

Review article

India at the Doha ministerial meeting: an analysis

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Introduction

The outcome of the Fourth Session of the WTO (World Trade Organisation) Ministerial Conference at Doha, 9–13 November 2001, has been a mixed bag. On a balance, however, it seemed to have achieved more than anticipated gains for India in select critical and contentious areas.

In the period preceding the Ministerial Conference, generally opposing views on issues to be included in the agenda for negotiations were discernible. Whilst the DMD (Draft Ministerial Declaration) that aimed at charting the immediate agenda for negotiation at the Ministerial Conference did not explicitly mention a new round of trade negotiations, it covered all the issues that clearly pointed towards a broad-based agenda being imminent. India and some other developing countries continued to oppose the launch of a new round. They stressed the resolution of commitments made under the Uruguay Round before an expansion of the scope of multilateral trade negotiations to include other issues, such as investment, competition policy, transparency in government procurement, trade facilitation, labour, and environment. On the other hand, developed countries, particularly the United States and the EU (European Union) strongly favoured the launch of a new round of trade negotiations that would address these issues.

The focus of this paper is on a pre- and post-Doha analysis of what India set out to achieve for itself and its successes and failures. Further, the paper attempts to outline pragmatically some directions for the future.

The Road to Doha

Draft Ministerial Declaration and India's concerns therein

The DMD circulated prior to the ministerial conference began with the positive note of continuing the process of reform and liberalization of

trade policies. It pledged to reject the use of protectionist measures so as to attain the ultimate aim of poverty alleviation through increased opportunities and welfare gains. For this, it placed the interests of developing and least developed countries at the centre of the multilateral trading system. However, the manner in which issues of inclusion of trade and environment, concerns of market access and intellectual property rights, and implementation of commitments made under the Uruguay Round were dealt with was not satisfactory from India's viewpoint. Furthermore, proposals to expand the scope of negotiations to include investments, competition, trade facilitation, and transparency in government procurement also continued to be disquieting. Each of these issues is discussed below.

Trade and environment issues

The DMD affirmed that the pursuit of an open and non-discriminatory multilateral trading system and environmental protection are mutually supportive objectives. The emphasis on finding 'win-win' solutions was clear in the draft declaration, which recommended that the CTE (Committee on Trade and Environment) particularly examine those situations where elimination or reduction of trade restrictions or distortions would benefit trade, environment, and development.

India, while reiterating its commitment to environmental protection, has been traditionally opposed to legitimizing the imposition of unilateral trade restrictive measures through an expansion of the scope of multilateral negotiations to include environmental issues and the consequent dilution of the role of the CTE (WTO 1999). As part of his address to the Fourth Session of the WTO Ministerial Conference at Doha, the Commerce Minister, Mr Murasoli Maran, stated that India is '...strongly opposed to the use of environmental measures for protectionist purposes and to imposition of unilateral trade-restrictive measures. ... the existing WTO rules are adequate to deal with all legitimate environmental concerns. We should strongly resist negotiations in this area which are not desirable, ...' (WTO 2001). This aside, India has been opposed to negotiations on the relationships between the WTO and MEAs (multilateral environment agreements) and issues of eco-labelling. In particular, a note of caution might be expressed in respect of the statement within the DMD to link the work of the Committee on Technical Barriers to Trade to expedite work on eco-labelling.

Developed countries, on the other hand, submitted proposals to the WTO seeking a broadening of the mandate of negotiations to include environmental issues. The EU, for example, sought to

‘mainstream’ environmental issues by making trade measures in MEAs and eco-labelling requirements (including those based on non-product related PPMs [production processes and methods]) compatible with WTO principles. The EU also favoured negotiations on environment-related issues in light of concerns of its civil society. The US and the CAIRNS Group countries demanded removal of environmentally damaging subsidies, including agricultural and fishery sector subsidies. Another group of developed countries took recourse to further discussion on the ‘precautionary principle’ and the need to develop a common understanding of how to manage risks in situations where there was scientific uncertainty with regard to impacts on human health and the environment.

