency in WTO operations.²² No provision exists for review of the WTO agreement, but that could not prevent changes being made if member countries agreed. The main purpose of the agreement is to link general obligations and substantive trade rules embodied in separate agreements on goods, services and intellectual property rights.

Criticisms have been expressed on matters, such as "slow-moving procedures" for accession to the WTO, role of Council of Trade in Goods, level of minimum budget contribution payable by countries with small share in world trade. However, these problems are not relevant to

²¹ The Services Agreement suggests that concessions should be balanced within the Services Agreement itself, more specifically that market access negotiations "should take place with a view to promote the interests of all participants on a mutually advantageous basis and to secure an overall balance of rights and obligations." (Article XIX, paragraph 1)

²² WTO (1998a) Ministerial Declaration approved at the end of the 2nd Session of WTO Ministerial Conference, Geneva.

the main agreement. Overcoming such problems is well within the scope of WTO, and few concerns could be redressed by appropriate administrative changes. But it is highly unlikely that countries could be considering changes in accession rules for discussions.

Dispute Settlement

One of the decisions taken by the WTO Ministers at the Marrakesh Meeting (when the Uruguay Round agreements were approved) asks for a full review of dispute settlement rules and procedures — to be completed in 1998. The Uruguay Round agreement on dispute settlement, of course, provided a much stronger dispute settlement mechanism than the old GATT process.

Key issues in Dispute Settlement

<p>Dispute Settlement Full review in 1998.</p>	<ul style="list-style-type: none"> ● The dispute settlement mechanism is sometimes blamed for disagreements over meaning, e.g., the shrimp, sea turtles case, the banana's case. Such complaints have come from developing as well as from industrial countries. ● Panel meetings are closed to outsiders (other than governments), access to information provided to panels is limited. ● Only government officials may participate in panel meetings. ● Complexity requires expertise that some developing countries do not have. ● No fixed time schedule for implementation of DSP's report.
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While reviewing the Dispute Settlement Understanding (DSU) in 1998, members were asked to submit informal written suggestion so as to take up at the WTO's next Ministerial Conference to be held at Seattle in late 1999. The idea of review focussed on "whether to continue, modify or terminate such dispute settlement rules and procedures". Criticisms of the DSU procedures and rules are quite frequent by aggrieved members.²³ Besides, different NGO's have condemned DSU's

²³ For example, the US criticised the DSU panel for not taking into account claims that restrictive business practices contributed to trade distortions in Kodak films case with Japan. Likewise, environmentalists have condemned the DSU panel favouring developing countries like India, Pakistan, Malaysia, etc. against the US Law on shrimp exports. Indubitably, the WTO obligations do not at present extend to competition issues or give primacy to environmental goals. But more importantly, India complained that WTO is proving to be highly legalistic organisation, far more than GATT. The banana export crisis is an evident example.

rules and procedures. Few suggestions circulating at Geneva on DSU's functioning include hearings to be open for the public, briefs by the disputing parties to be made publicly available. But again, there is lot of opposition to such suggestions from various quarters.²⁴ Members do recognise public concerns about accountability, but more transparency will lead to frequent leak of confidential information of disputing governments, putting them in a disadvantageous position at the time of settlement of disputes.

Transparency and openness would seem to be procedural virtues. But pressure for more transparency and openness often comes from interests who are not satisfied with the substance of decisions (again, cases involving environmental issues provide examples), many WTO members are suspicious. Only government officials are allowed to participate in panel hearings, but small countries often do not have the appropriate expertise on government staffs. Similarly, large companies can provide the technical expertise to support their governments on matters of interest to the companies; smaller companies are at a disadvantage. Such issues undermine the effectiveness of DSU and raise suspicion.

Besides transparency, developing countries are raising their concerns on equitable and accessible dispute settlement, like any other weaker participant in any other legal dispute is at a disadvantage. These members feel themselves at a disadvantage if the opposite party is the US or EU. The issues are often very technical and their wide network and informational infrastructure put developing countries in a fix on most occasions. The WTO Secretariat legal service is still small and to the extent it can provide technical assistance does so largely on procedural matters. It is difficult for developing countries to hire expensive legal assistance for settlement of disputes, even if they do so—their legal experts are excluded from panel hearings because they are not government officials.²⁵ Thus, a point strongly percolating among developing members is to establish legal service cell within the WTO Secretariat specifically to advise developing countries on procedural and substantive aspects of disputes. Another alternative to keep the Secretariat neutral is to establish funding for independent legal counsel for developing countries.

²⁴ Most members resisted the attempts of World Wild Life Fund's attempt to submit its own "amicus brief" to a DSU panel.

²⁵ See banana dispute case, Caribbean banana producers' private legal advisers were excluded from panel hearings.

The banana dispute has also drawn the attention of members to the weakness of the DSU in terms of implementation of Appellate Panel Report. Unlike the DSU's approximate time schedule for relief mechanism, the final implementation of the verdict has no specific time schedule. The banana dispute case prolonged for more than three years without really forcing EU to implement the panel verdict. Recently enough, developing countries with low share in trade are realising their vulnerability against major trading nations. But it is highly unlikely to emerge as an issue for the Millennium Round because no understanding on this issue has emerged within a major negotiating group.

Trade Policy Review

The Trade Policy Review Mechanism is an uncontroversial issue. There is no indication that major changes will be sought by any of the WTO members. However, prescribed frequency of reviews (every two years for the US, Japan, EU, Canada; every four years for the next sixteen largest traders, and every six years or longer for LDCs) has been often criticised, in particular by the European Union. Besides, Switzerland has expressed doubts whether this review activity of the WTO yields benefits commensurate with its costs, similar views are shared by other members too.

Possible Areas for Inclusion

Dispute Settlement Understanding

- Transparency in Dispute Panel Decisions.
- Participation of NGOs in environmental, consumer and labour-related matters.
- Legal service within WTO Secretariat or special funding for developing countries to hire independent legal service.
- Sensitisation of legal proceedings especially for developing countries.

Trade Policy Review

- Frequency of reviews

Tariffs

Negotiations to improve market access by reducing and binding import duties have been a core element in multilateral trade negotiations, since the GATT era. There is no provision in the new agenda for another round of trade negotiations. The Singapore Declaration renewed a

commitment to progressive liberalisation and elimination of tariff and non-tariff barriers to trade in goods, but fell short of including tariffs in the future discussions. Australia and New Zealand pressed hard for tariffs but developing countries failed to support them, apparently for inherent reasons. But observers feel that any broad round of multilateral trade negotiations in the WTO must cover tariffs.

Many countries engaged in reducing MFN tariffs as a result of recent sectoral negotiations, which led to the Agreement on Information Technology Products (ITA), reached in 1997. The 40 odd signatories to ITA will phase out tariffs on IT products by 1st January 2000. Negotiations for ITA-II have run into bad weather and are likely to commence in the near future. Besides, countries have decided for further sectoral negotiations in specific areas. The APEC has identified fifteen product categories, like environmental goods and services, energy sector, fish and fish products, toys, natural and synthetic rubber, fertilisers, gems and jewellery, etc. for early voluntary liberalisation. With such a range of sectoral, preferential and accession tariff negotiations underway, the prospects for a new multilateral tariff negotiation might seem dim.

Key issues in Tariffs

Tariffs

- The last tranche of Uruguay Round cuts off tariffs on industrial goods was made on 1 January 1999. Implementation of some cuts on agricultural products will be extended further.
- Various regional agreements involve tariff cutting that might alternatively inhibit multilateral reductions (They threaten regional identity, erode preferences) or make it easier.
- Tariff cuts are already in place against major trading partners.
- Developing countries have potentially more to gain from across-the-board negotiations; sectoral negotiations offer less potential for market access gain, but provide more opportunity for individual countries to avoid making concessions.

But recent developments at the WTO have again reinforced new alignment on tariff negotiations. Among developed countries, Australia and New Zealand have now gained considerable support from different quarters, most notably from the European Union and Japan. The US is

also not far behind in recognising the limitations of sectoral and regional approach to tariff liberalisation. The opponents of tariff negotiations, the developing region, are finding it hard to continue with their stand because of intrinsic interests of individual countries. These interests include textiles and clothing, leather and footwear, in general and specific national interest, like petro-chemicals (Argentina), consumer electronics (Hong Kong and ASEAN countries), rubber products (Sri Lanka) etc. Some developing members suggest, in particular Latin America, that there is great scope for reducing the gap between applied and bound tariff rates. Many LDCs too maintain GATT-bound tariff rates well above their actual applied rates. They could get some worthwhile bargaining leverage in future negotiations, without risking much loss of protection or revenue, if they were prepared to offer reductions in bound rates. Though tariffs issue is not included in the built-in agenda, it is natural that tariffs might emerge at any time of multilateral trade negotiations in the new round.

Textiles and Clothing

Trade in textiles and clothing stands out as an important area for large proportion of developing countries. This area has seen the great North-South division, in terms of common position and negotiations. However, the prevalent position of developing region is quite defensive on this issue. Any negotiations in the earlier GATT rounds and now in the Millennium Round are directly linked to Agreement on Textile and Clothing.

From a market access perspective, implementation of the Uruguay Round commitments to eliminate the MFA and to do away with the quantitative restrictions, is the most important WTO issue for developing countries. Phase-out is being implemented over three stages, ending in 1997, 2001 and 2004; all restrictions to be terminated by 1 January 2005. The liberalisation commitment is back loaded — much of the liberalisation can be put off until the last stage.

The agreement provides for a review of implementation at each stage, but there is no provision in the agreement for renegotiation. Indeed, the last sentence of the agreement reads “there shall be no extension of this Agreement.”²⁶

²⁶ Of Course, any such agreement can be superceded by another agreement. In this sense the statement is less substantive.

Key issues in Textiles and Clothing

Textiles and clothing Review of implementation of each stage.

- Agreed elimination of MFA will be completed on 1 January 2005, and is back-loaded.
- The agreement specifies “There shall be no extension of this agreement,” (Article 9).
- Review of first stage implementation indicated that importing countries have exploited every opportunity to delay liberalisation.
- The industrial region's textile industry considers agreed reduction of import restrictions on fibres and fabrics as a *quid pro quo*.
- So far, large and small developing country exporters have maintained a solid front.
- Developing countries fear that rules of origin, antidumping, measures imposed under the aegis of environmental or labour standards will amount to significant backsliding.
- Industrial country tariffs are still high.

Review of first stage of implementation indicated that importing countries have exploited every opportunity to delay liberalisation. Importing countries' textile industries consider that developing country's reduction of restrictions on fibres and fabrics are up to their level of commitment as agreed in the *quid-pro-quo* for the MFA. Developing countries are uncomfortable that application of carefully crafted rules of origin, antidumping, or measures imposed under the aegis of environmental or labour standards will amount to significant backsliding.