WTO and MEAs

It is accepted in principle that the preferred approach for the national governments to tackle transboundary or global environmental problems is through cooperative, multilateral action under the MEA. This is well recognized in the discussions in the WTO as well. In line with this, a priority area identified by the DMD was an increased understanding of the relationship between the multilateral trading system and the MEA. Under the DMD, it was agreed to negotiate to enhance the mutual supportiveness of trade and environment, specifically on

- the relationship between existing WTO rules and specific trade obligations set out in the MEAs. This is, however, applicable only to parties to the MEA in question;
- procedures for regular information exchange between the MEA secretariats and the relevant WTO committees, and the criteria for granting the observer status; and
- the reduction or elimination of tariff and non-tariff barriers to environmental goods and services

As provided in *Agenda 21*, international trade and environmental laws should be mutually supportive. The relationship between the WTO and trade provisions of MEAs provides the greatest challenge to this provision. Out of the 200 or so MEAs currently in existence, 20 contain trade measures to achieve their goals. This implies that the MEAs use trade restraints in a particular substance or product, either between parties to the treaty or between parties and non-parties, or both.

The major MEAs with trade provisions, that India is a signatory to, are the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Transboundary Movement of Hazardous Wastes, and the CITES (Convention on International Trade in Endangered Species).

The GATT (General Agreement on Trade and Tariffs) / WTO members are obliged to observe the MFN (most-favoured nation) clause, the principle of non-discrimination and NT (national treatment) principles and the provisions on eliminating quantitative restrictions (Articles I, III, and XI). Any MEA provision that states that parties can use trade restrictions against some countries (the non-parties), but not against others (the member parties), may violate all these three Articles, a key concern in harmonizing the principles of the multilateral trading system and the provisions in the MEAs. It also discriminates between otherwise 'like' products based on their country of origin, imposes quantitative restrictions, and it may treat imported goods differently from 'like' domestic goods—violating the MFN clause and the NT clause by allowing discrimination between domestic and imported products.

The information sessions organized by the CTE with the secretariats of the MEAs have noted that the focus is on developing mechanisms to assist parties to comply with the obligations in a flexible and non-confrontationist manner.

Modifications of the WTO trade rules to accommodate the trade provisions in the MEAs, if approved, are of concern to countries such as ours on account of the following aspects. First, changes in the WTO rules could have a damaging effect on the trade promotion opportunities of developing countries as most of them export natural resource-based products. Second, trade measures to attain environmental goals can only be second-best policy moves, when environmental degradation arises from policy or market failure. That is, the inclusion of trade-restrictive measures for non-trade purposes is economically inefficient. Third, broadening the scope of exceptions in Article XX would make it ever more difficult to successfully challenge a trade measure under this Article. Such modifications, on environmental grounds, may also eventually spill over to other areas, such as labour issues and human rights. Finally, there is little progress in respect of supportive measures from developed countries, in the form of enhanced access to markets for products from developing countries and access to ESTs (environmentally sound technologies), finance, and capacity building to enable compliance with the MEAs. The emphasis on the use of trade measures over other policy instruments could further discourage the search for positive measures.

In this context, India's view has been that the current WTO rules and practices are sufficient to address any contradiction that may arise between WTO rules and trade measures in MEAs. In the case of local environmental effects, the position taken has been that unilateral trade measures based on non-product-related PPMs are tanta-

mount to enforcing domestic environmental regulation on the trading partner, which is not acceptable. Insofar as environmental externality has transboundary spillover effects, the use of trade measures pursuant to MEAs should not imply coercing countries to join an MEA. Instead, addressing global environmental problems cooperatively, based on common but differentiated responsibility, has been repeatedly emphasized.

The other concern for developing countries with regard to MEAs is the high costs of compliance with their provisions. For instance, India is a signatory to the Montreal Protocol, which commits signatories to gradually phase out the consumption of certain CFCs (chlorofluorocarbons), halons, and other substances ('controlled substances') that deplete the earth's ozone layer. The Protocol also includes trade measures between parties, and among parties and non-parties. These trade provisions commit signatories to ban the import and export of controlled substances from non-parties and also ban the import of products containing controlled substances from non-parties.