The developing region as a whole fear that importing members from the developed region will increasingly resort to other protectionist measures in place of quantitative restrictions, such as changes in rules of origin, anti-dumping actions, and measures introduced to protect the environment or labour standards. Thus, follows the WTO rules that are being reviewed at the WTO for any changes and modification that could be negotiated in the New Round of negotiations.

Electronic Commerce

It is the most controversial topic to date in the finalisation of Millennium Round agenda, though it is not a part of the official agenda but has emerged at all Councils' meetings in one form or the other. Introduction of electronic commerce at the WTO is quite recent

(February 1998) and that too indirectly through the US proposal on electronic transmissions. However, within two months of deliberations, it found place in the 2nd Ministerial Declaration at Geneva. The Declaration temporarily extended the status quo proposal for one year, and directed the WTO to carry out a comprehensive work programme on trade related issues emerging from electronic commerce. The objectives of work programme, as spelled out by the Director General, WTO are as follows:

- It will help in conforming and consolidating the disciplines and rights, which already exist, notably in GATS and TRIPS;
- It will facilitate identification of problems where negotiations are necessary to amend existing agreements, notably in the existing arrangements; and
- Finally to decide if there are more areas of conflict, not covered under the existing arrangements.

These objectives in a way suggest that this subject may not appear directly at the WTO but there is all likelihood that electronic commerce could be taken up tangentially in different forms. One way could be negotiating specific agreements' related amendments surfacing from the work programme for inclusion in the existing agreements.

The comprehensive work programme covers all multilateral agreements on trade in goods, services and protection of intellectual property rights. The main agreement on trade in goods is General Agreement on Tariffs and Trade 1994. The GATT Council has identified issues such as market access to and for, standards, rules of origin, customs valuation, etc. Likewise, the Council on General Agreement on Trade in Services (GATS) has identified issues, like scope and mode of supply, transparency, market access commitments, competition, etc. Besides, protection of intellectual property rights is a major issue in electronic commerce. The TRIPS Council has identified three issues for the time being, namely, copyrights, inclusion of domain name in trademark category, access to new technologies and technology transfer.

The comprehensive work programme has observed variety of contrarities in the existing provisions of the WTO. Even tangentially, all the identified contradictions are likely to surface while reviewing the rules as part of "Built-in" Agenda for the New Round. Thus, electronic commerce appears here as part of the built-in agenda for the Millennium Round (though officially it is not yet a part of the Agenda).

WTO Rules

As discussed in the "Built-in" Agenda, the existing framework of rules are constantly under fire from all quarters. Safeguards, intellectual property rights and subsidies are prominent areas of concern for the developed countries. The general observation is that of distorting competition in trade. Developing countries have been severe on anti-dumping, trade related investment measures, technical standards, sanitary and phyto-sanitary provisions. Common experience of these provisions reflects that these rules act as non-tariff barriers for exports from developing regions. Few areas, such as dispute settlement mechanism, etc. are common subject of interests for both developing and developed countries. Thus, in finalising the "Millennium Round" agenda, the WTO rules will be prominent issues for future negotiations.²⁷

Rules of Origin

The Agreement on Rules of Origin concluded from the Uruguay Round negotiations is a major guiding agreement for other associated agreements under the multilateral framework of WTO. Governments agreed on a number of principles for rules of origin, such as:

- Provisions should not be used as instruments of trade policy;
- Rules should be objective, coherent and based on positive standards;
- A good should be held to originate in the country where it has been wholly obtained; or
- If more than one country has been concerned with its production—where it was last substantially performed.

The central element in the agreement was the decision to develop and adopt a single set of harmonised rules of origin that would be applied by all WTO members for all purposes, except establishment of preferential status. Rules of origin are crucially important in deciding the treatment given to imports when quantitative restrictions, safeguards, anti-dumping actions or countervailing measures are in force.

The drafting of harmonised rules was entrusted to Technical Committee on Rules of Origin of the World Customs Organisation. The work has fallen behind schedule and could not meet successive deadlines for completion. The latest postponement to Ministerial meeting in late 1999 raises the strong possibility that this issue will be caught up in wider negotiations. There is a broadly based interest among members in establishing harmonised rules of origin, since such an agreement

²⁷ WTO (1998b) Document No. WT/L/271.

would remove uncertainty from the international trade environment. Developing countries recognise that they could have large trade interests at stake, especially in case of textile and clothing. They are anxious that restrictive rules of origin should not be used as substitutes for quantitative restrictions.

The issue in rules of origin is the exclusion of the agreement governing preferential treatment to trade in goods. But a "common declaration" on basic principles is applicable to preferential rules of origin.²⁸ Besides principles, the declaration excludes applicability of other principles such as the determination of origin on the basis of where the last transformation of a product was carried out, or the non-use of rules of origin "as instruments to pursue trade objectives directly or indirectly". Currently, the agreement offers no help in curbing the use of deliberately trade-distortive rules applied within regional arrangements.²⁹

Key issues in Rules of Origin

Rules of Origin	<ul style="list-style-type: none"> ● The central element of the Uruguay Round agreement was the decision to develop and adopt a single set of origin rules, line-by-line of the Harmonised System of tariff classification. ● These rules are to be used in all relevant instances e.g., textile and clothing trade; except for establishing preferential status, e.g., in a free trade area. ● Procedures for developing, reviewing, modifying, adopting such rules have yet to establish. ● The work has proven more complex than anticipated, work has slipped behind schedule.
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Thus, focus of deliberation among members at the WTO is likely to be on a single set of rules of origin based on Harmonised System of tariff classification. The developing countries' interest lies in applicability of rules on all relevant instances, especially in textiles and clothing trade. The division on preferential status is quite evident and is likely to drive a hard bargain in the forthcoming negotiations on rules of origin. Besides, the work programme on electronic commerce has highlighted that electronic transmissions blur geographical boundaries, resulting in new complexities while ascertaining rules of origin for goods trade via electronic medium.³⁰ Thus, such complexities of a new business medium

²⁸ The agreement's basic principles are clarity, predictability and transparency.

²⁹ See NAFTA's "yarn forward" rule.

³⁰ It is almost impossible to ascertain the exact origin of goods where the last major transformation of a product was carried out.

is sure to further complicate matters for drafting single set of provisions for rules of origin. The single set of draft harmonised rules of origin will be reviewed, modified and adopted in the next round as per the status report, making negotiations on this subject extremely arduous in the context of preferential treatment transition period coming to an end in the near future in certain categories.

Customs Valuation

The Customs Valuation is a modified version of the Customs Valuation Code negotiated during the Tokyo Round. The agreement lays down a set of valuation methods, which must be followed by all members with a central purpose of basing customs valuation on the actual value of the concerned goods. Inherent fear of many countries in developing region is their inability to challenge traders who might understate the value of goods. Taking cognisance of this fear, the Ministerial decision of 1994 allowed some flexibility in applying the Customs Valuation rules. The agreement is in complete force for developed and developing signatories to the "Code", other members are not required to apply the rules until January 2000. These countries could seek further extension and allowed retaining some flexibility in valuation procedures.

Key issues in Customs Valuation

Customs Valuation	<ul style="list-style-type: none"> ● The agreement is in full force for industrial countries and for developing countries who were signatories of the Tokyo Round Code. ● Other countries have until 2000 to apply the agreement, plus additional time-bound flexibility on certain provisions. ● Adaptation is proving to be complicated, already some 50 countries are using various flexibility provisions. ● An effort to provide more technical assistance has been mounted. ● Little concern has arisen over the substance of the agreement, but the time needed (relative to the deadlines), the expense and the expertise to fully comply worries a number of countries. ● Probable inclusion customs valuation related issues emerging from electronic commerce.
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The issue of distortions is more related to administrative procedure than policy considerations, like technical assistance, missing notifications, etc. Thus, this subject seems not to be on anyone's list of prospective WTO negotiations for conventional business medium.

However, the existing set of valuation rules is adversely influenced by the electronic medium. Today, the valuation rules are based on traditional mode of business where there is no distinction between carrier medium and content. But electronic medium act as a carrier medium and content alone is not valued for the purpose of customs valuation. Thus, if a debate on customs valuation appears in the new round, most likely it will be revolving around an appropriate valuation method for separately determining value for carrier medium and content.

Pre-shipment Inspection

The Agreement on Pre-shipment Inspection (PSI) was negotiated in response to increasing use of private inspection agencies by the developing countries. The aim was to reinforce their customs administrations by checking (often in the exporting country) that the real value of goods matches their value as declared for customs purposes. Majority of exporters raised their concerns that PSI could lead to excessive overheads, unwarranted delays and constant irritants in terms of interference in price fixation, thus adversely affecting trade in general.

The agreement on PSI provides for triennial reviews and first review in 1997 highlighted variety of discrepancies within the existing provisions. The review committee made certain immediate and long-term recommendations. One recommendation from their report was the emphasis on the ultimate responsibility of governments for customs valuation and revenue collection. Besides, the report also recommended on the need for confidentiality by the inspection agencies, avoidance of conflicts and prompt issuance of PSI findings for swift dispute resolution.³¹ A separate code of conduct for PSI is also in the offing and likely to be taken up in the near future. Eventually some issues could find place in the final review and lead to amendment of the agreement.

Key issues in Pre-shipment Agreement

Pre-shipment Inspection

- Agreement calls for triennial reviews.
- The first review brought forward many problems, related to: the ultimate responsibility of the government for valuation and revenue collection, confidentiality, promptness, conflicts of interest.
- Problems are being handled at a technical level, a possible code of conduct for pre-shipment inspection entities is a possible outcome.

³¹ Report of the Working party on Pre-shipment Inspection to the General Council, GL/L/24.

It is highly optimistic to include these subjects in the Millennium Round Agenda, but a great majority of developing countries (including least developed countries) use the independent PSI agencies for customs evaluation. Thus, for all purposes it could become a rallying point at the finalisation stage of New Agenda for the developing regional groupings.

State Trading Enterprises

The WTO's built-in agenda includes Article XVII of the GATT agreement (Understanding on State Trading Enterprises). Governments largely grant special powers, rights and privileges to their enterprises for achieving certain national objectives. The Understanding intends to prevent government owned state enterprises from using their power to distort trade by favouring particular suppliers, subsidising exports or fixing high prices. The "Built-in" Agenda also includes continuing work on the issue of state trading enterprises, without any specified deadline.

General opinion emerging so far on the Understanding is to tighten the disciplines of the Article XVII. The United States and European Commission among others are the most ardent critic on the role of state trading enterprises. Their concerns are related to the role played by agricultural marketing boards prevalent in developed and developing regions, like Canada, Australia, New Zealand, India, etc. Canada's administration of tariff rate quotas for milk and dairy products is an evident example of how marketing boards are being used to guise subsidies and protection for domestic producers.