These requirements have imposed incremental costs of compliance on signatories, especially the developing countries. In India, a number of small-scale units in such industries such as refrigeration, fire extinguishers, pesticides and pharmaceuticals have been affected. The cost of adjustment and conforming to international standards has been assessed to be 1400 million dollars for an early phase-out and 2450 million dollars for a late phase-out (Jha, Hewison, and Underhill 1997) The relationship between existing WTO rules and specific trade obligations set out in the MEAs is mandated for negotiations. The CTE is to prepare a report on environment issues to be negotiated at the fifth session of the ministerial meeting.

Environmental requirements

The concern regarding a rise in 'green protectionism' is heightened as the DMD recognizes 'the right of members under the multilateral trade rules to uphold and enforce the levels of health, safety and environmental protection they deem appropriate, including the right to regulate and to introduce new regulations on the supply of services'. This is followed by a proviso that measures taken to address such concerns shall not be used for protectionist purposes.

By explicitly recognizing the rights of member nations to impose regulations for the protection of environment, health, and safety, the declaration opens the door for an increase in unilateral imposition of standards and technical regulations, packaging, labelling and recycling requirements, and environmental charges and taxes. The spe-

cific agreements in the WTO under which countries can impose such measures are the TBT (Technical Barriers to Trade) Agreement and the SPS (Sanitary and Phytosanitary) measures Agreement. The former allows members, on the basis of the *least trade restrictiveness* test, to apply mandatory and voluntary standards for the protection of human health, animal or plant life and the environment. The latter, which conforms to the 'precautionary principle' adopted by the WTO, encourages the use of protective measures to guard against damage to the environment, plant or human health.

Apart from these, there have been selective bans imposed by the advanced nations based on environmental requirements. For example, the EU has imposed bans on Indian seafood exports on account of infrastructure and hygiene in fishery establishments. In fact, the requisites outlined for the setting up of an EU-approved plant far exceeds the ones set by the HACCP (Hazard Analysis Critical Control Point), which is the preferable system for food safety. This is an example of *de facto* non-tariff barriers against industries in developing countries and call for action by the WTO to prevent the imposition of such unilateral measures.

Eco-labelling, which are voluntary standards entailing labelling of products according to environmental criteria, could range from product contents to environmental externalities arising in the entire lifecycle of a product, from production to consumption. The use of the life cycle approach results in differentiation between products on the basis of environmental externalities in PPMs. Handling requirements for products that specify packaging, recycling, reuse, recovery, and disposal are also used as environmental policy measures by some countries.

Standards based on non-product-related PPMs and eco-labelling requirements do not take into account the differing levels of environmental abundance (and hence the ability to absorb pollution), technological or economic development, important factors that would determine the type of production process adopted. To make matters worse, labelling requirements could differ between export destinations, which could cause further difficulty in compliance. Export sectors, such as forest products, leather goods, and textiles are especially threatened.

For India and other developing countries, the concerns with regard to such environmental requirements are threefold. First, these environmental regulations could be used as non-tariff barriers to trade, thereby limiting market access for their export products. This has been the case with Indian tea exports, which were banned by some European countries on account of high pesticide residue levels.

Second, the technical and financial capacity of firms in developing countries, especially small- and medium-sized enterprises, to conform to environmental regulations set by developed countries is limited, thus leading to a disproportionate burden of costs across different categories of producers. This has been the case with the dye sector in India, where the industry is dominated by small-and marginal-sized enterprises. Germany has stipulated the usage of the environmentally friendly Busan-30 instead of the regular PCP (pentachlorophenol) in dyes used in cotton fabrics. However, shifting to the specified dye would entail costs nearly thirty times that of PCP, thus proving prohibitive for the Indian industry. Yet another example of the increased costs of compliance with eco-labelling schemes is the footwear sector where these costs were found to be nearly 33% of the export price. These measures result in a loss of competitiveness, market access, and export revenues, and further serve to limit developing countries' ability to implement improved environmental standards.

Third, in the case of local environmental effects, using the same standard across countries, or even different regions within a country, may be wholly inappropriate. Such standards would be more effective and efficient if they took cognizance of specific environment and development conditions.