Key issues in Understanding on State Trading

State Trading

- The WTO's "Built-in" Agenda calls for continuing work, without a deadline.
- Work till now has been technical, e.g., a new questionnaire for notifications, an illustrative list of relationships between such an entity and its government.
- At stake are issues related to agricultural trade among industrial countries; e.g., US and EU concerns about agricultural marketing boards in Canada, Australia and New Zealand.
- Developing countries prefer to go by the existing arrangements.

At present alignment and realignment of groups at the WTO is quite evident on this issue. The US and the EC have found some allies among agricultural exporters, like Argentina and Colombia. The Cairns Group has adopted a cautious approach to this subject because developing region has shown no interest. Many members make substantial use of marketing boards and other state trading bodies and common argument is that such bodies help in stabilising markets and provide food security. Even the issue of state trading enterprises emerges frequently in accession negotiations, where present members demand the applicants to provide specific undertakings for ensuring tariff and other commitments genuinely lead to market access. For all purposes, these countries resist any move in a direction that could lead to negotiations on this issue. However, the critics (mostly developed countries) find it a rallying point in any negotiations at the WTO. But currently there is no link at present between the New Round and review of Article XVII.

Import Licensing

The Agreement on Import Licensing procedures lays down principles and rules to prevent non-automatic and automatic licensing from becoming trade barriers in themselves. The non-automatic licensing is a government tool for administering quantitative restrictions on the basis of quantity or value. On the other hand, automatic licensing is used mostly to facilitate trade. The agreement is in full force, and presently no country is interested in negotiating any changes in the provisions.

Key issues in Import Licensing

Import Licensing	<ul style="list-style-type: none"> ● The intent of the agreement is to prevent non-automatic licensing (e.g., to administer quantitative restrictions) and automatic licensing (e.g., to collect trade statistics) from becoming restrictions in and of themselves. ● The agreement is in full force and no country appears to seek changes. ● The major problem identified in the first of the required 2 yearly reviews was the failure of a large number of countries to notify as required relevant regulations, procedures, actions. ● Provisions seem to be ineffective against issues emerging from electronic commerce.
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Various review reports suggest that the main problem encountered with the agreement is members' reluctance to fulfil their obligations, such as notifying relevant legislation, procedures and actions. The agreement is also seen in the context of electronic commerce. Views on this are diverse, but major problem foreseen in this regard is that an electronically processed transaction has an ability to bypass licensing procedures and legislation. In the existing form, the agreement is ineffective against an electronic transaction. It does not provide any means of relief to governments because of widespread bypassing of stipulated quantitative restrictions via licensing.

Regional Trading Arrangements

By far the most unanimous view in the multilateral system is the understanding on the regional trading arrangement. It is observed more and more countries are entering into regional trading group on the lines of NAFTA, EC, ASEAN, etc. In the recent times, the Singapore Ministerial Conference concluded that regional trade arrangements have expanded vastly in number. One benefit of such arrangement is envisaged in the form of more liberalisation and faster globalisation. Consequently, this pattern will assist least developed, developing and transition economies in integrating into international trading system.

The Article XXIV of the GATT sets out rules for customs union or free trade areas. But this provision has well known areas of ambiguity resulting in widespread free trade agreements within members not in conjunction with the stipulations. The Understanding on MFN, differential treatment, reciprocity and fuller participation provides flexibility for free trade agreements among developing countries.³² However, some member governments are critical to such arrangements because they are not a part of any strong regional trading arrangement. Their concerns are not unfounded because regional trade arrangements distort trade between members and non-members. It is more evident due to differential treatment meted out to the non-members against goods from members. The multilateral trading system promotes principles of non-discrimination which regional trading arrangement violates in all respects. On the other side, countries in general have been benefited from such arrangements and find little reason for any further negotiations.

³² The "Enabling Clause" of GATT 1994, a similar provision is found in the GATS Agreement Article V.

Key issues in Regional Trade Arrangements

Regional Trade Agreements

- GATT/WTO requirements are ambiguous, application has been soft.
- New procedures for reviewing regional agreement have been established, but they have minimal bite, even on determining what information an agreement must submit.
- A work programme calls for legal analysis, comparison of agreements, and debate on context and economic aspects.
- The comparison exercise will be based on an inventory of non-tariff provisions of regional arrangement that have been notified to the WTO.
- Except for Japan, Hong Kong, China and Korea, countries have expressed no particular interest in tighter rules.
- Other countries' interests may be more in accommodating the rules to the agreements than the agreements to the rules. Renegotiation of the Lomé agreement is likely to affect the position of the EU and of developing countries who are members of the agreement.

Undoubtedly, there is an adverse impact of regional agreements on the integrity of multilateralism and members are reluctant to tighten the relevant WTO provisions. Tightening will reduce the degree of flexibility that members enjoy in negotiating new trading agreements within the group. Countries like Australia, Hong Kong, Japan and Korea are advocating for stringent measures on such trading arrangements. On the contrary, the US, Canada, European Union have shown very little interest in supporting opposition's viewpoint. Thus, inclusion of stringent measures in the Agenda will be mainly depending on the position taken by the US and European Union.

Intellectual Property Rights

The TRIPS agreement require each member to apply minimum standards of protection for intellectual property, which in all respects exceed the standards set by the Berne and Paris Conventions and other relevant agreements. Besides, the agreement also sets requirements for adequate enforcement of the specified protection measures and dispute settlement procedures. Although the TRIPS provisions are now in full force in developed nations, developing and least developed countries

are in their transition stage, which will end in 2000 and 2006, respectively. Few developing countries opting for product patenting from process will be required to complete the formal transition by 2005.

The transition period is stretching far beyond 1999, therefore developing countries have no reason for favouring early negotiations in the Millennium Round. However, developed countries are putting all possible efforts to expand the scope of the TRIPS agreement. For example, the US and Japan have agreed to extend the provision on geographical indications from wines and spirits to other products. Few countries have raised their objections on limiting the scope of this provision to wines and spirits. So far countries have favoured to extend the scope of the provision to other products. Several countries have expressed their interest in the protection of traditional names of their agricultural and other products, since it is an important market tool.

Likewise, the review process on TRIPS is underway at the WTO. The review is likely to highlight inherent complexity of Article 27.3b that allows countries to exclude plants, animals and bio-technological processes for producing plants and animals from patentability, while at the same time providing protection to some forms of plant varieties. Developing countries have constantly advocated on extending the protection under TRIPS to traditional knowledge. Several other TRIPS provisions may require special attention. The provision on transfer of technology is a major issue for developing countries. The idea is to formulate a commercially viable mechanism for facilitating technology transfer from developed to developing countries in the light of Articles 7, 8, 40, 66.2 and 67 of the TRIPS provisions. Another issue left open in the Uruguay Round, is the question of what protection should be given against "parallel" imports of a genuine product which has not been licensed for sale in the importing country.

Adequate protection of IPRs has also been discussed at different levels of the WTO, foremost being the trade facilitation council. Major issue is the enforcement procedures and removal of counterfeit goods from the channels of distribution. Most countries are currently pondering over such issues at national and WTO level. This is primarily undertaken for reviewing TRIPS agreement. But the final report will definitely influence the finalisation of New Agenda. Significantly, on most of the issues there appears to be a general consensus on modification of TRIPS provisions.

Key issues in TRIPS Agreement

Intellectual Property

- The Agreement will require each Member to apply stringent standards of definition and of protection of intellectual property rights.
- For developing countries, deadlines for most standards have not yet been reached, extends to 2005 in some cases; for least developed countries to 2006, with possibility of extension.
- Enthusiasm by the US for pursuing dispute settlement cases, pressures put on countries negotiating accession—suggest to developing countries that opening new negotiations would lead to pressures for additional obligations.
- Several developing countries have an interest in the protection of traditional names as a marketing tool, e.g., basmati rice, tequila. A current review of the issue may lead to further negotiation.
- An upcoming review of provisions for patentability of plants, animals and bio-technological processes has already raised controversy, e.g., from environmental groups.
- A counterpart to increased patent protection for plants and animals may be similar protection of indigenous knowledge.
- “Parallel” imports of a genuine product not licensed for sale in the importing country may also be a topic of negotiation.
- Protection of copyright and domain name as trademark in electronic commerce.

The GEC work programme has raised diverse issues with respect to copyright protection on the Net and linking domain name to trademark protection. In all possibility, if these matters remain unresolved till the review, TRIPS will be a major rallying point for the developed countries in the new round of negotiations. Once it become a part of new negotiations, more issues are likely to surface especially in view of contrarities emerging from electronic commerce.

Technical Barriers to Trade and SPS Measures

These are two independent agreements on standards that could be conveniently clubbed together, as issues are more or less same. The

Agreement on Technical Barriers to Trade aims to restrict governments from using technical standards as protective measure to curb flow of trade. It encourages the use of international standards and role of national testing and certification bodies to avoid discrimination against imports. Similarly, the Agreement on Sanitary and Phyto-sanitary Measures is linked with standards on agricultural products. It recognises the right of governments to take measures to ensure food safety and protect animal and plant life, but requires that such measures must be based on scientific evidence. In other words, these measures should not be used to restrict imports and discrimination. Both agreements are in full force for all countries except least developed countries until 2000. However, both agreements are widely regarded as important because at most occasions they act as non-tariff barriers for the developing and least developed countries.

No country has sought for amendments in the TBT agreement, but the review of the agreement concluded that it has variety of difficulties and problems. One key issue that has come to fore is the technical assistance to developing and least-developed countries, and the special and differential treatment to them, including measures to build their own capacity to prepare and adopt technical regulations and standards. The report strongly recommends a separate study of technical barriers to market access of developing country exporters. Many developing countries have raised their concern on indifference of the developed countries on this aspect of the agreement.

Likewise, the SPS agreement is facing similar dilemma on account of variety of celebrated disputes at the WTO (for example, the US-EC disputes on the use of growth hormones for beef cattle; sale of genetically modified corn and soybeans; etc). The ulterior motive in such cases is to restrict imports, but frequent disputes put severe strain on the SPS agreement and above all on the dispute settlement procedures. In the past five years of WTO operations, most trade-related disputes are directly or indirectly related to these two agreements.

The standards set by ISO and the FAO/WHO Codex Alimentarius Commission are on an international consensus basis. The developing countries have expressed similar concerns on both agreements. International standards are set on a consensus basis to which some developing countries are a party, but they are ill-equipped against technologically advanced developed countries to take part in formulating

the international standards. On the other hand, the developed countries are of the opinion that issue of safety of plant and animal life is kept in mind for setting standards for domestic producers. In no way a country can allow inferior quality goods as imports, as it will borne distortions in the domestic market. But many believe that such standards-related measures are imposed ostensibly for environmental or public health reasons, in fact inspired by protectionist objectives.