The other area of concern has been regarding market access barriers created on account of non-product-related PPMs, which have had little transboundary effects. Indian shrimp exports have been losing heavily because of the unilateral restrictions imposed on account of the harvest of shrimp without using turtle excluder devices. The WTO clearly rules against such camouflaged trade barriers. However, with the explicit mention of the inclusion of environment concerns in the DMD, doubts prevailed on the stance of the WTO.

Market access

The DMD agreed to reduce or eliminate tariffs, including the reduction or elimination of tariff peaks and tariff escalation and non-tariff barriers for non-agricultural products. Product coverage was envisaged to be comprehensive and without *a priori* exclusions. The DMD also noted that the negotiations shall take into account the special needs and concerns of developing countries, including through less than full reciprocity in reduction commitments. From the Indian viewpoint, the important areas of concern included implications of the Agreement on Agriculture on national food security and rural employment safeguards as well as reduced 'market access' entailed by high subsidies and high tariff walls maintained by developed countries on account of non-fulfilment of the commitments made under

the Agreement on Textiles and Clothing and the Agriculture Agreement.

On the issue of market access for agricultural products, the Draft Declaration merely states that the future work programme on the directions or aims of reforms in the areas of market access, domestic support and export competition is to be elaborated through consultations. A crucial area of interest to developing countries thus remains largely unaddressed.

In particular, the lack of progress on increasing market access for agriculture products is a serious concern for India and other developing countries as it is in these products that they have comparative advantage. Even after six years of implementation of the Agreement on Agriculture, the access for products from developing countries continues to be impeded in developed country markets due to their high trade distorting domestic support policies coupled with tariff peaks, tariff escalation and a plethora of non-tariff barriers (WTO 2000). In certain product categories, particularly in processed products, the level of tariff escalation has almost doubled in comparison with the level of tariff that existed prior to the Uruguay Round. Tariff escalation has an inherent bias towards the export of primary and unprocessed products—textiles, clothing, leather, rubber footwear, a majority of which have export interests for developing countries, thereby limiting market access.

Trade liberalization also incorporates the removal of trade distorting subsidies, including environmentally harmful subsidies such as those in the energy and agriculture sectors. The concern for India is the social dimensions of the removal of these subsidies, as from a developing country perspective, subsidies are a crucial means of providing access and security to disadvantaged sections of the population.

On the issue of subsidies, the Agriculture Agreement and Subsidies and Countervailing Measures make certain exemptions for environment subsidies (or domestic support). Under the Agriculture Agreement, a distinction has been made between those subsidies that are exempt from commitments towards reducing domestic support, on grounds of non-trade effects (e.g. research, disease control, food security, and environment) and those that are not (as they have production and hence trade implications). However, this distinction is usually not very clear. Similarly, under the Subsidies and Countervailing Measures, the provisions with regard to non-actionable subsidies, granted on grounds of industrial research, pre-competitive development activity, assistance to disadvantaged regions, or assistance for adapting to new environmental laws or regulations can-

not be challenged in the WTO's dispute settlement procedure, and countervailing duty cannot be used on subsidized imports. To qualify for these exemptions, however, the subsidies have to meet strict requirements.

Intellectual property rights and the Trade Related Aspects of IPRs Agreement

The priority areas for negotiations under the TRIPS agreement that emerged at the agenda for discussions at the Fourth Session of the Ministerial Conference were the negotiations on geographical indications, clarifying the relationship between the WTO's TRIPS Agreement, and the United Nations CBD (Convention on Biological Diversity). Specifically, India, among other developing countries, called upon the WTO to consider and address the implications of the TRIPS Agreement on national public health policies. India's concerns and positions on these areas are discussed below.

Geographical indications

A geographical indication refers to the use of a place name to describe a product, which usually identifies both the product's geographical origin and its characteristics. Products such as 'Scotch' whisky, 'Champagne', 'Tequila', and 'Roquefort' fall in this category. At present, protection of geographical indications exists predominantly for wines and spirits, products mostly from developed countries. The Draft Declaration strengthens the protection offered to these products by agreeing to complete negotiations on the establishment of a multilateral system of notification and the registration of geographical indications for wines and spirits.

Developing countries including India have been calling for the extension of the protection of geographical indications to products beyond wines and spirits to other products including handicrafts, agricultural products, and other beverages. This concern has not been concretely incorporated in the Draft Declaration as it just states that the Council for Trade-Related Aspects of Intellectual Property TRIPS shall examine issues related to possible negotiations on the extension of the protection of geographical indications to additional product areas.

Extending the protection offered by geographical indications would be critical to maintaining a competitive advantage in export products such as Alphonso mangoes, Basmati Rice, and Darjeeling Tea by instilling a degree of product differentiation. In this respect, a *sui generis* legislation for the Protection of Geographical Indications of Goods (Registration and Protection) Bill has been passed in India

in December 1999, which may serve as the basis for seeking higher protection for some products.

TRIPS and public health

In preparations towards Doha, members negotiated on clarifying the relationship between intellectual property protection and access to medicines and public health. Intellectual property protection was deemed necessary for encouraging creation of new medicines. For one, the clarification of relationship between TRIPS and public health in the DMD text aimed at reducing uncertainties about using the flexibility provisions (such as compulsory licensing and parallel imports) of the TRIPS Agreement. At the other end, the TRIPS Agreement could potentially have detrimental implications for access to drugs in developing countries, particularly their poorer populations, to deal with large-scale, life-threatening epidemics such as HIV/AIDS, malaria, tuberculosis, and other diseases.

India, as of now, provides only process patents to the pharmaceuticals sector and hence it is possible to produce a given drug at a cheaper cost by producing it with a different process. India has to meet commitments on the TRIPS Agreement by 2005. With the imposition of product patents, a high-cost structure of drugs could emerge, which has serious implications for the access to medicines.

In June 2001, India along with other developing countries submitted to the Council for TRIPS that measures be taken to ensure that the TRIPS Agreement does not undermine the right of WTO members to formulate their own public health policies and implement them by adopting measures to protect public health. The submission to the TRIPS Council argued that the protection of intellectual property rights, in particular patent protection, should encourage the development of new medicines and the international transfer of technology to promote the development of manufacturing capacities of pharmaceuticals, without restraining policies on access to medications. This concern, however, has not been incorporated in the agenda set out for the TRIPS Council by the DMD.

TRIPS and CBD

The TRIPS Council was also envisaged to address the relationship between the TRIPS Agreement and the CBD and the protection of traditional knowledge and new technological developments. This is on account of a possible conflict in the objectives of the two agreements.

The CBD provides a basis for the equitable access to natural resources, while focusing on conservation, sustainable use and equita-

ble sharing of benefits from the utilization of these resources, and respect for local communities' knowledge and innovations. The TRIPS Agreement seeks to promote and foster technological innovation by ensuring the certainty of intellectual property protection, but it is not clear how this protection can achieve the objectives of sustainable development, benefit sharing, and conservation of biodiversity especially in developing countries.

It becomes evident that both the agreements approach the issue of IPRs from different perspectives. However, it is possible to trace certain synergies that would enable the building of a mutually supportive relationship so as to achieve the common objective of sustainable use of intellectual property. One such move would be the introduction of TRIPS-compatible IPR systems wherein IPRs are shared along with other mutually agreed access to genetic resources. The second would be to disclose informal knowledge regarding patents while yet another move would be the coming together of the CBD and the TRIPS for the exchange of IPR-related material.

In addition to the issue of protecting traditional knowledge where the CBD and the TRIPS Agreement seem to be in divergence, the TRIPS Agreement has significant trade and environment implications. This is reflected in the agenda of the CTE, which includes, as a focal point of discussion, the issue of IPRs as engendered in the provisions of TRIPS. The environmental aspect of provisions in the TRIPS Agreement is clearly manifested in Article 27, which states that members may exclude from patentability inventions, which are necessary '...to protect human, animal or plant life, or health, or to avoid serious prejudice to the environment...'.

The ruling on IPRs through TRIPS and the various provisions regarding standardization norms are expected to have tremendous impact on trade especially in the conduct of trade and in the patterns of trade flow. This is so because these provisions tend to significantly alter market access: a patent granted to a specific country would act as an indirect barrier to trade to those countries which were previously engaged in the trade of that particular good. This kind of an adverse impact could affect developing countries more than advanced nations.