Key issues in TBT and SPS

Agreement Technical Barriers, Sanitary and Phyto-sanitary Measures

- Objectives are to encourage the use of international standards, to prevent technical standards, enforcement procedures from being used to discriminate against imports.
- Requires that regulations and procedures be based on scientific principles and be implemented only on the basis of scientific evidence.
- Notification requirements are technical and extensive.
- Administration of the WTO agreements requires technical expertise, will depend considerably on the evolution of case law.
- Controversial cases; e.g., beef hormones, genetically modified grains; have led to criticism, particularly of the “justify by scientific standards before restricting” dimension of the agreement, to some blurring of criticism of the dispute settlement mechanism versus criticism of the substance of the agreements.
- Both the TBT and SPS agreements are fully in force, except for the least developed countries.
- In principle, both agreements should be important bulwarks against backsliding; but complexity means difficulty of supervision, hence opportunity for protectionist use.

The “scientific evidence” criterion in the SPS Agreement is loosely described causing widespread ambiguities in the interpretation. Recently, an idea on tightening the loose strings, especially clearly specifying the procedures acceptable as scientific evidence, is in the offing to eliminate ambiguities in the SPS agreement. Though there are not very many takers, but slowly this idea is consolidating within developing members.

Likewise, in the TBT much attention will be on technical assistance to developing and least-developed countries.

Trade-Related Investment Measures

The TRIMS agreement restricts governments from taking measures to attract and regulate foreign investments, and from laying conditions to encourage or compel the use of investment to meet their objectives. Developing and least developed countries to promote their developmental objectives frequently adopt such measures. The agreement identifies five types of measures that are inconsistent with GATT and provides transitional periods within which the members are required to remove them.³³

The agreement is in full force in developed countries and shall be in force in developing countries by 1st January 2000. The members were asked to notify the WTO Secretariat on the number and types of TRIMs applied in their respective territory. About 25 countries have notified that they use TRIMs of the types covered by the agreement. The issue raised at various forums of the WTO is the need for specifics in interpreting “difficulties” for extending the transition period for developing and least developed countries. The agreement only specifies to take into account the development, financial and trade needs of the member concerned for extension of the deadline.

It is imperative to mention that TRIMs agreement is one of the few that envisage future negotiations. The key feature of the agreement is to consider inclusion of provisions on investment policy and competition policy.³⁴ The competition policy is in itself quite ambiguously defined because it potentially encompasses a wide range of government policies. For example, protectionist abuse of technical standards or the grant of subsidies could be described as competition policy. Thus, with an in-built clause on competition policy and investment policy, the TRIMs issue is very important from the Millennium Round Agenda.

³³ The prohibitive measures are export content requirement, trade-balancing requirement, restrictions on imports, exchange restrictions on imports and domestic sales requirements involving restrictions on exports. The transition period for developed countries is 2 years, 5 years for developing countries and 7 years for transitional economies.

³⁴ The investment policy and competition policy is discussed separately in the new issues for the Millennium Round.

Key issues in TRIMs Agreement

Trade Related Investment Measures

Must be reviewed
before 2000.

- Prohibited measures must be eliminated by industrial countries by 1997, developing countries by 2000, least developed countries by 2002.
- Agreement envisions further negotiations, on competition policy as well as investment policy, but competition policy has emerged as a separate subject.
- No suggestions for changes in the agreement have yet emerged among delegates.
- Possibilities of taking up some issues related to Competition Policy and Investment.

Since the Singapore Ministerial Conference, these issues have surfaced at all levels of deliberations at the WTO. The European Union and the US have strongly supported these issues to be taken up in the new round of negotiations. However, as far as the TRIMs agreement is concerned, no member has suggested any changes in existing provisions.

Anti-dumping

The Anti-dumping Agreement (Agreement on the Implementation of Article VI of the GATT 1994) has emerged as one of the most controversial issue after the Uruguay Round negotiations. This agreement prescribes rules and procedures to establish the existence of dumping and of damage or threat of damage to domestic producers. It also lays down procedures for conducting anti-dumping investigations and decisions for the imposition and termination of anti-dumping duties. The agreement is in full force and has no provision for general review.

One unresolved issue from the Uruguay Round negotiations is the authority to act against efforts by suppliers to circumvent anti-dumping decisions by relocation of final assembly point.³⁵ Members remain divided on the issue of circumvention and appropriate measures to curb circumvention. The European Union and the US have made some unsuccessful efforts in scoring their viewpoint at the Anti-dumping Committee Meetings. Even the two Ministerial Meetings, at Singapore and Geneva, could not set any work programme on Anti-dumping Agreement, apart from a mute point "an effort to improve notifications and more technical assistance to developing countries".

³⁵ Hoekman B. and Petronas C.M. (1996).

Anti-dumping is a major issue for developing countries. In the last five years, this agreement is repeatedly used as a tool against exports from developing countries. Lately, some countries from the developing region have begun using anti-dumping measures to protect their domestic producers. Notably, countries like Argentina, India, Brazil, Korea, Malaysia, etc., have taken anti-dumping actions against exports from developed and developing countries. This trend is rising with most transition periods of WTO agreements coming to an end. However, large proportion of developing region is still not geared to undertake anti-dumping actions. Few trade analysts have suggested to put a moratorium on anti-dumping actions by developed countries on exports from developing countries. Besides, this section is more vulnerable against anti-dumping action by developed countries against their exports. Thus, there is a clear division within the developing region on anti-dumping agreement.

This feature is also not new for the developed countries. One reported consequence is an increasing division of opinion inside US industry over anti-dumping issues. Some producers, notably steel, still prefer rules that would allow easier introduction of anti-dumping measures. But companies with strong export interests are more aware of the risk that weaker rules will expose them to greater risk in export markets. Thus, anti-dumping is seen both as a protective instrument as well as threat by the industry. With such division in the world's opinion, which is further compounded by the introduction of competition policy,³⁶ the agreement is bound to be taken up for finalising the Millennium Round Agenda.

Currently, the United States is an avid supporter of tighter rules on anti-dumping, especially to resolve the issue of circumvention. Few developing countries using anti-dumping measures find the rules too complicated for application purposes and prefer them eased. Export based economies like Hong Kong, supported by Japan and Mexico, prefer to restrain the use of anti-dumping measures. It is highly unlikely, but possible that these countries could form an alliance group (equivalent to Cairns Group for agricultural exports) to limit the scope and use of anti-dumping measures. Most importantly, the developing countries are

³⁶ The countries like, Hong Kong, Korea and Mexico have introduced a new concept at the WTO by pointing out that effective competition rules make anti-dumping action superfluous. They are of the opinion that this agreement could be scrapped if competition policy is included in the New Round of negotiations.

Key issues of Anti-dumping Agreement

Anti-dumping Agreement No provision for general review.

- No agreement was reached at the Uruguay Round on "Anti-circumvention" – the issue carries over but discussions have made little progress toward agreement, even on the basic question "What is circumvention?"
- Several developing and industrial countries have expressed concern that anti-dumping will be used for backsliding; countries favouring increased discipline over use are divided on the need for further negotiation versus tighter scrutiny of application.
- The United States sees no need for further negotiation.
- Some developing countries have become frequent users of anti-dumping measures.
- Developing countries would like to see eased rules on application – particularly procedural rules.

the worst sufferers from anti-dumping actions. With the phasing out of Agreement on Textiles and Clothing, the developing countries view anti-dumping measures as a substitute for quantitative and other restrictions.

Thus, most observers feel that divided opinion may result in excluding this subject from the agenda, but ground realities stress that it will become a major rallying point while negotiating new issues, especially the competition policy.

Subsidies and Countervailing Measures

Among all agreements, the Agreement on Subsidies and Countervailing Measures is supposedly whose provisions are less stringent for developing region and countries in transition vis-à-vis market economies and developed region. The agreement prohibits subsidies contingent on export performance or the use of domestic against imported goods and permits certain other types of subsidies related to development of backward region and research and development. All other subsidies are actionable and give the right to respective governments to use countervailing measures. The agreement clearly stipulates rules and procedures for using countervailing actions based on the lines of anti-dumping. The agreement is not fully in force, countries having less than US \$ 1000 per capita GNP are allowed to maintain export subsidies

indefinitely and other developing countries are allowed to remove such subsidies by 1st January 2003. Likewise, the transitional economies are required to come in line by 2002.

This agreement has a review clause and currently it is under review at the WTO. Two important issues that are applied provisionally, stresses on the opening up of the agreement for new negotiations. One issue is the presumption that certain subsidies amounting to more than 5 per cent of the value of product or are given to cover operating losses distort trade in the domestic market. This presumption does not apply to developing countries. The second issue is whether to allow green subsidies to continue indefinitely, since no time limit is specified in the agreement. Another issue, not so important, is linked to the green category subsidies, i.e. the export competitiveness rule which makes the right of developing countries to give export subsidies subject to the product concerned but not gaining more than 3.25 per cent of the world market.³⁷

Key issues in Subsidies

Subsidies

- Developing countries have until 2003 to eliminate prohibited subsidies; no prohibition for least developed countries (with exceptions, for shortening and for lengthening the phase out, for imposing phase-out requirements on least developed countries).
- Many countries have not satisfied notification requirements on how they will phase out prohibited subsidies.
- Agreement requires review by 2000 of: (a) a provision for accelerated phase-out of subsidies on products on which a developing country or least developed country achieves 3.25 per cent of world trade, (b) three provisions (that expire at the end of 1999) affecting when dispute settlement action can be taken against certain subsidies. (One of these protects subsidies, the other two expand the possibility of action against subsidies.

³⁷ See Agreement on Subsidies and Countervailing Measures, Article 27.6.

The US, in particular, is an ardent critic of subsidies and has never lost an opportunity to highlight that subsidies distort trade. But the concern is far more with the implementation of the agreement than with the rules. Many members have not provided information on the process adopted to meet their obligations to bring their subsidy regimes into lines with the provisions after 4 years of implementation of the agreement. Thus, it is unlikely that it could emerge as a subject for new negotiations.

Safeguards

The Agreement on Safeguards represents a trade-off which outlaws "grey area" restrictions such as voluntary export restraints in exchange principally for a special mechanism that allows departure from the general MFN rule to apply tighter restrictions. This "quota modulation" provision is highly controversial when negotiated perhaps because of anti-dumping and countervailing measures can be more easily and less provocatively applied. The agreement is in full force (except the special provision on allowing the European Union to continue restrictions on imports of Japanese cars till 1st January, 2000).

Key issues in Safeguards

Safeguards	<ul style="list-style-type: none"> ● The Uruguay Round agreement was the vehicle for banning non-MFA voluntary export restraints by 1999. ● Safeguard actions are very infrequently taken, governments and protection-seeking industries find anti-dumping procedures more attractive.
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There is provision for a review to figure as part of the "Built-in" Agenda. No government has raised its concern for modification in the existing agreement. However, developing countries are keeping a close watch on the agreement in order to assess how it is applied.