Implementation issues

As the run up to the ministerial meeting, a gamut of issues relating to implementation of the Uruguay Round agreements attracted maximum attention and generated more debate than any other area of work of the WTO. From the developing country perspective, including India, the main concerns have been the following. First, capacity

constraints have hindered full-fledged implementation of the Uruguay agreements, namely lack of financial, human, and institutional resources that often make it difficult to operationalize the agreements in the context of developing countries. Second, the agreements have not brought forth the economic benefits that were envisaged particularly in respect of the agreements on textiles, subsidies, agriculture, IPRs, anti-dumping, SPS measures and that there is need for 're-balancing'.

The concerns expressed by India *inter alia* pertained to imbalances in the earlier Round, non-realization of expected benefits, and non-binding character of special and differential provisions applicable to developing countries. The distinctive areas included: Agreement on Textiles and Clothing under which meaningful access has not accrued to the developing countries, prevalence of anti-dumping measures in the EU that posed hardships for Indian textiles exports and absence of honouring the provisions in Agreements on SPS measures and TBT in application of special and differential treatment. Additional implementation issues highlighted by India relate to imposition of unilateral trade restrictions, growing emergence of regional trading arrangements, market access to agricultural products, issues of transfer of technology at fair and affordable costs in the context of trade and environment, etc. Hence, India's position in preparing the Ministerial Meeting was resolution of these concerns to constitute an important part of the agenda of the meeting.

Investment, competition, trade facilitation and transparency in government procurement

On the group of four issues covering trade and cross-border investment, trade and competition policy, trade facilitation and transparency in government procurement, the DMD proposed agreements to begin multilateral negotiations with a view to encouraging their contribution to international trade and development, whilst securing transparency, predictability and stability of rules and procedures.

Like other developing countries, India has thus far participated in the educative process to gain a thorough understanding of the issues before assessing as to whether it would be in its interest to enter into multilateral trade agreements. Although acknowledging the spirit of launching negotiations on these subjects, India held the position that there was lack of '...consensus in favour of changing the study mode into negotiation mode in respect of any of these subject' (Third World Network 2001). The only option offered by the DMD was proposal to commence negotiations, which was at complete variance to earlier

commitments made in Singapore that entailed no pressure to be put on countries to negotiate rules until there was 'explicit consensus'.

India at Doha

With the above background, we now undertake an analysis of the specific outcomes at Doha on each of the issues of concern for India. The objective is to assess the gains made, particularly under the TRIPS Agreement and in the area of agriculture and examine the concerns as a result of mainstreaming of environmental issues into the WTO framework. We also address the implications for India as a result of developments at Doha in addressing implementation issues, investment, competition, and transparency in government procurement and trade facilitation.

Trade and environment

India's vehement opposition to the inclusion of environment in the WTO framework could not stop its mainstreaming into the multilateral trading system. The Doha Declaration recognizes the right of countries to take measures for environmental and health protection, with the caveat that these measures should not be used as protectionist devices that hinder trade flows. This sanctioning of unilateral imposition of environmental measures is a worrying development for India.

In the aftermath of Doha, the CTE would be examining the issue of imposition of labelling requirements for environmental purposes. Based on the recommendations of the CTE, negotiations could take place on this subject at the next ministerial conference in 2003. This would open the door for the imposition of eco-labels and other environmental requirements which would increase costs for domestic industry, particularly small enterprises which would have to comply with these requirements to remain competitive. Environmental requirements have been criticized not only for the potential for them to be used as non-tariff barriers but also for the way in which they are formed, which do not take into account differing environmental resource bases, and social and economic conditions among countries. To address some of these concerns, the effect of environmental measures on market access with particular reference to developing countries is to be studied by the CTE and, based on this, action will be taken at the next ministerial meeting. This small window of opportunity should be utilized by India to undertake a concrete assessment of the implications of environmental requirements on trade flows and present these findings to the WTO, so as to restrict the adverse affects of imposition of these requirements.