Government Procurement

It is a plurilateral agreement, i.e. only applicable on its signatories. Currently, it has 27 members, majority of them are developed countries.³⁸ The agreement binds the signatories to open up the possibility of tendering

³⁸ As of now, the members are the US, Canada, European Union (its 15 member states), Hong Kong, China, Israel, Japan, Republic of Korea, Liechtenstein, Netherlands (for Aruba), Norway, Singapore and Switzerland.

for the purchase orders of specified central and sub-central government bodies, public utilities and other services. The agreement has a threshold limit, above which all signatories will get an opportunity to compete. In structure, it is on the line of GATS agreement, which calls for specific commitments from individual signatories.

The WTO is carrying out work on Government Procurement Agreement (GPA) at three levels. The first level is purely streamlining the agreement. The second level is at the GATS level (Working Party of GATS Rules) in the context of prospective negotiations on services. Lastly, third is a study of transparency in government procurement practices. The ultimate objective of work programme is to translate this agreement into a multilateral agreement. The Millennium Round Agenda will show whether, these efforts will converge and join together or remain status quo.

Government is not covered by the principles of GATT and GATS, because purchases by governments for their own use are excluded from the general rules of national treatment and non-discrimination by state-enterprises. The GPA includes some provisions for attracting developing countries into its fold. For example, developing countries can negotiate the right to impose conditions such as domestic purchase requirements on foreign tenders for government procurement. However, not very many developing countries showed interest in the GPA, except for few like Mexico, Chile, etc. But the membership is likely to increase with number of accessions in line, as developed members find it a rallying point for the entry of new members within WTO framework. Besides, the signatories are themselves committed to undertake negotiations to improve and widen the agreement and to eliminate discriminatory measures and practices.

Developed countries along with many observer countries waiting for accession are rallying in favour of widening the membership. Besides, transparency issue was placed on the WTO agenda at the 1st Ministerial Declaration. The very mention of the agreement in the Ministerial Declaration is an assurance that negotiations will take place on this subject at the WTO. The working group on transparency has identified variety of key elements in the agreement for larger acceptability, such as full information on national legislation and procedures, procurement opportunities, tendering and qualification, transparency of decisions on qualification and contract awards,

Key issues of Government Procurement

Government Procurement

- The agreement is a plurilateral one, with few developing country members.
- Government procurement is not covered by GATT and GATS — purchases by governments for their own use are excluded from the general rules of national treatment and of non-discrimination that apply to state trading enterprises.
- In structure, the agreement follows the “positive list” approach of the GATS — signatories may tender for the purchase orders of specified central and sub-central government bodies, public utilities and services.
- Even developing countries whose domestic policies are basically sympathetic to the aims of the agreement have stayed outside: Chile says “complex, bureaucratic, and costly”, Mexico finds its membership too limited.
- A working group is making good progress to identify the key elements of a possible agreement on transparency in government procurement.

dispute resolution, etc. Very many developing countries are not averse to the modifications, provided the agreement does not attempt to liberalise national procurement policies. The major advantages that are enticing more members within its fold are economic reasons (saves costs), contribute to good governance, and even open new export opportunities. Most members feel that a fresh round of negotiations will merge the Understanding on Transparency with the GPA.

Besides the “Built-in” Agenda, rapid developments in the global environment has led the WTO to take cognisance of new issues. The WTO is already carrying out work programme on five new subjects that are most likely to be adopted in the Millennium Round Agenda. These five subjects are as follows:

- Trade and Environment
- Trade and Competition

- Trade and Investment
- Trade Facilitation
- Global Electronic Commerce

These subjects are not covered at present by substantive rules at the WTO. The current understanding on each subject at the WTO is more or less positive and proactive. For change, some of these subjects have patrons in the traditionally rival camp, opposing opening a new round of negotiations, i.e. developing region. A global perspective on each is as follows:

Trade and Environment

The WTO Committee on Trade and Environment is making an attempt to identify the relationship between trade measures and environmental concerns to promote sustainable economic development. The aim is to recommend suitable modifications in the existing provisions of the multilateral trading system. Environmental issues are not a new subject in trade negotiations, this subject was raised five years ago during the GATT negotiations. Environmental issues were initiated at the behest of number of trade related disputes between governments for environment protection. One such case is the ban on tuna fish due to inappropriate fishing methods endangering dolphins. The GATT's panel ruling in favour of Mexico was a matter of concern for the environmentalists. This panel report among others gave much needed impetus to environmental issues in future trade negotiations.

The two issues on environment before the WTO are

- Relationship between the WTO and the provisions of multilateral environmental agreements (MEA); and
- Environmental objectives are met through establishing technical standards, packaging and labelling requirements and sanitary and phyto-sanitary restrictions.

The developing countries remain unconvinced on trade restrictions purely for better environmental standards. This group views that environment is too convenient explanation to cloak protectionists interest of developed countries. Especially, the governments of developed countries are found to be more supportive to the cause of environment protection than developing and least developed countries. It is observed that wide division exists between developed

and developing regions on various multilateral environmental agreements.³⁹ Most developed countries want prior assurance that action taken under the terms of an MEA cannot be challenged in the WTO. But the European Union proposed to cover such action under GATT Article 20 (b) which allows restrictive measures for the protection for human, animal or plant life or health. On the other hand, the developing countries in general wish to retain some possibility of challenging the actions taken under MEA at the WTO.

The standards related environmental measures are generally regarded as protectionist measures that do not concern the product itself but specifically aimed at the way it is produced. Such measures are largely unacceptable to many members as they feel that efforts are on to extend the jurisdiction of the country applying the measure beyond its territory. Besides, efforts are underway at the WTO to improve substantive disciplines to achieve desired environmental objectives. An evident example is the role of subsidies in encouraging pollution through excessive use of chemicals on crops, most commonly cited by agricultural exporters of Argentina and New Zealand.

Though there is a wide division among members on the ways of implementing trade-related environment protection measures, but in general all members share a common concern for environment protection. Many members see more risks and no gains from taking this issue at the WTO. Few members are of the opinion that UNEP is the appropriate organisation to oversee environment-related issues. Few also believe that if inter-governmental agreement is needed on substantive matters, the International Standards Organisation and other MEA related bodies are appropriate entities to do so. The argument in favour of such entities is given because these organisations have the necessary specialised knowledge base to recommend right measures. One issue that impedes WTO's involvement in environment protection is expertise. If the WTO is involved in setting environmental standards, it will be extending its objectives and area of work. These views are largely shared both by members from developed and developing regions.

³⁹ These MEAs' are not a part of the WTO and have come into existence via different Conventions, for example, Convention of Bio-Diversity, Convention on Climatic Change, etc.

Key issues on Trade and Environment

Trade and Environment

- As a result of certain dispute settlement decisions, e.g., tuna-dolphin, some environmentalists are sworn enemies of the WTO.
- The WTO Committee on Trade and the Environment was given a mandate by the Singapore Ministerial declaration to identify the relationship between trade measures and environmental measures and to make appropriate recommendations.
- Two key issues have emerged: (a) the relationship between the provisions of the WTO and of multilateral environmental agreements, (b) environmental objectives often involve application of technical and sanitary standards of packaging and labelling requirements.
- Developing and industrial countries agree that work of the WTO Committee has led to a better understanding of the relationship between trade and environmental issues.
- The EU has proposed that certain environmental measures be recognised as covered by the GATT Article XX provision allowing measures necessary to protect human, animal or plant life and health.
- Most developing countries would prefer that cross-border environmental measures be negotiated in MEAs. [The key differences between the two positions are: (a) the latter approach would require a second approval — a WTO waiver to use trade instruments to enforce an environmental agreement, (b) item-by-item versus generalised enactment of environmental obligations.]

The United States supported by the European Union is the prime mover of the idea to include environmental issues in future WTO negotiations. Thus, efforts are on among members at the WTO to overcome the stalemate on this issue. The WTO Committee on Trade and Environment will be pushing for including this subject in the new negotiations. Thus, alignment of members, one way or the other, will take place on trade and environment before finalising the Agenda. In all

likelihood, the subject will be discussed at great lengths but there are doubts that any significant result could be achieved at this stage.

Trade and Investment

Investments have always been a critical issue in terms of acceptability of a multilateral negotiation. Views are sharply divided between developed and developing countries because major investors are in developed region and large proportion of their investments are in developing region. Negotiations on the Multilateral Agreement on Investment (MAI) ended inconclusively at OECD in mid-1998. Likewise, developing countries are divided on the question whether WTO should concern itself with investment issues. The WTO Working Group on Trade and Investment has not been able to clearly generate a common opinion on the relationship between trade and investments. The Ministerial Meeting in late 1999 will actually determine- how work should proceed on investments at the WTO subject to the condition that any decision to negotiate new multilateral discipline would have to be taken up by explicit consensus decision. A widely held view is that such a decision will be made in the context of broadening the scope of negotiations of the Millennium Round.

The Working Group has focussed its attention on mainly three issues, namely:

- The implications of the relationship between trade and investment for development and growth;
- The economic relationship between trade and investment; and
- Stock taking and analysis of relevant existing international instruments and activities.

The aim is to compare existing instruments, identification of possible impediments and loopholes between them, and considering the advantages and disadvantages of bilateral, regional and multilateral rules on investments. The focus of the Group will be on economic development. In the context of the above, the Group is also making an attempt to identify the rights and obligations recipients and investors to draft a sound investment policy. The discussions on the subject have progressed in a proactive manner, with quite a number of developing countries showing interest in the subject.⁴⁰

⁴⁰ Countries like Brazil, Argentina, Chile, Hong Kong and Hungary have shown positive interest in signing the MAI.

The initiative for action in the WTO came from a group led by Canada, including Japan, Morocco and Peru. Countries like, Malaysia, Indonesia and India at the WTO expressed strongest resistance on this issue. In fact, the US and other OECD countries favour strong provisions to encourage investment flows. But they are of the opinion that any multilateral agreement at the WTO will result in dilution of the provisions because the investor countries will have to accommodate the views of the full membership. They still prefer to have an agreement on investment, i.e. the MAI, in the OECD. But MAI issue will need to be taken up again at the OECD. Therefore many observers feel that there is a general loss of interest in having a multilateral rules on investment at the WTO. There is a likelihood of shift in focus towards formulating non-binding principles in the context of regional agreements such as the APEC. Many OECD countries feel that an agreement on investment at the WTO will have more legitimacy than elsewhere because of wider and more representative membership.

Sharp division among developed countries on the investment issue is common in the developing region too, since all countries are seeking foreign investments and adopting variety of liberal policies to woo foreign investors. But these countries are also sharply divided at two extremes, opposition group led by Malaysia is positioning essentially on the basis of ideology, while the supporters are viewing it on the basis of their needs. The former feels that it is a matter of national sovereignty to be able to attract and choose foreign investors and investments based on national objectives and priorities.⁴¹ While the latter feels practical need for encouraging foreign investments. But this group is of the opinion that the provisions must retain some policy flexibility so that they can encourage investment in particular regions or continue to favour local firms or local participation. At the extreme right, Latin American countries with Hong Kong and Korea are strongly subscribing to a MAI at the WTO.

Virtually nothing is clear so far about possible provisions of a WTO investment agreement. A common view is that nothing as ambitious as full MAI could be negotiated at the Millennium Round, but it is possible that a draft of the agreement could be thrashed out in the coming negotiations.

⁴¹ Malaysia has argued that it has around 60 bilateral investment treaties that are sufficient to protect and promote investment.

Key issues in Trade and Investment

Trade and Investment

- A WTO Working Group is investigating background issues.
- The WTO Council is to decide in 1999 how work will proceed, a decision to negotiate would have to be taken by explicit consensus decision.
- Some developing countries favour looking into trade-investment issues at the WTO, others oppose.
- Differences among the industrial countries involve matters such as the control of extra-territorial measures such as the US's Helms-Burton, French concern for a "cultural" exception to include or not to include labour and environmental considerations.
- The MAI negotiated at the OECD, in which some developing countries have declared interest, also concerns. Another alternative is the many bilateral treaties that already exist.

Trade and Competition

Competition issue confronted past GATT negotiations in diverse form, but lack of cohesion among members on this issue led to continual postponement of a multilateral understanding. The UNCTAD had raised its concern on diverse competition related trade issues, rampant use of restrictive business practices by the MNCs being the foremost. Rapid technological developments coupled with the need for technology led industrialisation, led to significant growth in trade in technology. Besides, most countries in their drive for liberalisation and globalisation considerably reduced government intervention in many areas. To achieve these objectives, one needs to ensure free and fair competition in the market. But after considerable trade liberalisation, privatisation, deregulation, and passage of competition laws in developing and transition economies, many markets have inherent distortions. Thus, some countries felt it necessary to spell out a specific framework for ensuring free and fair competition rules.

The fundamental rules of the WTO envisage granting of market access by each member to others on a non-discriminatory basis. But internal government and private measures could distort the equality of competitive opportunities and the market may be foreclosed by anti-

competitive practices.⁴² Most members feel their domestic competition laws and policies are incapable of addressing private and governmental anti-competitive behaviour having cross border effects because the reach of domestic competition laws are territorially bound. The Singapore Ministerial Conference took the initiative and established a Working Group to study the relationship between trade and competition policy.

Absence of competition tends to create conditions favourable for incumbent firms to wield power to control the market or to enjoy market power. The competition issue attracted attention of members primarily because the role of MNCs became a critical bone of contention among developing and developed regions. The trade and competition was put on the WTO agenda along with trade and investment. Likewise, a Working Group on Trade and Competition was established to draw a framework of action plan for the General Council. The possibility of negotiations will take place only after the members reach an explicit consensus at the WTO. The Working Group has adopted its work plan on the lines similar to those of the group on trade and investment.

The Working Group is working on the following lines:

- To identify relationship between the objectives, principles, scope and instruments of trade and competition policy;
- To identify relationship between trade and competition to development and economic growth;
- To review the content and application of national competition policies and laws related to trade, relevant WTO provisions, and international agreements and initiatives.
- To look at the interaction of trade and competition policy:
 - The impact of anti-competitive practices of enterprises and associations on international trade;
 - The trade impact of state monopolies and regulatory policies;
 - The relationship of intellectual property rights and of investment with competition policy and of investment with competition policy; and
 - The impact of trade policy on competition.

⁴² Hoekman B. (1997) "Competition Policy and Global Trading System: A Developing Country Perspective", WB Paper: 1735.

- To identify “any areas that merit consideration in the WTO framework”.

The prime mover for involving the WTO in competition issues is the European Union, widely supported by developing countries. The US is skeptical that WTO negotiations on competition rules are desirable and is reluctantly participating in the study programme. Sir Leon Brittan, the EC Commissioner had spearheaded the debate on competition policy at the WTO based on the premise that lowering of tariffs and other restrictions will tempt companies to resort to diverse anti-competitive actions. The EU supports an agreement committed at the WTO for members to enact an effective domestic competition legislation, guaranteed access to national courts without discrimination between domestic and foreign firms, and basic standards of enforcement such as transparency of proceedings, the applications of sanctions and an effective competition authority.

Key issues in Trade and Competition

Trade and Competition

- A WTO Working Group is investigating background issues.
- The WTO Council is to decide in 1999 how work will proceed, a decision to negotiate would have to be taken by explicit consensus decision.
- There is widespread opinion that the issues here are more complex than for trade-investment and will require longer for countries to feel comfortable reaching conclusions.
- The prime mover is the EU, but there is considerable developing country support for WTO involvement in the issue.
- Some countries see incorporation of competition rules in the WTO could help to restrain use of anti-dumping. Others fear that relating competition with anti-dumping will block the possibility of negotiations on competition issues.

Developing countries are attracted to the issue because a provision like this could be an instrument to deal with abuses by MNCs, a theme pursued by the developing region for many years at UNCTAD. Some members argue that mutually consistent trade and competition policy could reduce the need for government trade measures that discriminate

against competitive suppliers, especially for anti-dumping actions.⁴³ But few are not convinced with this idea in the developing region.⁴⁴

As in the case of investments, the Working Group has received many notifications on these issues. But there appears to be a widespread view that issues involved in the work programme are complex. Not many have been able to understand the issues in a holistic manner to support a multilateral negotiation on trade and competition. Consequently, it is felt that a long process of mutual education may be needed before many countries will be able to subscribe to any conclusion on this subject. It is felt that a broad ranging WTO negotiations on competition is unlikely to take place in the Millennium Round but in all possibilities few important issues could be taken up in the context of the review of the TRIMs agreement.

Trade Facilitation

Out of all the new issues, trade facilitation is essentially uncontroversial. In all likelihood it will be an important issue in finalising the New Agenda. Principally, all members have favoured this issue to eliminate widespread distortions in the international marketing environment and streamline trading procedures. The Singapore Ministerial Conference unanimously adopted a work programme on trade facilitation at the initiative of the European Union. The Ministerial Declaration directed the WTO's Goods Council to undertake exploratory and analytical work, drawing on the work of other relevant international organisations, primarily on the simplification of trade procedures in order to assess the scope of WTO provisions.

Both European Union and the US have been pushing this issue fairly vigorously at the WTO. The main idea behind the EU proposal is to provide trading rules that would suffice the efforts of international organisations to reduce practical problems encountered by international traders, particularly in reducing cross-border complexities. In other words, the efforts are directed at harmonisation of rules and procedures for trading community. The Kyoto Convention of 1973 administered by the World Customs Organisation is the primary agreement adopted by around 55 countries. But signatories to the Convention have

⁴³ Submission to the Working Group on Trade and Competition Policy (WT/WGTCP/W/50).

⁴⁴ Few members argue that insistence on prior agreement to review the anti-dumping rules could block the possibility of negotiations on competition.

expressed their concerns on many Annexes that set out substantive obligations. Other organisations, like the UNCTAD, ECE, APEC and International Chamber of Commerce have contributed significantly on simplification and harmonisation of trade procedures. The business community has also welcomed this initiative at the WTO.

Key issues in Trade Facilitation

Trade Facilitation

- The issue is essentially uncontroversial, the business community is keenly interested.
- The objective is to reduce practical problems encountered by international traders, particularly in completing border formalities.
- The WTO has collected information about work of other agencies in this area (World Customs Organisation, UNCTAD, ECE, APEC, the International Chamber of Commerce) and holding a seminar that had active business community participation.

The European Union had recently proposed to develop a legal instrument that would bind members to adopt the central core of the many accepted international agreements on trade facilitation. It is suggested that WTO could adopt a revised version of the Kyoto Convention, along with few finer points from other works. The efforts are on to establish the data requirements for a single document in electronic format permitting customs procedures worldwide to be streamlined. This idea is in conjunction with the GATT Article VIII, which stipulates for the avoidance of unnecessary procedural obstacles to trade and calls for provisions to reduce and harmonise trade documentation based on UN and other international agencies.

Members are ready to explore the implications of the EU proposal in principle, but have few reservations on substantive obligations. The US is somewhat less enthusiastic on this issue claiming that WTO is already overworked with diverse rules of cross border transactions, such as rules of origin, pre-shipment inspection, technical assistance to developing and least developed countries, etc. But this stand seems to get significantly eroded by the support extended to trade facilitation by the business community at large. Thus in all likelihood, trade facilitation is a sure subject among others to be included in the New Round of negotiations.

Electronic Commerce

This subject is already discussed as part of the "Built-in" Agenda to highlight different forms of contrarities with the existing provisions of the WTO. It seems the US and other market leaders in electronic commerce have taken a firm position on this subject. But developing and transitional economies have yet to decide on their stand. As far as the US proposal is considered, no country levies customs duty on electronic transmissions and such transmissions are not even classified in the HS-Code. Few countries in initial stages raised their doubts about the US intentions, but lately they have realised the complications of technology and advantages of an efficient medium. The decision on the US proposal will be taken on a consensus basis at the WTO. However, the work programme shows that trade related issues emerging from electronic commerce are quite in number. Many countries have expressed their inability to fully comprehend the subject in such a short time. Even Electronic Commerce is found to transgress in number of other Working Groups and WTO's Councils activity areas. Thus, it will be difficult to open the subject for full negotiations but few critical areas could be tangentially taken up while negotiating other agreements of the WTO.

Key issues in Electronic Commerce

Electronic Commerce

- A new issue, first raised at WTO by the US in February, 1998 as a proposal that Members continue the present practice of not imposing customs duties on electronic transmissions.
- Only the US has taken a strong position.
- Among other countries, there is interest, questions and concerns.
- As a result of US pressure, the 1998 WTO Ministerial Declaration provides that the organisation should study all trade-related issues.
- Developing countries' views have not evolved beyond reluctance to close off a possible source of revenue, irritation at the US forcing an inadequately considered decision at the WTO.
- Possibly taken up tangentially, while negotiating amendments in the "Rules".

Anne Krueger, John Croome and Michael Finger, among others made an attempt to evaluate around 26 subjects and concluded that country

suggestions might add half-a-dozen more. The focus will be on tariffs restructuring and members' commitments. Probable subjects on which the Uruguay Round agreed to review include Dispute settlement, TRIMs, Anti-dumping, Subsidies, Rules of origin, Import licensing, Pre-shipment inspection, Regional agreements, etc. Labour standards, an issue much likely to be taken up by the developed countries, especially the US, will not find very many takers in the new negotiations. Potential areas that could be discussed for inclusion in the future agenda could be competition policy, restrictive business practices and global electronic commerce. Some of these would be more technical than political in nature and negotiations on some would likely be of limited scope. But in all likelihood, the new round of negotiations will not be limited to the "Built-in" Agenda.