In its opposition to the linking of trade and environment, India had also said that existing WTO rules were adequate to deal with all environmental concerns. This view also did not find reflection in the Doha Declaration that calls for negotiations on the relationship between existing WTO rules and trade obligations in MEAs. However, the negotiations would be limited to the applicability of WTO rules among parties to an MEA. Thus the core issue of reconciling the imposition of more stringent trade measures on countries that are not parties to an MEA but are members of the WTO, with the principles of non-discrimination and MFN, remains unresolved.

At this point, it is necessary to emphasize that India's opposition to the inclusion of environment in the multilateral trading framework should not be interpreted as meaning that addressing environmental concerns is not high on the priority of the government or the people. The objective of environmental protection is enshrined not only in the Constitution of India and implemented through various policies, programmes, and legislation, but has been part of traditional community practices. India is committed to achieving sustainable development and is a signatory to the Marrakesh Declaration, which sets this as the overall objective. The Doha Ministerial Declaration also reaffirms commitment to the objective of sustainable development, and emphasizes that the objectives of safeguarding an open and non-discriminatory multilateral trading system and environmental protection are mutually supportive. There can be no disputing these basic principles and objectives, it is their translation into unilateral trade restrictive measures that is to be opposed.

Market access with specific reference to agriculture

In the arena of agricultural trade, India had been calling for the elimination of domestic support, trade distorting subsidies, and non-tariff barriers that prevent the free flow of agricultural exports from developing countries. Along with this, India emphasized the critical dependence on agriculture of large rural populations in developing countries, and the 'need to adequately provide for their food and livelihood security and for promoting rural development' (WTO 2001).

In the Doha Declaration, WTO members have committed to comprehensive negotiations aimed at increasing market access, reducing and eventually phasing out export subsidies and substantial reductions in trade distorting domestic support policies. Getting this commitment from developed nations, particularly those that form the EU, which were opposed to reducing domestic farm support, has been seen as a major negotiating gain for India and other developing countries. Further, the Doha Declaration specifies that *special and*

differential treatment would be accorded to developing countries for the implementation of commitments to trade liberalization in the agriculture sector. Significantly, the Declaration explicitly states that this differential treatment in implementation should enable developing countries to address their development needs, such as *food security* and *rural development*. The incorporation of these issues in the 'green box' is a substantial gain for India.

The TRIPS Agreement

Public health

The impending imposition of product patents under the TRIPS Agreement would result in increased prices of many drugs and medicines, in addition to having adverse impacts on the domestic pharmaceutical industry. At Doha, India asserted that 'availability and affordability of essential medicines is a universal human right. WTO should not deny that right' (WTO 2001). Further, a demand was made that the Ministerial Conference should send out a message that the TRIPS Agreement should be interpreted and implemented in a manner supportive of the WTO Members' right to protect public health and ensure access to medicines to all.

The adoption of the Declaration on the TRIPS Agreement and Public Health at Doha is thus a substantive gain for India and other developing countries who had been pressing for this. The Declaration recognizes developing country concerns about ensuring access to medicines and taking measures to protect the health of its citizens. Countries now have the flexibility of determining what constitutes a public health emergency, including diseases such as HIV/AIDS, tuberculosis, malaria, and other epidemics. The government can then grant *compulsory licenses* to pharmaceutical companies to produce drugs and medicines for alleviating the particular health emergency. Thus, the restriction on production of patented drugs and medicines could be sidestepped if required and deemed necessary by the government. This could go a long way in ensuring availability of medicines to a large segment of the population.

Geographical indications

Another area of concern for India under the TRIPS Agreement is the issue of protection through GI (Geographical Indications) for products such as Basmati Rice, Darjeeling Tea, Coorg Coffee, and Alphonso Mangoes, which are produced in specific regions in India. The need for such protection was only recognized for products such as wines and spirits, where developed countries have a comparative advantage. In the run-up to the Ministerial Conference, developing

countries including India had been calling for the rectification of this distortion.