Indian Perspective

India is one of the founder members of the World Trade Organisation. In the past GATT negotiations, India had actively pursued interests of the developing countries. Traditionally, India has always claimed to be the few developing countries who actively represented the views of developing world at different international forums. Indian negotiating stance had primarily been focussed on liberalising labour intensive exports, while protecting domestic restrictions on imports. On the other hand, developed countries have vociferously taken up issues such as protection of intellectual property rights, across the board liberalisation of trade in terms of market access and national treatment. It is evident from the past negotiations that developing countries, including India, could not gain much but accepted more than what they were prepared to accept in the beginning. Since the conclusion of the Uruguay Round negotiations, developing countries at large have realised the complexities of trade negotiations and are surely diffident to the new round.

In the post-WTO period, the situation is unlike the Uruguay Round negotiations. The members have gained considerable experience and exposure of trade negotiations. Even developing countries like Argentina, Brazil, Hong Kong, Peru, among others have begun active alignment with like minded governments to raise their concerns at the WTO and later to drive a hard bargain in the new round of negotiations. One such group is the Cairns Group, which has mainly emerged for agricultural trade negotiations in the New Round. Likewise, other developing countries have commenced alignment by joining different trading blocks

like MERCOSUR, NAFTA, ASEAN, EUROPEAN UNION, etc. In all, the understanding is that one cannot negotiate in isolation, especially when it is related to the WTO and trade negotiations. But Indian negotiating stance has not changed much with the rapidly changing global scenario and newly established multilateral trading system in the form of WTO.

The traditional Indian stance on the Millennium Round is not to discuss any thing other than the "Built-in" Agenda of the WTO. Undoubtedly, the reason conveyed has some justification that already lot of pending issues from the Uruguay Round remains to be discussed and taking new issues will further complicate the negotiations considerably. Besides, developing countries have not been able to put their house in order as per the already established provisions of the WTO.⁴⁵ Thus, some members like India maintain a position of "no new issues" in the Millennium Round except the built-in agenda of the WTO. However, the ground reality is evident from earlier discussion that alignment and realignment based on different interest groups is underway at the WTO. This is likely to be more as the deadline approaches near, i.e. 1st January 2000. Besides, the post-WTO period has experienced more countries from the developing region acceding to the newly established multilateral trading system. These countries will be actively pursuing the idea of extending the scope of built-in agenda for getting a better deal at the WTO. In view of all these rapid developments, Indian stance seems to be quite out of place.

There are three issues involved for extending the scope of the Millennium Round negotiations, namely review of built-in agenda, lost opportunities of the Uruguay Round and rapidly changing trading environment. The review of the issues included in the built-in agenda is a major subject of the Millennium Round. The review of each agreement has identified variety of loopholes in the provisions. Countries have been using these gaps in the existing provisions for using protectionist measures.⁴⁶

⁴⁵ Since most developing and least developed countries are in their transition phase for most of the WTO agreements.

⁴⁶ The excessive use of TBT and SPS agreements for restricting imports from developing countries. The European Union has set higher standards for alfatoin level vis-a-vis international standards without any strong scientific evidence, adversely affecting agricultural exports from developing countries. Likewise, there are many other cases pending with the Dispute Settlement Panels.

The review process will not be highlighting new areas of negotiations but gaps in the existing provisions. But most loopholes will require administrative initiative than trade negotiations. Similarly, there are few agreements in the Millennium Round that will be completely opened for new negotiations, i.e. the Agreement on Agriculture and General Agreement on Trade in Services.

The theory of negotiations have already established a proven point that without having leverage in the *quid pro quo*, one cannot achieve much from the negotiations. Limiting the scope of negotiations to agriculture and services agreement, there is hardly any alternative available for a *quid pro quo* to achieve any significant gains from the negotiations. Besides, it is also evident that ATC will be culminated within GATT regime very soon, a major interest of developing countries. With lowering of tariffs and removal of quota restriction on imports, it is envisaged that other limiting provisions of the WTO, like anti-dumping, countervailing measures, TBT, etc., will play a major role in restricting exports from developing countries. In the light of these, it is vital for India to prevent such circumvention of rules and procedures. India is also not objecting to the built-in agenda so far. But the question is what could be negotiated as a *quid pro quo* in exchange of required modifications in the existing rules? So far Indian stance is somewhat hesitant to the built-in agenda. India is not a member of any major interest Group nor it supports explicitly the need based Cairns Group. It is imperative to mention that trade negotiations are a direct function of economic clout a country has in terms of exports. Indian share in world trade is less than 0.7 per cent, miniscule against developed countries like Japan, European Union, the US, etc. Even developing countries, like Brazil, have larger share in world trade, yet they made an all out effort to align themselves into the Cairns Group. The idea is to emphasise that a better deal in the negotiations could only be achieved through joint effort, unlike individual efforts like India. There are more than two dozen issues for consideration in the built-in agenda, some critical and some trivial from the point of view of the member countries. India needs to shed its traditional stance of opposing any subject area initiated by the West and proactively take up side with groups who share common interests.

It is difficult to comment on the official position of Government on the rules. This is in itself a major impediment that India's official position on the built-in agenda is not yet finalised and made public. In all likelihood, the only alternative available is to go along the commonly pursued issues at the WTO. Another drawback for India in the trade negotiations is that it is not a part of any major trading block. It could align itself in the final stage to groups having common interest, but purely on an individual basis. Even neighbouring countries like Bangladesh, Pakistan, etc., do not share common interests to evolve a joint strategy for future negotiations. Thus, India's bargaining position in the new round is supposedly weak in terms of individual initiative. In all likelihood, the official position of Indian government is that it is not averse to negotiations within the framework of built-in agenda. According to indications, potential stance of the government is as follows:

Potential Stance of India on the Built-in Agenda

Subject Area	Grouping	Evolving position
Agriculture	Individual efforts	Prefers QRs, domestic subsidies, Green Box, etc.
Services	Individual efforts	Market access, especially on the movement of persons, mutual recognition of qualification and experience.
Dispute Settlement	Individual efforts	Availability of special funds for legal assistance of developing and LDCs.
Trade Policy Review	Individual efforts	No specific issue.
Rules of Origin	Individual efforts	No specific issue.
Import Licensing	Individual efforts	No specific issue.
Regional Trade Areas	Individual efforts	No specific issue.
Intellectual Property	Individual efforts	Facilitate technology transfer for DCs, protection of traditional names, "parallel" imports, patentability of plant varieties, prevent linking domain name, etc.

Subject Area	Grouping	Evolving position
Anti-dumping	Individual efforts	Increase the de minimus limit to 5 per cent for developing and least developed countries.
Subsidies	Individual efforts	Special dispensation (Art. 27). Increase the <i>de minimis</i> level
Safeguards	Individual efforts	No specific issue.
Customs Valuation	Individual efforts	Related to electronic commerce.
Pre-shipment Inspection	Individual efforts	No specific issue.
State Trading	Individual efforts	No specific issue.
Tariffs	Individual efforts	Against any new tariff negotiations.
Textiles and Clothing	Individual efforts	Against the long phasing period and backloading.
TBT & SPS Agreements	Individual efforts	Special and differential treatment.
TRIMS	Individual efforts	Extension of transition period, balance of payment criteria for regulating investment.
Government Procurement	Individual efforts	No specific issues.
Electronic Commerce	Individual efforts	Prefer status quo.

The potential stance of India on the built-in agenda highlights the weakness of India's negotiating strategy. It will be unjust to mention that India is going alone in the negotiations. The idea of mentioning "individually" means that India has officially not backed any group of countries on any subject included in the built-in agenda. Nevertheless, India has made significant efforts in evolving a negotiating strategy based on critical issues and bilateral understanding. It has got in touch with like-minded governments on bilateral basis and apprised them of the critical issues where it can lend its support and pointed out areas where it would like their support. But success of this strategy mainly depends on common interests. It is possible, that governments may see eye to eye together on one issue but might oppose subsequent issues

in the built-in agenda. For example, the Cairns Group promotes liberalisation in agriculture trade or cross board liberalisation of trade in agriculture, including negotiations on tariffs. While, India prefers to liberalise on sectoral basis and would like to keep quantitative restrictions on agriculture. Similarly, the Cairns Group is quite vocal on removal of export subsidies, but India adopts a non-committal position on this issue whenever it comes for discussion at the WTO.

On the other hand, again it will be unjust to mention that "no specific issues" are listed in the table. In fact, India has few critical issues in all the subjects but these issues are more related to administrative mechanism than negotiations. For example, technical assistance is already included in the provisions but developed countries have so far not made any significant progress in such matters, likewise special and differential treatment for developing and lesser-developed countries. India has raised its concern in various review meetings and will be taking such matters actively. However, it will require administrative support than negotiations. Thus, "no specific issue" really means that India has no specific concern to open the agreement for new negotiations. Inclusion of trivialities has been avoided in the table from negotiations point of view. As part of the strategy, some subjects with "no specific issues" could become a part of alternatives in the event of a *quid pro quo*. In other words, India could back a group in special circumstances on subjects where it has no specific issues as part of bargain against their support on subjects important from India's point of view. The success of this approach remains to be seen.

Besides the built-in agenda, there are new issues pending before the General Council for consideration in the Millennium Round Agenda. The official stance of India till late 1999 is to oppose all moves on expanding the scope of negotiations. Thus, virtually Indian stance on trade and environment, trade and investment, trade facilitation, and trade and competition policy is incoherent. The ground realities of present global trade environment suggests that there are many countries who desire to expand the scope of negotiations by including new issues in the agenda. The reasons could be many, but so far two most evident reasons are that many countries feel they went ill-prepared for the Uruguay Round negotiations. Since the First Ministerial Declaration, most members from the developing countries have realised that if not all, some new issues might be included in the Millennium Round. Thus,

they have commenced preparation for negotiating these issues, especially in terms of coherence in their stand and likely areas of concessions. Now they have aligned themselves with like-minded groups for a better deal this time. In all possibilities, these countries are going to back their respective groups for including new issues in the forthcoming negotiations.

Besides, another reason is new inclusions in the WTO membership. Some countries acceded to the WTO framework after the Uruguay Round negotiations. This is the time where they can raise their voice over variety of new issues, since they had no option of picking few and leaving others from the existing multilateral trading framework. Now they will get a chance to raise their concerns on the built-in agenda as well as actively participate in new negotiations. Another argument to support their positive response on inclusion of new issues in the agenda is their reason for generating consensus for accession. While acceding to the WTO, these countries have extended their support on pending issues in principle to the developed countries to gain their acceptance for full membership. Therefore, these countries will be more active this time to include new areas in negotiations. They have accomplished their main objective to get into WTO, but now will be more interested in achieving a fair deal in future negotiations.