The Doha Declaration addresses their concern, but in a limited manner. While it formalizes the system of protection for wines and spirits by agreeing to negotiations on the establishment of a multilateral system of notification and registration for these products, it stipulates that further study be undertaken on the issues relating to extension of GI protection to other products. The Council for TRIPS would undertake this in its work programme and based on its findings, a decision would be taken at the next ministerial conference in 2003 on whether negotiations should be entered into, thus deferring the flow of benefits from such protection.

TRIPS and CBD

Underlying the specific concern about the extension of protection by GI, is the more fundamental issue about the potential conflict between the TRIPS Agreement and the CBD (Convention on Biological Diversity). While TRIPS seeks to provide protection to *private property* (an individual or firm's right of ownership of distribution of a process/product developed by them), the CBD aims to promote the conservation of biological diversity using measures such as the adoption of *traditional knowledge* on the subject, which by its very nature is *common property*. Thus, the implementation of these two multilateral agreements, which India is signatory to, could be in conflict.

The protection of traditional knowledge and products or processes that emanate from it is something that India and other developing countries have been calling for. The need for this protection has arisen on the basis of several instances of misappropriation of the biological and genetic resource of developing countries. The Doha Declaration recognizes this concern and calls for further work on examining the relationship between the TRIPS, CBD, and the protection of traditional knowledge and folklore. This could be utilized by India to strengthen the case for protecting products that have been developed using traditional knowledge.

Implementation issues

The cornerstone of India's approach to the Doha Ministerial Conference was the insistence that negotiations be limited to those already mandated, such as agriculture and services, and implementation of commitments made in the earlier Uruguay Round agreements. At Doha, India reiterated this and drew attention to the 'asymmetries and imbalances in the Uruguay Round Agreements, non-realization of anticipated benefits and non-operational and non-binding nature of special and differential provisions' (WTO 2001).

Concerns on implementation issues have been addressed in a limited manner by the Doha Declaration, as only some of the issues have been mandated for immediate negotiation. Other outstanding implementation issues have been recommended for further study and action will be taken only at the next ministerial conference in 2003.

Investment, competition, transparency in government procurement and trade facilitation

India had been strongly opposed to the inclusion of new issues in the agenda of multilateral trade negotiations at Doha, on the basis that these were essentially non-trade issues that would curtail the governments' right to develop economic and industrial policies for national development. At any rate, it called for the need to study these issues before entering into a process of negotiations, which also should be undertaken only after an *explicit consensus*. India stuck to this stance and said that it would not sign the final declaration until this was specifically incorporated. This call was addressed, with the Doha Declaration specifying that negotiations on these issues be deferred to the next session of the ministerial conference and only with the explicit consensus of member countries. This gives India and other developing countries time to examine the implications of undertaking any commitments in these areas on domestic policies.

Directions

India had a significant role to play in shaping the outcome of the Doha Ministerial Conference, particularly considering its small share in world trade. The rigid approach adopted by India ran the risk of getting isolated in the international arena although *ex post* the risk-taking strategy paid off well.

Against this background, it would be right to state that more than anticipated gains have been made at Doha on several issues of concern for India. For one, these include getting a fair visibility for its concerns in the deliberations at the ministerial meet as much as the run up to it. By virtue of this, a range of developing country concerns were internalized into the future work programme of the WTO. Specifically, these include commitments towards ensuring availability and affordability of essential drugs and medicines, protection of niche indigenous products and market access for farm exports. The area of concern is the inclusion of environmental issues into the multilateral trading framework and the consequent potential for a rise in non-tariff barriers.

India's strategy for the next ministerial conference should be to adopt a proactive and pragmatic stance towards trade negotiations and not one that would isolate it from the bulk of the trading commu-

nity. Trade reforms are here to stay. Towards this, it would be in India's interest to be well prepared, through comprehensive research and analysis on the implications of commitments in specific areas to participate effectively in the future negotiations. Whilst guarding ourselves of the costs entailed, it would be only correct to weigh these against the benefits that would accrue by integrating ourselves with the international trading system such as capital and technology inflows, skill enhancement, and competitiveness. Reconciling domestic policy objectives with the demands placed by the global economic environment is the need of the hour. The process of trade liberalization is an opportunity for India to deepen economic reforms towards integration with the global economy.

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