The rapidly changing trading environment and technology led industrialisation has dominated the last decade of this century and is likely to influence decisions of the next century. Electronic commerce is one such example that emerged primarily in recent times. Likewise, environment has received attention much recently. In all likelihood, these are subjects that concern every nation irrespective of its economic status. Even the measures to deal with such subjects cannot be taken in isolation. One needs to act on a global level to meet the challenges emerging from these new issues. Thus, the question is not of acceptance but about the measures. Principally, India is keen to consider these subjects but it has trivial reservations on the way these issues have been taken up at the WTO. Thus in all circumstances, India's opposition will not cut much ice in the finalisation of the Millennium Round Agenda. Few new issues will definitely become a part of the new negotiations' agenda.

Present incoherence in the Indian stance on the Millennium Round Agenda is a big setback to the liberalisation and globalisation process.

The basic principles of WTO are largely aimed at more liberalisation and more globalisation. It is inconceivable that being a part of a liberal body one cannot afford to put brakes on the liberalisation process. In fact, an approach like Indian stance will further alienate India from the global community, such as the WTO. As long India does not shed its traditional mind-set and hangover of NAM and G-77, India will continue to lurch at WTO negotiations. Going back to the Uruguay Round negotiations, India could not achieve much with respect to its official stand. Till 1988, Indian stance was to oppose inclusion of TRIPS, Services and TRIMS in the Uruguay Round negotiations and sought concessions in other areas like tariffs, market access, etc. But its efforts to rope in support from the developing countries failed, and ultimately had to accept TRIPS, TRIMS and services as an integral part of the negotiations. Once the mindset is developed for opposing, it is highly unlikely that one could negotiate on equal terms. Thus, whatever was the outcome of the Uruguay Round, India could hardly claim it as its own contribution. In fact, the credit could be attributed to the few progressive groups who were favouring inclusion of these subjects and were well prepared to deal with any surprise packages. Likewise, India had a fixed mindset of opposing ITA-1 (talks on phasing tariffs to zero on information technology products) but at the last minute went on to agree the terms set by the signatories.⁴⁷ If this was not enough for India's experience in trade negotiations, now it is spearheading a head-on collision course for the Millennium Round negotiations.

Evidently, it is the past experience that indicates reservations and protections are the things of the last century. It is not only India, but to many others undecided developing countries of the WTO, this is an opportune time to ponder and put their act together. The Millennium Round is inevitable, so are new issues. The discussion on the global scenario is a concrete reason for adopting a proactive policy on finalising the issues for the new agenda. For a change, India should shed its traditional stance of resisting liberalisation. The developed countries are ones that are getting protectionist in recent times. Here is chance for India and other like-minded developing countries to formulate a more aggressive negotiating stance based on greater liberalisation, rather than its resistance.

⁴⁷ This happened during the Singapore Ministerial Meeting in 1996.

Conclusions

Developing countries, including India, clearly reaped important gains from the Uruguay Round of multilateral trade negotiations.⁴⁸ The creation of the WTO and especially its Dispute Settlement Mechanism (DSM) are of enormous value to the developing region. The effectiveness of DSM has been clearly demonstrated by protection of countries with small share in world trade against major trading powers. The United States in particular has accepted every decision against it and has changed its practices accordingly- including two cases brought by India concerning trade in textiles and apparel. As a *quid pro quo*, developing countries have made several concessions in the Uruguay Round. Most of those concessions, such as reductions in tariffs, phase out of import quotas and elimination of some TRIMS, etc. were the pay-offs for a better regulated global trade market under the aegis of WTO.

Nevertheless, all members experience some costs of trade liberalisation. Consequently, some elements of the global society may on balance lose out from the new phenomenon. Hence domestic policies must provide for such contingencies, helping to smooth the required adjustments and to equip all segments of society to benefit from globalisation. Looking to the future, it is clear that developing countries including India have a major interest in early launch and successful completion of the Millennium Round. The rising threat of protectionism, especially in developed countries like the US and European Union, could levy substantial cost on exports from developing region through the use of different provisions such as anti-dumping, countervailing duties, and other non-tariff barriers (TBT & SPS), etc. It could even jeopardise implementation of the complete phase out of Agreement on Textile and Clothing concluded in the Uruguay Round. Besides, a failure to pursue new multilateral liberalisation could lead to shift of major trading partners on their regional arrangements. Thus, protectionism and resistance based strategy could lead to double loss in terms of renewed barriers and renewed discrimination.

Opportunities from the new multilateral negotiations are in fact enormous. Resisting the Millennium Round or including new issues will not serve any purpose. Many developing countries that had infinitesimal share of exports in world trade in 1970's, such as Mexico,

⁴⁸ Estimates of the resulting increase in its GDP range from 0.5 per cent to over 4.5 per cent for South Asia as a whole Harsh V. Singh (1996) quoted in Michel Finger (1998).

Turkey, China, Bangladesh, etc., have tripled their export share in the new trading regime. Hence a combination of domestic policy reforms and improved market access abroad could enable countries like India to launch a period of trade-led development. Needless to mention, that India and others, should adopt a proactive policy and aggressive negotiating strategy based on greater liberalisation, rather than incoherent negotiating stance and all out resistance to change. A proactive approach could be based on respective priority national interests in pursuing the Millennium Round negotiations. The global perspective on the Millennium Round is positive and strengthens the concept of further liberalisation. The Indian, more so, developing countries' stance on the New Round should be on the following lines:

- Avoid insulation and isolation at the WTO by identifying common interests sharing negotiating group of member countries, e.g., Cairns Group for agriculture, EC with a group of countries for competition policy, etc.
- Elimination of high tariffs that will remain especially in the developed region, more particularly in the US, on many apparel and textile exports after the phase out of quotas under ATC.
- Elimination of high tariffs on agricultural imports in many industrialised countries, especially on products of export interest to the developing region. In other words, support the Cairns Group in the agricultural negotiations.
- Supportive of new issues, e.g., a new agreement on foreign direct investments, would expand the scope of negotiations that could provide leverage for a *quid pro quo* in negotiating concessions and transition time in other critical areas.
- It will be too optimistic to scrap the anti-dumping agreement in lieu of a new agreement on competition policy, but seek for tougher disciplines on the use of anti-dumping duties, especially by the developed countries.
- Seek for liberalisation of movement of natural persons, while push for mutual recognition of qualifications, experience, skills, etc. under the GATS. Also, focus on other services' negotiations that ended inconclusively during the last round.

- Elimination of preferential tariffs in regional arrangements, including the EU and NAFTA, that discriminates against exports from other countries. The target should be to scrap the Understanding on Regional Trading Arrangement, which violates the basic principles of GATT.
- Revamp the Dispute Settlement Mechanism for achieving greater accountability and transparency to the complaints and further strengthening of the DSM to help protect the rights of countries with smaller trade levels.
- Review the existing multilateral framework of rules and plug the loop-holes in order to eliminate the possibility of using them as non-tariff protectionist barriers, e.g. the TBT Agreement and SPS Agreement, etc.

While concluding, India along with other developing countries stands to gain great deal from a new multilateral round.⁴⁹ Pursuing these goals proactively would seem to be far more preferable than to resist the negotiations. It is certainly a better negotiating strategy to be more aggressive posture based on greater liberalisation, rather than trying to block the launch of a new round pending full implementation of the Uruguay Round agreements. India has already lost a chance by its recent decision of not to participate in the second phase of the Information Technology Agreement. Now is the chance of undoing something, which was detrimental to the trading interests of India. Likewise, developing countries, including India should avoid any push for renewed "special and differential" treatment, which was effectively terminated by the creation of the WTO and really never paid off in terms of gains for the developing region. Rather this region should seek for full and active participation as an equal partner in the newly established multilateral trading system. The aim of launching a new round is to establish global free trade by 2010. India along with other developing countries should put their act together, shed their traditional stance of resisting liberalisation and participate proactively in the Millennium Round.

⁴⁹ Global welfare benefits of the new round of negotiations are estimated to be around US\$ 400 billion annually. Major benefits will go to developing countries of Asia. (Global Trade Reforms-2000 (1999), Ministry of Foreign Trade Affairs, Australia). See also Finger M. and Winter L.A. (1996).

Relevant Web Sites

http://

1. www.wto.org
2. www.world
3. www.ustr.gov
4. www.unctd.org
5. www.wto.org/wto/minist/se

REFERENCES

1. Bergsten C. (1999), "India and the Global Trading System", 14th EXIM Bank Commencement Day Annual Lecture, Mumbai.
2. Croome John (1998), "The Present Outlook for Trade Negotiations in the WTO", The World Bank Development Research Group, Policy Research Working Paper No. 1992, Washington.
3. Debroy B. and P. D. Kausbik (1999), "Indian Industry's Guide to the WTO", CII-RGF Publication, New Delhi.
4. Finger Michael J. (1998), "Developing Countries in the Next WTO Round: Is That Enough?" Presentation made at the International Symposium on the Global Trading System and Korea (8th October 1998), Seoul, Korea.
5. Finger Michael J. and L. Alan Winters (1996), "What Can the WTO Do For Developing Countries", World Bank, mimeo.
6. Foreign Affairs and Trade Office of Australia (1999), "Global Trade Reform: Maintaining Momentum", Government of Australia Publication. Australia.
7. Hoekman B. and Petronas C. Mavroidis (1996), "Dumping, Anti-dumping and Anti-trust", Journal of World Trade, Vol. 30. Pg. 27-52
8. Hoekman B. (1997), "Competition Policy and Global Trading System: A Developing Country Perspective", The World Bank Development Research Group, Policy Research Working Paper No. 1735, Washington.
9. Krueger Anne O. (1998), "The Developing Countries and the Next Round of Multilateral Trade Negotiations," The World Bank Development Research Group, Washington.
10. OECD (1998), "Open Markets Matter: The Benefits of Trade and Investment Liberalisation", OECD Publication, Paris.
11. WTO (1996), "Singapore Ministerial Declaration", (WT/MIN(96)/DEC), 18 December 1996, World Trade Organisation, Geneva.
12. WTO (1997), "Council for Trade in Services: Draft Report to the General Council on Activities During 1997," (S/C/W/31), 17 November 1997, World Trade Organisation, Geneva.
13. WTO (1998a), "Ministerial Declaration: Adopted on 20 May 1998", (WT/MIN(98)/DEC1), 25 May 1998, World Trade Organisation, Geneva.
14. WTO (1998b), "Implementation of the Provisions for Review, Future Work or Negotiations in the WTO Agreement and Related Decisions and Declarations", WTO Document No. WT/L/271, World Trade Organisation, Geneva.
15. WTO (1998c), "The High-level Meeting on Integrated Initiatives for Least Developed Countries' Trade Development: Outcome and Follow-up Report of the Director-General", (WT/MIN(98)/2) 28 April 1998, World Trade Organisation, Geneva.

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